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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**Council for Penological Co-operation**  
**(PC-CP)**

**Draft commentary  
to Recommendation CM/Rec (2016) XX  
on the European Rules on community sanctions  
and measures**

**Document prepared by the Directorate General  
Human Rights and Rule of Law**

## **Appendix**

### **Scope**

It cannot be too strongly emphasised that community sanctions and measures applied within the framework of the present rules are of value both for offenders and for the community: offenders are in a position to continue to exercise choice and assume their social responsibilities, while the implementation of penal sanctions and measures within the community itself rather than through a process of isolation from it may well offer in the long term better protection for society. There are financial as well as social benefits to be gained by making less use of imprisonment, although the financial costs of implementing community sanctions and measures to the appropriate standard must not be under-estimated.

Consequently, the imposition and the implementation of community sanctions and measures must be guided by these considerations as well as the essential aim of treating offenders with respect as responsible human beings.

The present rules are not to be regarded as a model system. Instead, they form a corpus of requirements susceptible of being commonly accepted and acted upon. Without respect for these requirements there can be no satisfactory application of community sanctions and measures.

The provisions of the present rules deal with all sanctions and measures implemented in the community, including ways of enforcing sentences of imprisonment outside prison establishments. However, measures which are specifically concerned with juveniles are not covered by the rules.

### **Chapter I: Basic principles**

#### **Rule 1**

This Rule affirms the positive value of community sanctions and measures. Community sanctions and measures can be variously coercive, prohibitive, intrusive and rehabilitative, with many sanctions and measures incorporating more than one of these elements, so constituting an appropriate response for crimes, but also providing control and support towards desistance.

Community sanctions involve some restriction of liberty, as do most forms of criminal imposition, but allow people to continue to live in the community and to fulfil the obligations that this entails, while they undergo a fitting punishment for the wrongs of their offences. Community sanctions can therefore be used to promote social inclusion, enabling people to retain most of their rights and to develop ways of living in which offending has no place. Such social inclusion enhances social justice and fair opportunities, especially chances to secure employment, to find accommodation and to enjoy personal relationships - all factors known to be associated with desistance from offending.

Community measures can include measures to avert pre-trial detention: arrangements can be devised to put in place sufficient safeguards against offending, absconding or interfering with the course of justice without remanding people into custody. In many countries, large numbers of prisoners are held awaiting trial, often in the worst conditions. Some of them are subsequently acquitted and released following an experience that has inevitably been damaging; some are convicted but sentenced to a community sanction, so that their pre-trial detention comes to seem avoidable; even when a prison sentence follows conviction, pre-trial detention should be avoided so far as possible since the pains of imprisonment should in principle not come before conviction. Indeed pre-trial detention is a practice at odds with the fundamental right to be presumed innocent. Measures can also be used after a prison sentence at a time when supervision may make a decisive difference to the prospects of resettlement / re-entry.

Community sanctions and measures are often introduced to give courts a range of options to avoid imprisonment and in the hope that they will reduce the overall prison population. In fact, the relationship between imprisonment rates and the use of community sanctions and measures is complex and disputed. Even so, if community sanctions and measures are used wisely and proportionately, they can make a contribution to reducing prison numbers. In any case they should be valued not only for their potential to reduce the size of the prison population but for their positive contribution to justice and social inclusion.

## **Rule 2**

Examples of community sanctions and measures that are commonly in use include:

- alternatives to pre-trial detention, such as requiring a suspected offender to reside at a specified address and / or to be supervised and assisted by an agency specified by a judicial authority;
- probation / community supervision as an independent sanction imposed without pronouncement of a sentence to imprisonment;
- suspension of the enforcement of a sentence to imprisonment with imposed conditions;
- community service (i.e. unpaid work on behalf of the community);
- victim compensation /reparation;
- victim-offender mediation;
- treatment orders for drug or alcohol misusing offenders and those suffering from a mental disturbance that is related to their criminal behaviour;
- restriction on freedom of movement;
- electronic monitoring administered in accordance with CM/Rec (2014) 4;
- conditional release from prison followed by post-release supervision.

This list is not intended to be exhaustive. It is also to be expected that new forms of community sanctions and measures will be developed over time that will also be covered by the present Rules.

## **Rule 3**

Since community sanctions and measures are often developed in the hope that they will provide ‘alternatives to custody’ and thus contribute to reducing or at least limiting the growth of numbers in prison, their use must be encouraged. If imprisonment is to be a ‘last resort’, there must be sanctions and measures of earlier resort. Yet the well-established principle of proportionality is crucial here. While community sanctions and measures can appropriately be used for serious offences and not only for first offenders, it is important for policy makers and the judiciary to avoid ‘net-widening’ – in other words, using community sanctions and measures where they might otherwise have imposed a lesser sanction like a financial penalty, a reprimand or a warning. If community sanctions and measures are used excessively for minor offenders, they will not only enlarge the system, occasioning both injustice and significant financial expense to the public purse, but will also come to be regarded as unsuitable for more serious offences, which will limit their capacity to reduce reliance on custodial detention. This Rule restates the importance of proportion, but also urges decision makers to take due account of the individual’s circumstances to make sure that compliance is feasible and relevant in supporting desistance.

## **Rule 4**

This Rule states that implementation of community sanctions and measures should uphold the human rights of all concerned. It is expressed in very general terms and stipulates that the nature and manner of implementation of community sanctions and measures shall be in line with any internationally guaranteed rights. This general rule was formulated because the creation and application of community sanctions and measures often involves taking account of community safety and upholding the legal order in society, even when this may be contrary to the immediate interests or preferences of the individual. Yet this public interest must always respect the fundamental rights of defendants and offenders.

Technological developments (for example) may lead to new community sanctions and measures of a character that cannot readily be anticipated. Accordingly, the rule has been formulated in general terms in order to provide proper safeguards for the rights of the offender even in relation to contingencies which cannot yet be foreseen.

The Rule also refers to the responsibilities of offenders and requires implementation to have regard to enabling and encouraging them to accept their responsibilities as members of the community.

### **Rule 5**

Medical and psychological treatment of people who are in a coercive situation has, historically, sometimes led to grave infringements of human rights – especially when interventions have been used experimentally. Such practices are considered unethical in European countries and are therefore forbidden. An offender subject to a community sanction or measure is in a situation of restricted liberty backed up by the coercive force of law. This Rule accordingly asserts that treatment can only be given if it is in conformity with international ethical standards. This implies the need to bring national legislation and practice in line with such standards.

Internationally adopted ethical rules include the requirement that individuals should receive full information about the purpose, nature, methods and possible consequences of treatment. Their informed consent is essential. Consent by individuals who are subject to coercion is, however, a complex and sensitive matter. While consent may be necessary, it is not always sufficient to guarantee the ethical justifiability of an intervention. Chapter V of these Rules covers similar matters further.

### **Rule 6**

The purpose of this Rule is to ensure that community sanctions and measures are imposed and implemented justly and without unfair discrimination. Discrimination in the imposition or implementation of community sanctions and measures includes the unjust or unfair exercise of discretion for any of the reasons mentioned in the rule. The grounds listed should not, however, be regarded as exhaustive.

A distinction must be made between discrimination and differentiation. A prohibition on discrimination does not mean that everyone must be identically dealt with. Differentiation, unlike discrimination, is expected to relieve any unfair disadvantage or to achieve some betterment. People and their circumstances are not all the same and there are circumstances in which people must be treated differently from others, in order to respond to specific individual problems, to meet distinctive individual needs or to take account of special situations. In this way, substantial justice is advanced.

Unfair discrimination is sometimes unintended. Discrimination can be the result of unreflective implementation of routine procedures and can become 'institutionalised'. For example, policies and practices may be devised for men who are the majority of offenders in (probably) all countries and it must not be simply assumed that they are appropriate for women.

In some cases, people's circumstances (for example, homelessness) may make them unsuitable for a particular sanction or measure. An alternative should in such cases be actively sought to prevent individuals ending up in custody unnecessary.

Full respect for this Rule entails periodic inspection of policy and practice to make sure that community sanctions and measures are being fairly implemented and monitoring systems adopted which might draw attention to unwitting discrimination.

### **Rule 7**

There should be no discrimination in the imposition or implementation of community sanctions and measures on the basis of nationality. While this is just one example of the general principle of non-discrimination, it needs separate specification and due emphasis. There is considerable movement of people from all parts of the world across the continent of Europe and the prisons of almost all European countries hold prisoners of many different nationalities. Non-nationals should be considered eligible for community sanctions and measures and suitable provision should be made to make sure that they are treated well and fairly. In particular, there should be no provision in law or in practice that makes foreign nationals ineligible for community sanctions and measures.

Account must be taken of the distinctive circumstances of foreign nationals to make sure that they are treated equitably. For example, bail before trial should not be refused on the grounds of nationality. This may, for example, include a need to provide linguistic interpretation in some cases if the individual is not sufficiently competent in the national language. Resettlement needs following a term of imprisonment may be different, and there may be a need for probation agencies in different countries to liaise in particular cases. EU Council Framework Decision 2008/947/JHA of 27 November 2008 (on the application of the

principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions) allows the transfer of community sanctions between countries so that people who have offended in one country may fulfil the sanction in another country (usually their country of normal residence) where this will promote their social rehabilitation. This Decision applies only to EU member states but all members of the Council of Europe should consider how they might liaise and cooperate with other countries to advance rehabilitation by transfer in appropriate cases.

### **Rule 8**

This Rule requires that the privacy and dignity of offenders shall always be respected. In particular, harassment, by which is meant the vexing, troubling or worrying of an offender through unduly frequent controlling or checking activities, is prohibited by the rule. Similar considerations apply to jeopardising the offender's sense of self-respect, family and other intimate relationships, community links and the ability to function in the community. Community sanctions and measures, just because they leave offenders in society, may expose them to the risk of public opprobrium or social stigmatisation. The Rule requires that adequate safeguards be adopted to protect them from insult and improper curiosity or publicity.

The Rule is also a reminder that the implementation of community sanctions and measures can affect not only the individual, but also members of their family. One example of this is the need in certain circumstances to visit the home of an offender, which may well be the home of other people as well.

The right to respect for private and family life is guaranteed by Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Under this article, no public authority may interfere with the exercise of this right except in accordance with law and with reference to what is strictly necessary for, *inter alia*, the prevention of disorder or crime. The nature, content and methods of implementation of community sanctions and measures fall under this heading, since they may entail conditions and obligations about the ordering of the offender's lifestyle and that information be obtained about whether the offender fulfils the conditions or obligations imposed. Nevertheless, the principle of respect for private and family life remains paramount and any interference with this right should be strictly limited and proportionate.

It should also be noted that endangering the rights listed in this Rule can undermine the offender's co-operation in the implementation of the sanction or measure and detract from its legitimacy.

### **Rule 9**

This Rule requires agencies to protect the human rights of victims as they implement community sanctions and measures. Whenever implementation of the community sanction or measure or changes to its form or duration may have implications for victims, their interests should be taken into account and their rights always respected.

