

COMMUNITY ORDER, BREACH OF VOLUME 1

16.1a *What constitutes a breach? Further offences*

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 5

Powers of the court following a subsequent conviction

A conviction for a further offence does not constitute a breach of a community order. However, in such a situation, the court should consider the following guidance from the [*TICs and Totality Guideline 2012: Crown Court*]:1

Offender convicted of an offence while serving a community order

The power to deal with the offender depends on his being convicted whilst the order is still in force; it does not arise where the order has expired, even if the additional offence was committed whilst it was still current.

For the full guidance, see [16.2a](#).

Powers of the courts generally

16.2a *Powers of the courts Powers of the court Defendant commits further offences*

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 5

Powers of the court following a subsequent conviction

A conviction for a further offence does not constitute a breach of a community order. However, in such a situation, the court should consider the following guidance from the [*TICs and Totality Guideline 2012: Crown Court*]:2

Offender convicted of an offence while serving a community order

The power to deal with the offender depends on his being convicted whilst the order is still in force; it does not arise where the order has expired, even if the additional offence was committed whilst it was still current.

If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.

Where an offender, in respect of whom a community order made by a Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence and the additional offence.

The sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence.

If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.

16.21a *Breach Offences Guideline 2018*

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 4

1 https://www.sentencingcouncil.org.uk/wp-content/uploads/Definitive_guideline_TICs__totality_Final_web.pdf p 14

2 https://www.sentencingcouncil.org.uk/wp-content/uploads/Definitive_guideline_TICs__totality_Final_web.pdf p 14

Breach of community order by failing to comply with requirements

Overall compliance with order	Penalty
Wilful and persistent non-compliance	Revoke the order and re-sentence imposing custodial sentence (even where the offence seriousness did not originally merit custody)
Low level of compliance	Revoke the order and re-sentence original offence OR Add curfew requirement 20 to 30 days* OR 30 to 50 hours' additional unpaid work/extend length of order/add additional requirement(s) OR Band C fine
Medium level of compliance	Revoke the order and re-sentence original offence OR Add curfew requirement 10-20 days* OR 20-30 hours additional unpaid work/extend length of order/add additional requirement(s) OR Band B fine
High level of compliance	Add curfew requirement 6-10 days* OR 10-20 hours additional unpaid work/extend length of order/add additional requirement(s) OR Band A fine

* Curfew days do not have to be consecutive and may be distributed over particular periods, for example at weekends, as the court deems appropriate. The period of the curfew should not exceed the duration of the community order and cannot be for longer than 12 months.

For Band A-C fines, see [58.27](#).

Technical guidance

- If imposing more onerous requirements the length of the order may be extended up to 3 years or 6 months longer than the previous length, whichever is longer (but only once).
- If imposing unpaid work as a more onerous requirement and an unpaid work requirement was not previously included, the minimum number of hours that can be imposed is 20.
- The maximum fine that can be imposed is £2,500.
- If re-sentencing, a suspended sentence **MUST NOT** be imposed as a more severe alternative to a community order. A suspended sentence may only be imposed if it is fully intended that the offender serve a custodial sentence in accordance with the *[Imposition of Community and Custodial Sentences Guideline 2017]*.

e) Where the order was imposed by the Crown Court, magistrates should consider their sentencing powers in dealing with a breach. Where the judge imposing the order reserved any breach proceedings[, magistrates should] commit the breach for sentence.

16.22 Part compliance

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 4

Breach of community order by failing to comply with requirements

The court must take into account the extent to which the offender has complied with the requirements of the community order when imposing a penalty.

In assessing the level of compliance with the order the court should consider:

- i) the overall attitude and engagement with the order as well as the proportion of elements completed;
- ii) the impact of any completed or partially completed requirements on the offender's behaviour;
- iii) the proximity of breach to imposition of order; and
- iv) evidence of circumstances or offender characteristics, such as disability, mental health issues or learning difficulties which have impeded offender's compliance with the order.