The general duties of states to victims of crime are set out in Recommendation Rec (2006) 8 of the Committee of Ministers to member states on assistance to crime victims and in many countries implementing agencies like probation make an important contribution to fulfilling those duties. In some jurisdictions, implementing agencies offer services directly to victims of crime. Elsewhere, they often work in co-operation with other organisations or individuals who offer support to the victim. Commonly, and especially in more serious cases, agencies contact victims and offer information about the offender – for example, when s/he is to be released from prison. Parole and other forms of early release supervision are included in the present Rules.

The EU Victim's Directive ([Directive 2012/29/EU](#)) is an authoritative statement on best practice which imposes obligations on member states of the EU and is a useful resource for all countries.

### **Rule 10**

A number of European countries recognise the value of reparation and restorative justice practices. These can take many different forms, although there are a number of common themes in such approaches. A United Nations Handbook explains 'Restorative justice approaches and programmes are based on several underlying assumptions: (a) that the response to crime should repair as much as possible the harm suffered by the victim; (b) that offenders should be brought to understand that their behaviour is not acceptable and that it had some real consequences for the victim and community; (c) that offenders can and should accept responsibility for their action; (d) that victims should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparation, and (e) that the community has a

responsibility to contribute to this process.’ (Handbook of Restorative Justice programmes, Criminal Justice Handbook series, United Nations, 2006).

Restorative approaches include mediation— for example, mediation between victim and offender to explore how amends can be made and how those affected can manage the consequences of the crime. Mediation can also be used to prevent crime – for example by working to reduce neighbourhood disputes before they lead to crime. Recommendation Rec (99) 19 on mediation in penal matters sets out standards for mediation. Other restorative practices include family group conferences, sentencing circles and reparation panels. It is also possible to bring a restorative perspective to other more formal criminal justice practices – for example, courts, panels, parole boards can also incorporate a restorative perspective. The United Nations Economic and Social Council’s Resolution 2002 /12 “Basic principles on the use of restorative justice programmes in criminal matters” gives authoritative guidance on these approaches.

This Rule insists that such practices are to be encouraged in suitable cases. Particular care must be taken to make sure that both the offender’s and the victim’s interest and rights are fully respected. The evaluation of these interventions must not, for example, be undertaken solely with regard to the offender’s reoffending, but must consider the benefits to the victim from such work. Certainly whenever an implementing authority arranges any meeting between the offender and the victim, every care must be taken to make sure that this does not become an occasion for further victimisation.

Restorative justice approaches call for distinctive skills and implementing agencies should ensure that staff are trained to undertake such work appropriately.

This Rule also has implications for the best known form of reparation to the community - community service / unpaid work. If this is to constitute meaningful reparation it must involve (and be seen to involve) work that has value to the community concerned.

#### **Rule 11**

Community sanctions and measures have a certain inherent afflictive character as a consequence of the restrictions imposed on personal liberty and the requirements of supervision. While the afflictive nature of community sanctions and measures is usually less serious and burdensome than the deprivations and hardships of custodial sanctions, this does not mean that it does not exist or can be ignored. This Rule insists that implementation methods must not aggravate the inherent degree of affliction beyond what is necessary in giving effect to the community sanction or measure. Not only would such aggravation be unjust; it can also be expected to create resistance and unwillingness to co-operate in any attempt to secure the offender’s law-abiding adjustment in the community.

#### **Rule 12**

One of the main aims of community sanctions and measures is the attempt to avoid incarceration. This aim would be undermined if imprisonment were to constitute the necessary and only reaction to non-compliance. This Rule therefore prohibits provision in national law for an automatic recourse to imprisonment in such cases. Deciding authorities should use their own good judgement and not immediately conclude that the individual has failed to take advantage of the chance of a community sanction or measure and must therefore be sent to prison. This does not mean that imprisonment can never be a consequence of non-observance of the requirements. Depending on national law and on the circumstances, the deciding authority may allow the sanction or measure to continue, impose another community sanction or measure instead, order a financial penalty or, as a last resort, sentence to imprisonment.

The Rule also refers to people who have been released conditionally from prison. In some countries, they are regarded as still serving a prison sentence. If they violate the conditions of their release, therefore, they may be recalled to prison. Some failures to meet obligations are likely to result in automatic recall. In some cases, however, for example where the failure is minor, authorities should also be permitted to consider other options. (See also Rule 64 and Commentary)

#### **Rule 13**

Since the imposition and implementation of community sanctions and measures are founded in law, there must be adequate systems of inspection and monitoring to ensure proper accountability. In this way, the authorities and the public can have confidence that community sanctions and measures are being used as they should be. This Rule also refers to independent monitoring, as, in addition to the routine supervision that managers should undertake as part of their duties and periodic inspection by government agencies,

authorities must be open to question and scrutiny through independent inquiry. Independent monitoring by an Ombudsman or human rights organisations, are among the ways in which this may be achieved. These matters are considered more fully in Chapter VII of these Rules.

## **Chapter II: Legal Framework**

### *Legislation*

#### **Rule 14**

It is a general principle applicable to all kinds of penal sanctions, including community sanctions and measures that they must be subject to the principle of legality. This means that the authority to create and apply them must stem from law. This Rule says that national law shall regulate the use, type, duration and modalities of implementation of community sanctions and measures. Within the parameters of law, it is for the deciding authority to determine the community sanction or measures in all individual cases.

#### **Rule 15**

This Rule draws out some of the implications of the legality principle laid down in Rule 14. Community sanctions and measures impose conditions and obligations and these must be based on clear legal provision. Since the requirements of a community sanction or measure constitute instructions which the offender is expected to follow, the legal provisions should be concise and intelligible so as to be comprehensible by ordinary persons, leaving no doubt as to their meaning.

The legality principle also applies to the consequences of non-compliance. Offenders must be made aware of the possible consequences of a failure to fulfil the obligations of the community sanction or measure, which in the most serious cases, may include arrest and detention. It is for national law to determine the criteria which shall regulate the powers to arrest or incarcerate the offender under these conditions. This is considered further in Chapter VI of these Rules.

#### **Rule 16**

A further aspect of the principle of legality relates to the powers and duties of the deciding authorities which must be laid down in national law.

This Rule states the principle according to which competence to decide on the imposition or revocation of a community sanction must be reserved for a deciding authority - that is a court, judge, prosecutor or administrative authority only as laid down in law. The same is true where a pre-trial measure – a measure imposed before determination of guilt – is concerned.

The affirmation of a principle limiting such decisions to a deciding authority, which is in itself a guarantee of fundamental freedoms and rights, secures independence having regard to the doctrine of the separation of powers and impartiality. It constitutes a manifestation of the principles underlying the rule of law which are jointly admitted and shared by the member states of the Council of Europe.

#### **Rule 17**

The legality principle also applies to the implementation of community sanctions and measures, beginning with the requirement that the implementing authorities shall be specified in law. The law shall also define the responsibilities and the duties of these authorities.

The purpose of this Rule is to provide for a legal definition of the powers and duties of the implementing authority. This means that the methods of implementation are also subject to the principle of legality. The same is true where it becomes necessary to make use of third parties – whether private persons or public or private organisations – and delegate certain implementation tasks to them. These matters are considered in more detail in Chapter IV of these Rules.

#### **Rule 18**

Some countries adopt criminal codes that set out the sanctions and measures to be imposed for particular offences. This Rule encourages countries to stipulate community sanctions and measures as the usual,

'reference' or presumptive response for certain types of offence – rather than the terms of imprisonment that are often specified.

### **Rule 19**

Like Rule 18, this Rule recognises that criminal codes sometimes constrain the use of community sanctions and measures. In particular, law may limit their use to first offenders, younger offenders and / or relatively minor offenders. These Rules assert that community sanctions and measures can be used in a much wider range of cases than these. Accordingly, any such limiting legal provisions should be reviewed so that community sanctions and measures can be a lawful option for the deciding authority to consider in as many cases as possible. Unless such constraints are removed, the capacity of community sanctions and measures to contribute towards reducing the numbers of people sent to prison will be significantly diminished.

### **Rule 20**

This Rule states that the implementation of a community sanction or measure must not prejudice an individual's entitlement to social security or welfare benefits. Unemployment benefits, for example, may be contingent upon two conditions – that the person concerned is available for work and that no work can be found for that person. An unemployed offender doing unpaid work under a community service order, however, may be held not to be available for ordinary employment and therefore refused unemployment benefits. In order to avoid situations of this kind arising, the Rule requires that social security rights and benefits shall not be limited by reason of fulfilling the obligations of a community sanction or measure.

More generally, the Rule recognises that civic rights should not be compromised by a community sanction or measure. It is recognised that some restriction of ordinary civic rights may form part of a sanction or measure. For example, a community sanction or measure might restrict the movement of the person concerned and / or impose supervisory conditions. As Rule 11 prescribes, however, there should be no further afflictive burden beyond what is necessary to give effect to the community sanction or measure and no prejudice to people's normal civic entitlement.

#### *Imposition of community sanctions and measures*

### **Rule 21**

The dimension of duration is an essential element of any community sanction or measure since it allows a quantitative relationship to be established between the offence and the penal reaction, as well as a link between the means employed (control and all appropriate forms of help) and the aim pursued (the integration of the offender in society).

This Rule requires that the legality principle applies to the duration of community sanctions and measures since they must not exceed the maximum legally provided for, nor be less than the minimum (where such a minimum is laid down in law). This requirement is to be observed both by the deciding and implementing authorities. Hence, the implementing authority may not prolong any control of the offender beyond the point in time fixed by the decision to impose the community sanction or measure.

### **Rule 22**

The determination of a community sanction or measure must take into account the seriousness of the offence, as assessed by the harm done to the victim and to society and accordingly the offender's culpability, as well as the attempt to advance the rehabilitation of the offender and the protection of the legal order. Any such sanction or measure should therefore, both by its nature and duration, meet the requirements to stand in proportion to the offence committed and allow for individualisation, having regard to the accused person's or offender's personal situation - that is to their personal characteristics, family, material and social circumstances, their needs as well as any previous criminal record. Within the parameters of proportionality, it is legitimate for the deciding authority to take into account the risks posed by the offender which ought to be systematically assessed.

### **Rule 23**

Earlier versions of these Rules have been concerned with the question of the extended duration of community sanctions and measures. The principle of proportionality entails that a community sanction or measure should be of a fixed and specified duration. Prolonged periods of sanctions and measures run the risk of maintaining the offender in a state of dependency which is contrary to the purpose of developing the



offender's autonomy in society. On the other hand, there may well be people whose personal characteristics, combined with their record of serious offending, show that they pose a continuing risk of causing grave harm. It may not be possible to determine at the time of sentence how long this risk will continue. This Rule says that if no date of ending can be set or if the sanction or measure may be renewed or extended, there must be provision for periodic independent and rigorous review. If the review discloses that this level of risk no longer applies, the sanction or measure should be terminated.

#### **Rule 24**

It follows from Rule 22 that the deciding authority may seek to gain full and impartial information about the individual's personal circumstances. The seriousness of the offence will be set out by the prosecutor and may be challenged by the defence. But once this has been determined to the court's satisfaction and they are in a position to set the boundaries of the community sanction or measure within the limits of proportionality, the deciding authority may need additional information.

This Rule seeks to ensure that information provided to the deciding authority shall be reliable and of good quality. It requires, therefore, that such information be provided by a professional body or a body laid down in law. (It will often be desirable to obtain information from other sources and this is not prohibited by the rule, but in such cases the rule requires that information so obtained shall be provided through a professional or legally designated body). This body shall undertake a full assessment of the offender's situation, giving attention to the offence-related needs of the offender, the risks of reoffending and how these may best be reduced, the likelihood of compliance with any conditions or obligations, the individual's rights as a citizen and their social responsibilities. The findings of this process of assessment shall be submitted to the deciding authority to assist them in reaching their decision. The deciding authority may also need information on the feasibility of implementation, especially in relation to specific conditions. Professional staff are those who are appropriately qualified and authorised by the competent organisations.

#### **Rule 25**

This Rule states that the individual must have a right to appeal to a higher authority at the time the decision is taken to impose the community sanction or measure. It should be possible to appeal against the imposition of a community sanction or measure and / or any particular requirement on grounds that may include: that the sanction or measure is out of proportion to the seriousness of the original offence(s); that the deciding authority did not take account of one or more aspects of the individual's circumstances; or that the sanction or measure imposes conditions that cannot feasibly be met.

#### **Rule 26**

Chapter IX of these Rules emphasises the importance of explaining and indeed promoting the value of community sanctions and measures to policy makers and to the general public. This Rule urges a dialogue between deciding and implementing authorities. It is essential that deciding authorities have an adequate understanding of what is involved in the implementation of community sanctions and measures and including some of the practical challenges and opportunities. More than this, the implementing authority should welcome criticisms and suggestions about the manner in which they carry out the decisions of the deciding authority and be receptive to any concerns. Bluntly, if deciding authorities lack understanding or have insufficient confidence in the way in which their decisions are put into effect, they may reasonably be doubtful about using community sanctions and measures, especially in cases where the deciding authority regards its decision as on the borderline between a custodial or community option.

This Rule can also be understood to assert the value of mechanisms like progress reports in individual cases. Sometimes the deciding authority may see itself as taking a risk in avoiding custody and may be keen to monitor subsequent developments. Some countries encourage a degree of continuing oversight by a court – for example, in relation to drug use – whereby the court takes an opportunity to review progress periodically and to respond accordingly.

### **Chapter III: Community sanctions and measures: implementation and methods**

#### *General*

#### **Rule 27**

Community sanctions and measures keep offenders in contact with all the normal mechanisms of social control in the community. They thereby offer opportunities for adjustment to social life which are greatly

superior to those offered by custodial sanctions. On the other hand, the absence of the strict framework which characterises prison life makes greater demands on the individual offender's sense of responsibility. An appeal to this sense of responsibility is the starting point for work with offenders sentenced to community sanctions and measures.

However, the offender's sense of responsibility should, where necessary, be developed beyond this point. Indeed, an improved sense of responsibility is also the goal of such work as well as its starting point. All forms of help that are offered to the offender must, therefore, have the further development of this capacity for responsible choice and action as their fundamental aim. Helping offenders to adjust in society means helping them to exercise a developed sense of responsibility towards the community in general. The position of the victim of crime has rightly been given greater recognition in recent years. Developing a greater sense of responsibility towards society on the part of the offender should therefore include recognition of those who have been wronged by the offence.

This Rule states that ways and means of implementing community sanctions and measures shall never be divorced from the attempt to improve the offender's situation in ways that enable them to desist from offending and to find ways of living in which crime has no place. This involves acceptance of responsibilities towards others – to families, associates, employers and colleagues and to the wider community. The manner in which the community sanction or measure is put into effect should support this aspiration. Such a requirement also implies avoiding methods of implementation which are likely to blunt offenders' sense of responsibility or worsen their capacity to lead a law-abiding life.

All methods of supervision shall serve these aims.

#### **Rule 28**

Community sanctions and measures involve obligations that the individual must meet. There may be practical or psychological difficulties involved in meeting these obligations and this Rule states that the implementing authority should do everything possible to identify any such obstacles and to help the individual to overcome them. This should involve active assessment, encouraging the offender to anticipate any problems that may arise and supporting them in finding solutions. This is an essential aspect of facilitating compliance and cooperation (see Chapters V and VI).

Community sanctions and measures normally also entail rights – not only basic human rights, but also positive entitlement to advice and to support. Other Rules deal with the necessity of making the conditions and obligations plain to the offender. It is no less important, if their rights are to be upheld, that they should be informed what these rights are and given assistance to secure them.

This Rule further requires that participating organisations and individuals drawn from the community, as well as professional staff, be informed about the rights accorded to offenders and be expected to protect and promote these rights.

#### **Rule 29**

This Rule should also be read in the light of Chapter V where the importance of the individual's consent and cooperation is emphasised. The need to secure as far as possible willing response from the offender is an important principle for the successful use of community sanctions and measures. It is well established in research that people are much more likely to comply with requirements that they regard as fair and legitimate and where their rights and interests are respected. To that end the rule urges that the offender be involved to the greatest possible extent in the making of decisions about the practical details of implementation.

There are a number of gains in involving the offender as much as possible in decision-making. Offenders are treated as people who are able and willing to take responsibility and to develop their ability to do so. The learning process consists of examining the practical choices available in the light of their probable consequences. This examination can also disclose any resistance to collaboration in proposed courses of action. Identifying and dealing with such resistance on the part of the offender is fundamental to ongoing progress. By contrast, autocratic decision-making runs the risk of creating resistance to collaboration on the part of the offender or of leaving some existing resistance unexpressed and therefore untouched.

Rule 29 does not, however, require that the offender participate in every decision on the practical details of implementation. Situations can arise, for instance, which require a unilateral and perhaps coercive decision on the part of the implementing authority in order to ensure the fulfilment of basic conditions of the sanction or measure or set necessary limits to destructive behaviour. Nor does involving the individual in decision

making entail that the preferences of the offender will be decisive, but there must be a sufficient opportunity for them to express their point of view and to feel that it has received due consideration.

### **Rule 30**

Considerations of justice and practicality demand that offenders clearly understand from the beginning what is required of them by the particular community sanction or measure. Likely conditions and obligations may well have been discussed during the preparation of a pre-sentence report as an important preliminary to the decision to impose the community sanction or measure in question. Even so, once the decision has been taken, it is of formal and practical importance to make sure that the offender fully understands all the implications of the decision. In addition to the more formal requirements, a number of practical details may need to be decided on and explained. It is essential that these explanations be given in simple and clear language which is understood by the offender. It can sometimes be helpful to write down what is required of the offender and what the offender is entitled to expect in return in the form of an agreement or 'case management plan' to ensure clarity.

In the course of implementation, a number of decisions will have to be taken and once a decision has been taken, it shall be explained clearly. This is a very basic principle of fairness: people must understand what is expected of them and what they may expect from the authority as well. Again, instructions about how formal obligations are to be carried out must be given in straightforward, practical and concise language and, where the offender may not be fully competent in the national language, in the language the individual speaks. The implementing authority has a responsibility to make sure that the individual has understood, engaging the services of interpreters and translators if necessary. (It is recognised that this has resource implications, but it is plainly essential that people fully understand what is expected of them.). If instructions are vague or impractical, they are likely not only to be unfair but also operationally ineffective. Indeed, they might constitute a serious impediment to securing the offender's collaboration and thereby undermine the aims of rehabilitation.

By 'instructions' is meant defining in precise terms what must be done for the carrying out of a condition or obligation, for example to report to a particular workplace at a particular time on specified days. By definition, such instructions have their ground in the conditions or obligations to be observed and for this reason must not require more than is implicit in them.

The Rule also recognises that there may be occasions when there is significant disagreement between the offender and the supervisor. Chapters V and VIII deal with these matters more fully, but the general principle is that supervisors should do everything possible to resolve such disagreements, using their professional skills. If the offender believes that the decision has been unfair, then there must be recourse to a procedure to settle the matter.

### **Rule 31**

The European Probation Rules (CM/Rec [2010] 1) repeatedly affirm the value of a professional relationship in bringing about change, advancing rehabilitation and in supporting compliance. There is compelling evidence to show that sound professional relationships are effective in bringing about change in attitudes and behaviour. Indeed it seems that relationships are more influential than any single specific method or technique.

A professional relationship should be based on mutual trust and confidence; the rights and responsibilities of the offender and of the supervisor must be respected by both. Clarity about the professional role and its boundaries is essential. Research has shown that people are much more likely to comply with requirements where these are believed to be legitimate – that is, decisions have been arrived at through clear and fair procedures and with proper regard for the offender's views and interests.

This Rule also refers to participating organisations or individuals drawn from the community. Trust and clarity about roles here too are paramount and can only be achieved and sustained by clear communication among all involved. Where a number of people are making their contributions to the effective fulfilment of the community sanction or measure, all must know their respective contributions and offenders must be helped to understand what they may expect of these various individuals and agencies and what is expected of them as well. (See also Chapter IV).

### **Rule 32**

This Rule draws attention to the importance of discretion and of principled professional judgement. Individuals and their circumstances differ and respecting Rule 6 (prohibiting discrimination) requires attention to these differences so that substantial justice can be achieved. It is recognised that it is often hard to know how to reconcile the demands of consistency and justice with those of individualisation.

The Rule recognises that implementation of a community sanction or measure calls for professional discretion and that the staff of the implementing authority must not be so bound by regulation that they are unable to respond to diversity. There must, on the other hand, be consistency so that people know what is expected of them and can be confident that they are being dealt with fairly. To observe this Rule calls for professional training so that staff make wise decisions, but also for clear lines of accountability so that their decisions are visible and can be seen to be fair.

### **Rule 33**

It is well known that many offenders have marked personal, economic and social disadvantages, often associated with their offending and constituting obstacles to desistance. This Rule recognises that in some circumstances special provision must be made to enable people to comply with the community sanction or measure. For example, the keeping of appointments is not part of everybody's daily schedule and offenders may need reminders about this to make sure they report as required. There may be difficulties in travelling to the office of the implementing authority or to the site where unpaid work must be undertaken. Non-compliance is not always wilful but is often connected with personal characteristics and circumstances which may need attention if the community sanction or measure is to be appropriately implemented.

In particular, women may have responsibilities, especially childcare, that could make it more difficult for them to comply and the implementing authority has a duty to do all it can to support and facilitate compliance. This is one very important aspect of the Rule against discrimination (Rule 6) and implementing authorities must remain aware of the risks of unfairness and discuss this with individuals themselves.

This Rule also applies to the benefits of a community sanction or measure. It is a hallmark of community supervision that, as well as involving obligations, it can also bring benefits. The implementing authority should do all it can to enable offenders to enjoy these benefits and this is likely to involve attention to difficulties and working with the individual to anticipate and to solve problems.

### **Rule 34**

Community sanctions and measures offer unique opportunities to enmesh offenders in the informal forms of social control which operate on all ordinary citizens. Over and above these informal forms of social control, formal controlling activities by those involved in implementation may be necessary. In order to promote law-abiding adjustment in society a major goal must be to develop the various forms of informal social control and reduce the formal controlling activities as far as possible. For this reason, the rule states the limits and purposes of these activities. Controlling activities shall stand in proportion to the particular sanction or measure being enforced and be limited by its aims.

### **Rule 35**

The present Rule seeks not only to establish just and humane principles for the creation, imposition and implementation of community sanctions and measures but also to secure high standards of professional competence in implementing authorities. This Rule therefore requires these authorities to use methods which are consonant with professional knowledge grounded in the findings of research. Since this knowledge is constantly expanding it is necessary to take account of developments occurring in criminology, forensic psychology, social work and similar fields of study. This principle is further developed in Chapter IX of these Rules.

### **Rule 36**

It is a general principle for the implementation of all sanctions that the offender is not required to pay any necessary costs and this principle applies to community sanctions and measures. Meeting the obligations of a community sanction or measure often entails expense. The implementing authority shall do all it can to minimise additional costs and inconvenience. Where significant expenses have been incurred by the offender in the course of compliance, the implementing authority should consider reimbursement in appropriate cases.

Some countries may take the view that, specifically, the (often substantial) cost of electronic monitoring should be paid by the offender. The Rules on electronic monitoring state that: 'Where suspects and offenders are contributing to the costs for the use of electronic monitoring, the amount of their contribution shall be proportionate to their financial situation and shall be regulated by law.' (Recommendation CM/Rec (2014) 4 of the Committee of Ministers to member States on electronic monitoring: Rule 11). When countries take their decisions on this matter, they should note Rule 11 of the present Rules (which say that implementation should not aggravate the afflictive character of community sanctions and measures).

This Rule accordingly states that the costs of implementing community sanctions and measures should not normally be borne by the offender. Where national law permits or requires offenders to contribute financially, the maximum amount should be set by law and the offender's capacity to pay should be income-tested and related to his or her domestic circumstances, and the impact that such costs may have on these. An inability to pay a contribution should not be considered a reason to deny an offender the opportunity to be given a community sanction or measure. It must never be forgotten that many (probably most) offenders subject to community sanctions and measures are people of extremely limited means and unnecessary financial burdens may not only be unfair, but will probably make desistance more difficult.

### *Supervision and unpaid work*

#### **Rule 37**

Control, including surveillance, is a legitimate part of a community sanction or measure in many cases and can be necessary to ensure compliance and to protect the public. This Rule is a corollary of Rule 34, emphasising that methods of surveillance and control should not be included in a community sanction or measure for their own sake, but ought to be regarded and used as mechanisms to support the desistance which is the overarching aim of community sanctions and measures.

#### **Rule 38**

Deciding authorities make judgements about the programmes and interventions that constitute the community sanction or measure in particular cases. Often the implementing authority will have further decisions to take about how exactly the requirements of the community sanction or measure are to be met. For example, a deciding authority may determine that an individual must perform a number of hours of community service, but commonly it is for the implementing authority to assign the specific tasks.

Countries differ in the ways in which authorities manage implementation. However these matters are decided, there must be criteria to inform the decisions. In deciding the appropriate programmes and interventions (and with due regard to the principle of proportionality that sets limits on the overall 'weight' of the community sanction or measure), criteria should include:

- any risks of harm to the public, to offenders themselves and / or to the staff responsible for the programme or intervention;
- individuals' capacity to comply with and to respond to the intervention;
- the personal or social factors which are linked to the likelihood of re-offending ('criminogenic needs').

These criteria should be made explicit when decisions are taken.

#### **Rule 39**

A central aim of community sanctions and measures is to facilitate the adjustment of the offender in society. Such sanctions and measures are, by their very nature, heavily dependent upon the co-operation of the offender. This co-operation is unlikely to be furthered if community work tasks are pointless. The ultimate aim of these sanctions or measures thereby becomes endangered. Conversely, work which is clearly socially useful and enhancing of the individual's skills is both likely to improve the will to co-operate and to strengthen the sense of responsibility to the community. Community service also constitutes symbolic reparation and this principle also requires that the work should have purpose and wherever possible should be of genuine benefit to the community.

#### **Rule 40**

Community service must never be regarded as 'cheap labour'. The beneficiaries of the work are, first and foremost, members of the community against which the individual has offended, while it is also hoped that

the offender too will gain from the experience. This rule prohibits community work by offenders which is undertaken for the purpose of making a profit. It should be noted that in some countries social enterprises are becoming increasingly involved in the administration of community sanctions and measures and in carrying out their work these enterprises may generate a profit for the organisation and / or for society. This Rule does not discourage such ventures, but it does insist that the purpose of a community sanction or measure must never be to make a financial profit and that (for example) community service tasks should not be allocated with that end in mind.

#### **Rule 41**

It is clearly necessary to ensure that offenders who are engaged in community work are not disadvantaged so far as industrial accidents or health and safety regulations are concerned. The rule, therefore, requires that they be afforded the same kinds of protection as are given to other people under national health and safety legislation.

*Case records, data protection and confidentiality*

#### **Rule 42**

During the implementation of a community sanction or measure account must be taken of various kinds of information concerning the offender which exist or emerge at different moments in time. The information will relate, for example, to the offence, to conditions and obligations imposed, to the personal and social situation of the offender and their fulfilment of the requirements of the community sanction or measure. Much of this information may be expected to change over time. It is essential for effective implementation that these various kinds of information be assembled in an individual case record. All notes, whether of formal or informal character, should be part of, and contained in, the case record.

Case record information should be kept up to date. A further reason for updating the case record is stated in this Rule: it may be necessary on occasion to prepare a report about the offender's compliance with any conditions or obligations imposed. In addition, however, updated information makes possible a continuous review of the nature of any progress made during implementation. Such a review is necessary as a basis for the planning and re-planning of any action intended to ensure effective implementation. The case record will also hold information about decisions taken so that staff may be held accountable for their practice through these means. A final reason for keeping case records up-to-date is that they are an important source of information if changes of staff mean that persons not previously acquainted with individual offenders have occasion to work with them or must take over their cases.

The management of personal data should be undertaken in accordance with national law. [Directive \(EU\) 2016/680](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, directs EU members in these matters and may be used as guidance by other countries.

#### **Rule 43**

Information in the case record should be succinct, accurate and relevant to the community sanctions and measures imposed and their implementation. It is doubtful if an absolute criterion of relevance can be given. Clearly, however, information which infringes the rights of the offender or his family must not be written into the case record. On the other hand, information which has an obvious bearing on the offender's response to the conditions and obligations imposed should be included. Since the information in the case record serves as a basis for the taking of important decisions, it is vital that it should be of reliable character, accurate and up to date. The information shall be impartial and as objective as possible. The use of subjective assessments is not thereby prohibited, but the rule implies that they should be used with care. The supervisor should be explicit about this when recording an opinion or judgement, as opposed to a fact, and should set out the basis for such judgements.

#### **Rule 44**

This Rule recognises a use, but also a right, in connection with case records. The supervisor can use records to inform and explain to the offender about the progress of implementation and any plans or decisions which have been or need to be made. Equally, offenders have a right to know what is being recorded about them. This consideration applies to any case record or report concerning the offender.

Therefore, the contents of records or notes should be discussed with the offender and, where necessary, explained. A corollary of this is that records and reports should be written with little or no jargon and in plain language.

The Rule is not absolute (hence 'ordinarily'). Particular circumstances may arise which justify not revealing to the offender some particular aspect of the record or report. This would include information which infringes the rights of others, especially where making this information available to the offender may put others at risk of harm. It may also happen that the implementing authority has been given information in confidence (for example by a doctor with regard to a sensitive medical matter) and the confidential basis on which this information was shared must be respected.

#### **Rule 45**

This Rule requires that offenders shall have access to their case record and be able to read what is written there about them. An authorised person acting on behalf of the offender has the same right. Often this person will be the offender's legal representative, but the Rule does not require this to be so. Anyone enjoying the confidence of the offender may act on their behalf.

#### **Rule 46**

The offender may contest what is written in the record. Part of the purpose of this requirement is to provide a check against inaccurate information being written into the case record. As with any other form of dispute, the contestation may or may not be justified. The substance of the contestation must, however, be written into the record, whether or not it leads to a formal complaint and regardless of the outcome of any complaint procedure.

The right to read and contest the record shall not involve an infringement of the rights of others.

#### **Rule 47**

The presumption is that information in the individual offender's case record is confidential. For this reason it should only be disclosed to those with a legal right to receive it. This does not mean, however, that all information in the case record shall necessarily be disclosed to those with such a right. The Rule is restrictive and requires that any information disclosed shall be limited to what is relevant for the work of the requesting authority.

At the same time, since so much of the work associated with community sanctions and measures involves a number of agencies working together, some information exchange and communication are essential for rehabilitation and for public protection. Nothing in this Rule prohibits such liaison. It will be valuable for agencies to draw up inter-agency agreements to try to specify the requirements and the limits of such information exchange. It is no less important that the individual concerned should be made aware of the information that has been exchanged and the reasons why it has been disclosed.

#### **Rule 48**

The purpose of this Rule is to prevent case records being kept and exercising an effect after the community sanction or measure has ended. It requires, therefore, that they be destroyed once the sanction or measure or its legal effects are exhausted or must be lodged with an authority which has rules about providing safeguards on keeping them securely and about revealing their content to third parties.

#### **Rule 49**

Community sanctions and measures frequently mean that a variety of agencies and individuals become involved in providing community service work or forms of help to the offender. This Rule deals with the question of the extent to which they may receive information about the individual. In general, the Rule provides for restrictive practice. The nature of the work or help provided may make it necessary to disclose information in fairness to the agency providing assistance and to ensure the safety and well-being of others. Undue risks may be run, for instance, if certain kinds of offenders are allowed to perform community service with children, older people or those who may be otherwise vulnerable. If, however, it is necessary to disclose sensitive information, this shall only be done with the knowledge of the individual. The offender should be asked to consent to this information exchange, after having been given a clear account of what information is to be disclosed and why this is necessary. If consent is not forthcoming, then, in the case of community service, another kind of placement should be arranged instead.

By sensitive information is meant information about the offence or the offender's personal background, information of a purely private character or any other information which might lead to unfavourable social consequences such as stigmatisation.

#### **Chapter IV: Community participation**

##### **Rule 50**

Every community has a vested interest in the successful re-integration of offenders into society and to that extent has a responsibility to facilitate that process. Community involvement in the implementation of community sanctions and measures provides an opportunity for citizens, both individually and collectively, to make a contribution to the rehabilitation of offenders and thereby to the protection of society and its members.

Community participation in the implementation process can have important effects on offenders. Offenders are more likely to take responsible attitudes towards the community when they become aware of the community's interest in and concern for improvement in their personal and social situation. At the same time, the offender is provided with opportunities to take up or renew meaningful ties in the community and possibilities for contact and support.

It is possible that without such active engagement services will become insular and fail to achieve their full potential in narrowing the gap between the offender and the community. Suspicion, fear and misunderstanding may persist and further offending can be the result.

##### **Rule 51**

This Rule expands upon Rule 50 to encourage implementing authorities to be active and imaginative in community engagement. Rule 50 recognises the roles of formal agencies, while this Rule states that, in addition to receiving a range of services, offenders need to establish and develop all kinds of associations with their communities.

The involvement of members of the local community greatly facilitates access to an extensive range of human and material resources and social support systems. Offenders might be able to establish links with voluntary welfare agencies, trade unions and staff associations, social and recreational clubs, religious groups, charitable bodies and other organisations and individuals with the capacity to provide them with assistance and support. The maintenance of links with the wider society is likely to enhance the prospects of an offender's social re-integration.

Justice cannot be effectively administered in isolation from the community it seeks to serve: it requires both the acceptance and the respect of the public. This level of confidence and commitment is most likely to be achieved if members of the public are encouraged and enabled to participate in the administration of justice. Imaginative projects may include involving ordinary people as mentors or through outreach schemes; as volunteers (see Chapter VII of these Rules); engaging employers and social enterprises (in creating work placements, apprentice schemes and real jobs); exploring the potential to develop responses to wrongdoing that do not involve prosecution – for instance, restorative approaches; and linking community service to community problems, including crime and community safety.

##### **Rule 52**

Rule 40 has applied this principle to the particular case of community service. The labour of offenders undertaking community service is productive and could in principle generate profits, raising the question of the beneficiary of such profit. Rule 52 recognises that the way in which individuals and organisations are remunerated for their contribution to the implementation of community sanctions and measures is becoming an increasingly complex matter with the development of social enterprise agencies alongside NGOs and commercial companies. For example, arrangements are made in some countries to pay for drug-misusing offenders to receive treatments in privately run therapeutic communities. This Rule reaffirms that while sometimes community involvement may generate profit, this must never be the purpose of community participation in a particular case and the interests of offenders should never be subordinated to a profit motive.



### **Rule 53**

Implementing authorities cannot themselves manage every offender need associated with desistance or social support. Nor is it their function to do so. They need, therefore, to rely on all the resources available to other community members – for instance in matters of employment, housing, health, etc. The different skills and perspectives of a range of organisations are an indispensable part of working with offenders in the community and promoting public safety. Co-ordinated and complementary inter-agency and inter-disciplinary work is necessary to meet the often complex needs of offenders and to manage risks. Implementing authorities, therefore, should work in partnership with other public or private organisations and local communities, in this way promoting social inclusion. Organisations which already have a duty to provide services may also need the advice of the implementing authority to help them make sure that their services are readily and fairly accessible to offenders.

At the same time, it is in the interest of the implementing authority, participating organisations and individuals drawn from the community and offenders themselves, that there should be no uncertainty in their inter-relationships. Rule 53 elaborates on how this might be done.

This Rule also states that when the implementing authorities make referrals to other organisations and commission their services they must do all they can to ensure that the organisations concerned are responsible and reliable. The implementing authority has a duty to make sure that all the principles in these Rules are upheld by individuals and organisations implementing community sanctions and measures in partnership with the authority. It is the implementing authority which bears the final responsibility for the proper implementation of the sanction or measure in question. In consequence, it is a first duty of the implementing authority to ensure that the service provided always meets the standards laid down in the present rules. Where this is found not to be the case, the implementing authority shall take appropriate action, deciding what should be done taking into account the nature and degree of the shortcoming.

### **Rule 54**

This Rule states that whenever the implementing authority commissions a service or refers a service user to a community participant, everyone must be aware of the requirement that the organisation or individual shall uphold the rights of offenders in all their dealings with them and respect the provisions of the present Rules.

### **Rule 55**

Rule 50 introduced the matter of the relationship between agencies. This Rule develops the point by reaffirming the importance of clarity between the implementing authority, community participants and service users about their inter-relationship. In particular, it is necessary that there should be clarity in respect of terms of the services to be provided, communication protocols, roles, responsibilities and lines of accountability, the range and nature of the duties to be undertaken, the human and material resources which can be provided and, importantly, the nature and limits of the authority exercised. For this reason it is important that community participation should be based on a shared and sound understanding, which should be set out in a written agreement between the implementing authorities and community participants.

## **Chapter V: Consent, co-operation and enforcement**

### **Rule 56**

Unlike the punishments of imprisonment and fines, which can be coercively enforced regardless of the will of the offender, ideally community sanctions and measures require the co-operation of the offender if they are to achieve their aims. If the offender is manifestly not prepared to co-operate and comply with appropriate conditions there would seem to be little point in a court deciding on a community sanction or measure.

It should be noted, however, that while a blunt refusal to co-operate may lead a deciding authority not to impose the community sanction or measure it had in mind, it is not unusual for the offender to have a degree of ambivalence about a community sanction or measure. 'I won't co-operate' can sometimes reflect a doubt about an ability to co-operate or a fear of being unable to change. Probation staff, for example, recognise that motivation is shifting and it is a large part of their professional skill to sustain and to develop it.

The deciding authority may benefit from professional advice before forming a decision about the likelihood of compliance and even where there is some doubt about the chances it will sometimes be worth giving the offender the opportunity – especially if a custodial sentence is the alternative. The pre-sentence inquiry is often an important way of ascertaining and informing the court about the kind of conditions that would be

appropriate and whether the offender is willing to co-operate. Careful pre-sentence inquiries enable a court to take its decision on the basis of sound information and professional judgement.

#### **Rule 57**

In this rule 'consent' refers to any situation in which the offender is asked to assent to some course of action prior to the taking of a decision on the matter. Such a situation can arise in connection with the imposition of a community sanction or measure. Not all countries have a legal requirement that an offender must express consent for all community sanctions and measures, but wherever this is a formal legal precondition, justice requires that the offender must do so in full knowledge of what they are consenting to. Offenders must know that they are being asked to give consent and this means that there always be an explicit procedure, not a tacit or assumed consent.

#### **Rule 58**

The giving of consent, even with the safeguards provided by other Rules, shall never have the consequence of depriving offenders of any of their fundamental rights. The European Committee for the Prevention of Torture has drawn attention to the difficulties of deciding about the authenticity of expressed consent in the context of a situation of coercion (especially in prison where, for instance, early release may depend on 'consenting' to some condition). These difficulties can arise for community sanctions and measures as well and this Rule asserts that consent must never be used as a pretext for depriving people of their fundamental rights.

#### **Rule 59**

This Rule relates to pre-trial proceedings or measures used instead of a decision on a sanction. An accused person is in principle innocent and because of the presumption of innocence caution needs to be exercised before a community sanction or measure is imposed.

One example of such a measure would be a requirement for a homeless accused person to live in some approved premises and report regularly to a designated person instead of being detained in a prison pending trial. Such a solution nevertheless requires the accused to accept responsibility for their behaviour in a way that would not be required if they were to be remanded in custody in prison. The consequences of failing to live in accordance with the measure can be serious for the accused who should therefore be asked to indicate their willingness to comply with the proposed community measure.

It must be emphasised that the consent of the accused to such a community measure should not be obtained by offering inducements related to an admission of guilt or a reduction of the criminal charge.

#### **Rule 60**

This Rule is a specific application of Rule 22. Conditions and obligations should be imposed for a legitimate purpose. The deciding authority should consider those conditions that are judged to be necessary as a fitting punishment, to support desistance and to reduce risks, but must also take into account the individual's circumstances. It is no less important that the conditions fit together coherently: for example, a requirement to undertake community service could be imposed alongside a drug treatment requirement, but care would need to be taken to ensure that fulfilment of one condition did not prejudice the feasibility of compliance with the other. Again, an electronic monitoring requirement must not interfere with legitimate aspirations like seeking employment. The total 'package' of sanctions must be proportionate and feasible for the individual in their own particular circumstances.

#### **Rule 61**

This Rule deals with the application of the principle presented in Rule 30 – concerning information to the offender about the nature, content and consequences of the sanction or measure imposed – to the implementation phase.

No matter how information has been given to the offender about the decision of imposition (for instance, by written document, legal notice, oral explanation by the deciding authority), the beginning of the actual implementation constitutes a special and favourable moment. At this stage, offenders need clear and reliable information about the significance and consequences of the community sanction or measure and are likely to be receptive to this. A good understanding of what is expected can have a considerable influence on the proper implementation of the sanction or measure.

The information should in the ordinary way be given orally so as to permit a dialogue to take place between the practitioner and the offender. The fact that explanations are given orally does not exclude the possibility of giving the offender a written statement recalling the conditions and obligations that must be respected, and providing other generally useful information about the implementation of the sanction or measure.

## **Chapter VI: Non-compliance and revocation**

### **Rule 62**

Implementing authorities have a duty to give effect to the sanctions and measures ordered by deciding authorities. The nature of the sanction or measure must be fully explained to offenders: they must know what is expected of them – and, indeed, what they can expect from the authority. This Rule stipulates that the consequences of non-compliance must be carefully explained. These typically include the possibility of a return to court to be sentenced or, in the case of early release from custody, recall to prison.

The implementing authority must ensure that those under supervision are aware of these possible consequences, although supervisors should not rely solely on threat of further sanction to gain compliance. They should endeavour to demonstrate to offenders the value of co-operation and treat them in a manner that gains their consent. There are research findings that show that people are much more likely to co-operate when they feel they are being dealt with fairly. A sense of unfairness can lead to resentment and a refusal to co-operate. It is true that for some offenders in some circumstances, the consequences of non-compliance will be very serious and may lead to a custodial sentence. Offenders must be made aware of this, but this must not be put to them as the only reason why they should comply. An explanation of the advantages of co-operation and other motivational skills can be used in these circumstances. Any obstacles to compliance should be identified and discussed and strategies put in place to enable offenders to do what is required of them.

There are occasions when supervisors will offer advice to offenders – which they may or may not choose to accept. It is therefore important that staff should distinguish clearly between any legally required instructions they may give and any informal advice or guidance they may offer and make sure that the offender understands this distinction.

### **Rule 63**

The procedures to be followed by staff responsible for implementation when confronted by difficulties stemming from breach or poor fulfilment of imposed conditions must be precisely defined so that staff can manage such situations appropriately. This Rule is a corollary of the preceding Rule: just as offenders need to be clear about what is expected of them, so must staff.

The purpose of the Rule is not, however, to require a comprehensive regulation of this matter. The discretionary power enjoyed by the staff should enable it to resolve a number of the difficulties arising during implementation. The Rule seeks, rather, to ensure that certain limits are laid down with a view to maintaining equality of treatment as between individual offenders.

Finally, the delicate matter of dealing with non-compliance or poor performance on the part of the offender and, in particular, knowing when and when not to invoke formal procedures which can have serious consequences, calls for clear, open and trusting relations between the implementing and the deciding authorities.

### **Rule 64**

Non-compliance must always be taken seriously and professional judgement exercised within the standards set by national law. Whenever an offender fails to do what is required, the implementing authority should respond assertively and promptly. If an offender fails to report as instructed, for example, the agency should get in contact with the individual as a matter of priority. Once contact has been made, the supervisor should inquire about the reasons for non-compliance: not all instances of non-compliance are a wilful disregard of the sanction or measure. Indeed there are many reasons why offenders may fail to comply, including confusion about what is required of them, a disorganised personal life (leading to missed appointments), and despair about the possibility of change. On the clear understanding that non-compliance is unacceptable, the supervisor shall discuss with the offender what shall be done to bring about compliance in the future. Non-compliance and the reasons for it must be recorded in the record.

In some circumstances, a failure to comply may be a sign of increasing levels of risk and, where this could lead to serious harm, the agency must give priority to responding to this non-compliance as a matter of urgency. This may involve arranging (for example) for an offender to appear in court as soon as possible or to be recalled to prison.

One of the principal aims of any community sanction or measure is to encourage and enable changes in people's lives. Some changes – notably obtaining regular employment – are likely to make a significant difference to the individual's future behaviour. At the same time, such changes can create challenges for compliance. For example, an offender who is at work all day may find it difficult to report as instructed. Staff should be alert to these possibilities and must be willing to make application to the deciding authorities to amend the requirements of the community sanction or measure where this seems appropriate.

#### **Rule 65**

The term 'significant failure' can be compared and contrasted with that of a 'minor transgression' used in Rule 64. Although what constitutes a breach is normally laid down in law, since this may lead to revocation or modification of the sanction or measure, it is for the implementing authority to assess whether the failure shall be considered significant in this sense. A breach of conditions which is so serious that it can give rise to a reconsideration of the sanction or measure imposed should be regarded as a 'significant failure'. It is difficult and perhaps unnecessary to go much beyond this in defining the distinction, although agencies are likely to develop their own understandings and procedures so that staff are clear about what is expected of them. The offender too needs to know when a level of non-compliance may lead to a formal report to the deciding authority and what may ensue from that. It will, however, often be useful for the supervisor to talk to the offender about their failure to comply in order to form a view about its significance and its implications for future compliance.

The serious nature of a significant failure to comply requires that the deciding authority be informed of it formally. Such information should be conveyed promptly since if the community sanction or measure has broken down, the instructions of the deciding authority are no longer being put into effect and this state of affairs needs to be managed expeditiously. Report to the deciding authority should be in written form, bearing in mind the importance of making precise facts available.

#### **Rule 66**

Any report asserting non-compliance with the requirements of the sanction or measure should be precise and clear. The report should relate both to the facts of the case and to the context in which they are situated. This is a necessary condition for the deciding authority to be able to make a true assessment of the breach alleged and to decide on the possible modification or revocation of the sanction or measure.

#### **Rule 67**

This is a further requirement of due process of law. Just as the original imposition of the community sanction or measure was made by a legally established deciding authority (often a court), it is for this authority to rule on modifications and revocations. These decisions should be made after examination and consideration of the facts of the case.

#### **Rule 68**

This Rule should be considered in relation to Rule 12, which it complements. Even where non-compliance with a condition or obligation necessitates revocation it should still be possible to deal flexibly with the non-observance and not necessarily impose imprisonment. This might, for example, be the case where a serious failure to observe a condition or obligation occurs towards the end of a probationary period during which compliance has, up to that point, been satisfactory. The substitutive character attaching to community sanctions and measures would be reduced to nothing if a failure in implementation required the deciding authority to impose imprisonment in all cases. Where the deciding authority seeks the advice of the implementing authority about the appropriate response to proven non-compliance, staff should be positive and imaginative in trying to suggest community sanctions and measures that might be more appropriate and with which the offender is more likely to comply.

There is the further consideration of proportionality: if the deciding authority had formed the view originally that the offence did not necessitate a period of imprisonment, then this decision should not be lightly set aside when the decision is taken to revoke and to deal again with the original offence. The deciding authority, possessing as it does a total power of assessment, should contemplate a variety of possible

solutions, imprisonment being considered as the ultimate sanction to be used only in the absence of a possibility to impose some other appropriate community sanction or measure.

#### **Rule 69**

This is a requirement of due process of law. The individual must have a fair opportunity to contest the allegation of non-compliance or to explain to the deciding authority how and why this occurred. Since the deciding authority typically has a range of powers available in response to non-compliance, the offender should have the opportunity to address the matter. Normally this should take place before the decision is taken. Sometimes, however, such a process might increase the risks of absconding and could endanger the public - for example, when an offender must be recalled to prison because of increases in the risks they pose. In such cases, the offender should be given the earliest opportunity after recall to examine the grounds and, if they so choose, to challenge the decision. The offender should have a right to legal advice throughout these proceedings.

#### **Rule 70**

The initiation of a procedure for revocation should be the occasion for an evaluation of the implementation of the sanction or measure. The positive aspects should be studied as well as the negative ones. Thus, even a partial implementation of the sanction or measure (as occurs, for instance, when only a proportion of the hours of work in community service have been carried out) or a deficient implementation (as occurs, for instance, when efforts have been made to compensate a victim even if incompletely) can constitute indications which illuminate the way in which implementation has been carried out and thereby give reason to influence the decision on revocation. If a sentence of imprisonment is found to be unavoidable, the credit given to the offender for any satisfactory compliance should be reflected in the length of the sentence.

#### **Rule 71**

This Rule recognises that circumstances change and that one advantage of a community sanction or measure should be that it is sufficiently flexible to respond to such changes. On the application of the implementing authority or of the offender, or as otherwise prescribed by law, the deciding authority should be able to modify or revoke a community sanction or measure. Among the reasons for this might be:

- the circumstances of the offender have materially altered since the community sanction or measure was made and, as a result, the offender will not be able to comply with any condition; or
- (where this was a requirement) the offender no longer consents to the order; or
- the rehabilitation and reintegration of the offender would be advanced by the making of a further decision; or
- the continuation of the sentence is no longer necessary in the interests of the community or the offender.

#### **Rule 72**

Many of the earlier Rules in this Chapter have addressed questions of non-compliance, but it can also happen that the offender has made such progress that the deciding authority could profitably review the community sanction or measure. This could lead to modification of one or more conditions. Thus, for instance, an offender who gives proof of having compensated a victim should no longer be subject to a condition for compensation. Similarly, an offender should not be compelled to continue in treatment once it has been established that the drug dependence has been dealt with sufficiently and is unlikely to give rise to further offending. National legislation should set out the precise criteria for the use of this power by the deciding authority.

This Rule deals with the possibility of terminating the sanction or measure altogether before the normal term of expiration. Two conditions have to be met here. Firstly, the requirements inherent in the sanction or measure must have been fulfilled. Secondly, it must appear no longer expedient to maintain the requirements to achieve the ends of the sanction or measure. Complete latitude must be given to national legislations concerning the application of the second condition.

There can be real value in making a public statement to the individual that their progress has been noted, their obligations fulfilled and that this is formally acknowledged by ending the community sanction or measure and restoring the individual to their full civic rights.

## **Chapter VII: Organisation, staff, and resources**

### **Rule 73**

The proper implementation of community sanctions and measures is an extremely important and demanding responsibility. In many countries, the numbers of people subject to community sanctions and measures far exceeds the numbers in prison, yet often the distribution of the budget does not adequately reflect the volume and importance of community sanctions and measures. This Rule enjoins countries to provide a well-established and effective implementing authority, affirming its status and providing adequate resources.

### **Rule 74**

The general principle that this Rule asserts has been covered in Chapter IV, but needs to be restated in this context as well. If the implementing authority is to deal with other agencies in partnership, its distinctive skills and authority must be respected. If the purpose and value of the implementing authority are poorly understood, it will be much harder for its staff to work in mutually respectful partnership with other agencies within and beyond the criminal justice system.

### **Rule 75**

In support of Rule 73, this Rule asserts that the standing of the implementing authority and public confidence in its work will be enhanced by clear and realistic statements of its purposes and a transparency about its policies and practices. Deciding authorities also need to know how community sanctions and measures are put into effect and policy statements and plans of the kind envisaged in this Rule are preconditions of gaining confidence and ensuring due accountability.

### **Rule 76**

Implementing authorities shall ensure that there are reliable systems in place to monitor and improve their own practice and to ensure that it meets the standards required. For example, records should be regularly and systematically scrutinised by line managers to provide management information, including monitoring of adherence to law and policy. They should also discuss performance with members of staff.

### *Professional staff*

### **Rule 77**

If the implementing authority is to enjoy the standing and recognition proposed earlier in this Chapter, it must have staff of a calibre to merit such status. This has implications for the way in which staff are recruited and trained, as well as for their salaries and conditions of service. The relevant general principles are set out in [Recommendation No. R \(97\) 12](#) on staff concerned with the implementation of sanctions and measures as well as in the European Prison Rules (Part V) and the European Probation Rules (Rules 21 – 30).

### **Rule 78**

The Rule states that, apart from its functional duties (ensuring recruitment, selection, payment of salaries, promotion, etc.) it also lies within the competence of the implementing authority to establish norms of service. This means defining the obligations, rights and responsibilities of its staff and then ensuring that practice is taking place as it should.

There should be systems in place to enable agencies to monitor the quality of their own practices and to check performance against the required professional standards. Staff should be encouraged to regard these processes as a device to improve the quality of service delivery and enable them to do their work as well as possible. Such reviews should focus not only on individual performance, but should also consider if staff are adequately resourced and supported in undertaking their work.

Since the effectiveness of implementation depends primarily on the quality of work done by the staff, the implementing authority should avail itself of all useful ways of supervising the work of the staff and enhancing the quality of their practice.

## **Rule 79**

Staff have obligations to their employing authority and the implementing authority reciprocally has obligations to its staff. The authority must ensure that staff are adequately trained, resourced and supported to do what is required of them. This Rule states that managers should establish and participate in arrangements where staff can express their views as a group, not least on the question of their conditions of service. Moreover, staff have a unique insight into the ways in which policies are being put into practice and to observe any shortcomings in policy. Since it is not always straightforward for individual members of staff to put this to their managers, liaison with a staff body is an important mechanism for organisational enhancement.

## **Rule 80**

The general principle of non-discrimination asserted in Rule 6 applies with the same force to the recruitment, promotion opportunities, salaries and conditions of service of staff. The grounds of discrimination set out in the Rule should not be considered an exhaustive list and discrimination for any other similar reasons would also be prohibited by the Rule. The principle of non-discrimination in matters of recruitment and selection should not, however, hinder the promotion of specific policies of action on behalf of particular categories of persons, for example, women. Similarly, the principle of non-discrimination should not prevent differential recruitment and selection in order to deal effectively with particular categories of offenders, for example, ethnic minorities.

As with Rule 6, respect for this Rule entails periodic inspection of policy and practice to make sure that community sanctions and measures are being fairly implemented and monitoring systems should be adopted which might draw attention to unwitting discrimination.

## **Rule 81**

Staff recruitment strategies should have regard to the diversity of the communities served by the implementing authorities and of the offenders under their supervision. This can be a complex matter. For example, in many countries there are marked imbalances in the gender profile of the staff group and perhaps in their ethnicity too. Attempts to redress this (perhaps by seeking actively to recruit from groups that are found to be under-represented in the workforce) may not always fit easily with principles of equality of opportunity in employment. Even so, implementing authorities should always be aware of these considerations and do as much as possible to develop a workforce that broadly matches the profile of the community. Where there are large numbers of non-nationals originating from a particular country, the appointment of one or more members of staff who speak that national language might be considered. If the implementing authority shows itself to be aware of these matters, it will demonstrate at the same time a commitment to the rights and interests of those under supervision, greatly enhancing the legitimacy of its work in the eyes of service users and of the general public.

## **Rule 82**

This Rule provides no absolute indication concerning the number of staff in relation to the number of offenders being dealt with or 'caseload'. When account is taken of the great variation in community sanctions and measures and the heterogeneous structure of European sanction systems, it would be neither possible nor expedient to quantify this relation. For that matter, the numbers of offenders on a supervisor caseload is often quite uninformative: so much depends on the needs of these offenders, the levels of risk they are believed to pose and how much of the service is being delivered by the supervising officer in person (as opposed to colleagues or indeed partner agencies).

The second part of the Rule specifically requires the various administrations to define their own norms so as to provide a precise frame of reference within each system, having regard to the particular community sanctions and measures in existence and the complex tasks facing the staff. Such norms can be useful for the qualitative and quantitative evaluation of agency's practices. These norms include a specification of the personal characteristics of staff – for example, personal integrity, commitment to the values of the agency, ability to work as a member of a team. Some of these qualities can be tested during the process of recruitment; other such qualities can be developed through training and experience.

## **Rule 83**

This Rule formulates a number of requirements about the training of the staff and the necessary conditions for the exercise of their functions. Training is essential as a way of giving the staff an awareness of their precise responsibilities in relation to offenders and to the community. Similarly, having regard to the fact that

community sanctions and measures involve the wider society, staff must be made aware of the need to co-ordinate their activities with that of relevant organisations in the community.

Before entering into service, staff should receive specific and relevant initial training. Thereafter they should be given the opportunity to improve their knowledge and skills through developmental training. With both forms of training it is necessary to take particular account of the need to gain knowledge – especially that derived from sociology, social work and criminology – about various practical aspects of the work as well as on professional and ethical requirements. These matters should be dealt with over and above theoretical professional and technical aspects. It can be useful to think in terms of knowledge, skills and values as the components that constitute best practice. With further training, it will be necessary to undertake the practical examination and evaluation of different work situations so as to maintain and develop professional competence. The necessary resources for training, notably financial resources, should be provided by governments.

Best performance requires not only the abilities of staff, but calls for the agency to provide an organisational context in which these abilities can be deployed. This includes not only training and supervision, but also sufficient resourcing, as well as opportunities for career development.

#### **Rule 84**

The purpose of this Rule is to define the essential elements of the professional staff's conditions of service in order to guarantee stability of employment and ensure dignity of status.

A staff group which is established for an indeterminate period and which has legally defined conditions of service and adequate remuneration, is more likely to function better than temporarily hired staff. Stability of employment is extremely important in this kind of work, where the nature of the task is both demanding and complex, the psychological pressures often intense and in which it is often necessary to have frequent, even daily, contact with others working in the penal system – police, judges, other judicial, prison staff – with a different professional training. Professional staff should therefore have a status in relation to conditions of service similar to these other categories of staff with comparable responsibilities. If people choose to move from one agency of criminal justice to another (for example, a relatively new probation service may want to recruit staff from an established prison service) care must be taken to ensure that any such transfer does not adversely affect salaries and conditions of service like pension arrangements.

The Rule does not require that the professional staff be established as state civil servants. This is common, but not everywhere appropriate. In fact, there is a great diversity of both public and private organisation in member states of the staff responsible for implementing community sanctions and measures.

#### *Use of volunteers*

#### **Rule 85**

The Rules in this section apply to volunteers who work with and on behalf of implementing agencies and not to those who work with offenders independently or in other organisations. Volunteers can make an invaluable contribution to the work of an agency and to helping and supporting victims and offenders. The involvement of volunteers can be part of the contribution made by wider civil society in responding to crime, rather than handing over such work solely to professionals.

Volunteers are to be distinguished from the community participants referred to Chapter IV. Community participants remain at work in their own organisations and are usually salaried staff. They normally work with many clients in addition to those fulfilling the requirements of community sanctions and measures. Volunteers work with and on behalf of the implementing authority and are assigned particular roles within that organisation. Although they are formally associated with the authority in this way, just because they are not professionals and are unpaid, their contribution is different and can serve to make and strengthen bonds with the community. Like professionals, volunteers can help offenders change their lives, can serve as a positive role model, and help offenders understand the harm done by offending.

They can also work as mentors and can befriend offenders, offering a relationship that is valued all the more because it is less formal than an offender's relationship with a supervising officer. Offenders often especially appreciate the time and commitment of people who are giving their support and advice without payment. Volunteers may assist professional staff in a range of practical tasks by agreement with the authority. Volunteers can also act as 'champions' of community sanctions and measures, helping society to better understand their aims and value.



## **Rule 86**

Volunteers should not be asked to undertake work appropriate to the role and responsibilities of employed staff or solely as a means of conserving the resources of the authority. The organisation must make careful decisions about the appropriate role boundaries between its professional staff and volunteers, taking account not only of the skills and knowledge of the personnel involved but also of the appropriate level of responsibility.

## **Rule 87**

Since volunteers are working on behalf of the implementing authority with offenders (and sometimes perhaps with victims too) to whom the authority owns a duty of care, there must be a process to test their personal suitability to work in this capacity. This must involve at least a personal interview with a member of staff and a criminal record check.

Having a previous criminal record should not necessarily prevent people from working in this role. The experience of ex-offenders can enable them to make a distinctive and invaluable contribution in their work with offenders and their appointment as volunteers demonstrates the agency's commitment to supporting desistance through successful social inclusion. Notably many countries have good experiences of such 'peer mentoring'. Even so, by no means everyone is suitable for this role and the implementing authority has a duty to use its judgement about whom to engage.

## **Rule 88**

This Rule asserts that volunteers need ready access to professional staff who can offer them advice and support in their work. A professional supervisor should retain responsibility for the management of a case and assign tasks to the volunteer as appropriate. There are likely to be times when the volunteer will need authority and approval from the responsible supervisor as well as their guidance and support.

Volunteers, just like paid staff, have a duty to protect the public and are therefore bound by the same rules regarding confidentiality. Offenders themselves and other service users, as well as staff and volunteers, must understand the rights and responsibilities involved in these working relationships.

## **Rule 89**

Like paid staff, volunteers need adequate insurance cover when they carry out their duties. This applies only when the implementing authority appoints volunteers directly. These arrangements must be distinguished from the position of employees of organisations working in partnership with the implementing authority.

Although they are not paid for their work, they may sometimes incur expenses (for example travel costs) for which they should be reimbursed.

### *Financial resources*

## **Rule 90**

This Rule, which is addressed to governments and concerns budgetary allocations, makes an important statement about the financial resources necessary to implement community sanctions and measures. Although they may cost considerably less to apply than imprisonment, community sanctions and measures nevertheless require a significant degree of financing. The financial means necessary should be obtained from the budgetary allocations of the state and be subject to strict budgetary control.

The Rule gives no quantitative indications in this matter but is limited to emphasising that, in the interest of a well-functioning service, there should be sufficient correspondence between the financial means accorded and the needs of the implementing authority.

The second part of the Rule provides that the implementing authority may make use of resources which do not stem from a state budget. Such resources may come from bodies or private persons considered as 'third parties' in relation to the implementing authority. The resources in question may be of strictly financial character or take some other form such as, for instance, the provision of organisational assistance or ancillary staff. But such a contribution must never determine the total activities of the implementing authority.

## **Rule 91**

This Rule is the corollary to the second part of the preceding rule. Even if implementing authorities may receive funds from other than public monies it is essential to avoid any risk of losing independence of action, even partially, as a result of such financing. The Rule provides, therefore, for a procedure to ensure the proper use of such funding, a procedure which it is the responsibility of governments to set up. It is thus necessary to provide for specific procedures concerning budgetary appropriations derived from private funds, and to designate the persons responsible in this matter as well as the ways and means of auditing the use of such funds.

## **Chapter VIII: Complaints procedures, inspection, monitoring**

### **Rule 92**

This Rule develops the idea of transparency and accountability. The work of the implementing authorities should be open to scrutiny – that is, to routine monitoring and inspections carried out within the framework of the criminal justice system or other competent authorities. The nature and ways of carrying out such scrutiny may well vary according to the legal characteristics of different countries. Nevertheless, two requirements must be fulfilled if efficiency and credibility are to be ensured. Scrutiny should be undertaken regularly, that is neither casually nor in an ad hoc fashion. It should be conducted not only by the managers of the authority itself (Rule 76), but also by external persons - that is to say by persons who are independent of the activity in question in order to guarantee objectivity and impartiality. A high quality of scrutiny, where it is provided for in national law, requires that it be undertaken by qualified and experienced persons.

Arrangements vary in different countries and accountability can function at national, regional and / or at a more local level. In any event, the competent authority should ensure that robust systems are in place which allow them to satisfy themselves that the agency is undertaking its work as it should.

In addition, independent monitoring is very important for ensuring high quality of professional standards of practice. In some countries this may be the responsibility of the Ombudsman, in others a national supervising committee, etc. No matter which form such bodies may take, this Rule requires them to be independent and well equipped to perform their monitoring tasks.

Agencies should use such inspection and monitoring systems as an opportunity to learn and to improve their practice. The inspecting body should also take the opportunity to learn more about the realities of implementation practice and to advocate as necessary on the agency's behalf for changes in policy or in levels of resourcing.

It is also important to provide regular information to the deciding authorities, who must have confidence in the implementing authorities' work. There should also be dialogue, so that the implementing authority can take account of the expectations of the deciding authority.

This Rule also states that this is not just a matter of being available for scrutiny, but involves an active account of the work being undertaken. This can be achieved by submitting reports and other forms of feedback. These ideas are further developed in Chapter IX of the Rules.

### **Rule 93**

The legal principles which uphold these Rules must take account of the way in which implementation is carried out. The right of the offender to make a complaint must therefore be upheld concerning decisions (or failures to take decisions) which affect the practical ways of implementing the community sanction or measure. Offenders and other service users should be made aware of their right to complain and how to go about it. The procedure should be clear and straightforward.

Implementing agencies must ensure that offenders fulfil obligations – some of which they may prefer to avoid. Supervision can make personal demands on offenders which they may sometimes resent or resist. Sometimes too staff have to take decisions which can lead to a court appearance or to a recall to prison. The nature of implementing community sanctions and measures, then, can lead to disagreement and dispute between staff and offenders and this is an aspect of the work that staff must learn to deal with. Sometimes disagreement can give rise to formal complaint.

An offender may request a change of supervisor or other person charged with a duty towards them. As with a complaint, this request may or may not be justified. Since the relationship with the supervisor or other person charged with a duty towards the offender is important for effective implementation, the implementing authority shall examine such requests seriously and responsibly, but will not always decide to grant the request.

There must be a clear procedure available for offenders and other service users who wish to complain. Many complaints can and should be resolved informally and at a low level, by explaining to the offender or other service user why a decision was taken, but where the complainant remains unsatisfied, there should be an effective opportunity to put the complaint to someone at a higher level within the organisation and in some circumstances to an independent authority.

It is to be noted that complaints can often be avoided by the agency explaining its role clearly and holding its position with consistency and fairness. If people know what is expected of them and what they may expect in return, complaint is much less likely.

Those investigating complaints should be impartial and should avoid any assumptions that might prejudice the outcome of their inquiry.

#### **Rule 94**

A complaints procedure should meet certain requirements. In some cases, it will be sufficient for the line manager of the member of staff who is subject to the complaint to undertake the investigation. In other circumstances, depending on the level of seriousness of the allegation, a more senior member of staff should investigate. There is a role too for an independent authority (for example, an Ombudsman) to respond to complaints, but normally this process should be invoked only when other mechanisms have failed to bring a satisfactory resolution. This independent authority may also be in a position to hear any appeal against the findings of the initial investigation.

It must be possible for anyone to initiate a complaint without difficulty and for the complaint to be examined and decided on without undue delay. At the same time, the investigator must have at their disposal the information necessary for the decision, including any observations put forward by the complainant, by members of staff whose practices may be being called into question and / or others with relevant information to provide.

It is quite likely that a thorough investigation will take time. These processes should be undertaken efficiently, but not hastily. Where it appears that a certain amount of time will pass, the complainant should be kept informed and reasons given to explain what might otherwise appear to be undue delay. There should be procedures and explicit time-scales set for dealing with complaints.

It is often very important to try to find out what the complainant expects to result from their complaint. It may be, for example, that the individual is finding the demands of the community sanction or measure to be a heavier burden than anticipated, but that matter is unlikely to be resolved through a complaints process. Again, there is the delicate matter of when an offender is upset or angered by the challenges of the supervising officer. It is not always easy to know when a complaints procedure is the best response to this.

#### **Rule 95**

Investigation is likely to include considering the initial complaint, hearing further from the complainant as appropriate, talking to members of staff and perhaps scrutinising written records. Ordinarily, service users should be encouraged to put their complaints in writing – which need not be an elaborate representation – but where individuals lack the ability or the confidence to express their views in writing, they should be helped to do so and / or an oral complaint accepted.

The responsible authority should decide in each case whether or not it is necessary for the investigator of the complaint to interview the complainant in person. The complainant's request to be seen in person shall be considered carefully, but will not necessarily be decisive. Judgement shall be exercised.

#### **Rule 96**

A complaint may or may not be justified. It is also possible that a complaint is upheld to some degree. If a complaint is upheld, appropriate action needs to be taken and the complainant informed accordingly. If the

complaint is found not to be justified, the complainant needs to be so informed and in all cases to feel fairly dealt with.

Staff as well as complainants need to see that the procedure is fair and impartial. Whether the complaint is found by the investigation to be misplaced, malicious or vexatious, or to be well founded, the agency should respond to the complainant accordingly. Staff members whose practice may have been called into question should also be informed of the outcome.

It is important to distinguish between complaints against members of staff and, on the other hand, dissatisfaction with the agency's policy. For example, an offender may wish to complain about a decision to recall them to prison, but, if the agency is satisfied that this decision was taken and implemented properly, it should be prepared to support its members of staff.

Any changes in policy or practice that will result from the investigation into the complaint should be explained to the complainant. The implementing authority should respond positively to complaints and use investigations as an opportunity to learn how to improve the quality of their service delivery.

Information regarding the number of complaints filed and processed in the course of the year should also be analysed regularly with a view to identifying and addressing shortcomings in policy or in practice.

### **Rule 97**

The purpose of this Rule is to enable a complainant to exercise their right without hindrance. The offender is therefore to have the right to be assisted by a person of their choice in connection with any complaint concerning the implementation of a community sanction or measure. The complainant may choose the person to give advice or assistance even if there is a risk that this person may lack the specific qualifications or knowledge required. In some circumstances, the complainant may seek legal assistance.

## **Chapter IX: Research, evaluation, work with media and the public**

### **Rule 98**

Research is concerned, inter alia, with procedures of objective description, assessment and evaluation. Research is essential for knowledge, as opposed to beliefs, about the working of community sanctions and measures. Unless this knowledge is available, there is no trustworthy basis for describing and assessing the extent to which such sanctions and measures are used and with what results. The further development of criminal policy and practical work with offenders as well as the use of public financial resources cannot be effective in the absence of such descriptions and assessments. There is everything to be said for instituting descriptive and evaluative research on community sanctions and measures. The present Rule, therefore, urges the promotion of such research.

The findings of research should be used to inform and guide practice. Research should be rigorous and impartial and the participation of universities and other centres of research can ensure impartiality and give authority to such inquiries. The findings of research should also be made public as part of the attempt to develop public confidence. (Even when findings are disappointing, the agency's willingness to investigate and as necessary to modify its approach will add to its credibility.)

Just as practice must be responsive to the findings of research, policy too should be informed in this way. Politicians in many countries are under considerable pressure to introduce effective measures to reduce crime. Policy initiatives should be supported by research, reason and argument and, while remaining sensitive to the legitimate expectations of the electorate, politicians should show leadership and try to avoid any temptation to propose simple 'solutions' to complex problems.

Attention in research should be paid not only to the extent to which community sanctions and measures achieve the objectives set for them, but to any unintended or unforeseen consequences.

An implication of this Rule is an encouragement of the international exchange of ideas and practices. Practices that have proved to be successful in one country may be a promising idea to introduce elsewhere, although such transfer must be undertaken with due regard to differences of context, especially law and culture. Countries can learn from one another's experience – not only from successes, but also from mistakes.

## **Rule 99**

Criteria of effectiveness and performance should be laid down so as to make it possible to assess from various perspectives the benefits, drawbacks and limitations associated with community sanctions and measures. Among these criteria should be:

- reconviction rates (one significant measure of effectiveness)
- processes of desistance
- compliance (e.g. proportion of successful completion, number of breach actions registered)
- the profile and offending histories of those on whom community sanctions and measures have been imposed (to discover if community sanctions and measures are being assigned as law and policy expect)
- the impact of community sanctions and measures on rates of imprisonment (since community sanctions and measures aspire to reduce prison populations, though may fail or underachieve in this respect)
- the avoidance of discrimination in accordance with Rule 6
- the perceptions of staff working for the implementing authorities
- the views of deciding authorities
- the experiences of service users, including victims
- complaints procedure outcomes
- the financial costs of community sanctions and measures

This list is not intended to be exhaustive. For example, public perceptions about community sanctions and measures and their credibility is a worthwhile topic of research. Proxy indicators can often be useful: for example, many offenders need to be helped to overcome alcohol or drug dependence and educational or vocational deficiencies. Community sanctions and measures offer opportunities for such help. It remains for research to demonstrate whether such help is actually offered and accepted and to suggest ways of improving the efficacy of helping methods.

In many cases, these effects should be assessed comparatively. For example, rather than measure rates of reconviction against some (probably unattainable) ideal, they should be carefully compared with the reconvictions of comparable offenders receiving imprisonment as well as other sanctions and measures.

## **Rule 100**

New programmes, interventions and methods of implementation are to be welcomed. The requirements stipulated by this Rule are that they should be introduced first of all on a trial basis; that they should accord with these Rules and with international ethical standards; and that they should be carefully monitored and rigorously evaluated.

## **Rule 101**

It is quite common to find that, in a number of countries, the public has little understanding of community sanctions and measures or of the work of implementing authorities. Community sanctions and measures rarely attract public attention, for example, in the same way that prison does. This Rule urges the responsible authorities and the implementing authorities themselves to 'champion' community sanctions and measures – to work with the media to explain what community sanctions and measures attempt to do, what they achieve and why they are important. Authorities should be imaginative and creative in the way in which they set about this task in order to enhance public understanding and confidence.

This Rule therefore emphasises the importance of good communications in creating social conditions in which community sanctions and measures are accepted as appropriate and credible reactions to criminal behaviour. The purpose of the Rule is to ensure that decisions are made and opinions formed on the basis of reliable information rather than uninformed speculation.

## **Rule 102**

The general public have both a need and a right to know what community sanctions and measures are available, what conditions apply, what the rights and responsibilities of offenders are and, in general terms, how effective the various sanctions and measures prove to be. The awareness of the general public can be stimulated by use of the various media of mass communication – radio, television, Internet, social media,

newspapers and magazines. Conferences, seminars and lectures can also be used to disseminate information and influence public opinion.

The information should emphasise that community sanctions and measures can provide sufficient punishment and control as well as help in support of desistance.

It is also important that the public sees implementing authorities as active, responsive and always keen to enhance the quality of their work.

### **Rule 103**

It is the decisions of judicial and other deciding authorities that determine how community sanctions and measures are used within the parameters of the law. Unless they have a sound understanding of how community sanctions and measures are implemented and of what they can achieve, there is a risk that they will be used insufficiently or inappropriately. In such circumstances, community sanctions and measures are unlikely to fulfil their potential in any respect and perhaps especially in reducing the numbers of people in prison. This Rule envisages a dialogue between the implementing and deciding authorities. As well as receiving information, deciding authorities should be encouraged to express their opinions about the implementation of community sanctions and measures and how this could be enhanced in ways that would command their further confidence.

### **Rule 104**

Research into community sanctions and measures has often been dominated by statistical analysis, especially recording of rates of reconviction. There are other perspectives, however, that might lead to a fuller and more rounded appraisal of the performance of implementing authorities. This Rule urges authorities to encourage offenders to express their views of the services they have received and the manner in which they were supervised. Similarly, where the relevant agencies work with victims, their views shall be actively sought. In many cases, the views of individuals are routinely recorded in individual case files, but it is common for these views to be collated systematically or drawn upon to inform practice of policy. In some countries, authorities have helped to create user councils to advise them and this and similar arrangements are to be encouraged.

## **Chapter X: Reviewing of the Rules**

### **Rule 105**

These Rules should be reviewed regularly and revised as appropriate. Changes in law, including judicial rulings, in the understanding of the best ways to support personal change and desistance and in technologies may mean that some Rules need revision. Importantly, all countries should contribute to this process by attending to the effects of implementation. Circumstances where Rules do not (or no longer) achieve their intended purposes or create difficulties of principle or practice in their implementation should be noted and drawn to the Council of Europe's attention at the time of any revision. Rules must be improved by careful reflection on the experience of trying to put them into practice.