

## CRIMINAL BEHAVIOUR ORDER, BREACH OF VOLUME 1

### 26.19 Breach Offences Guideline 2018

*Breach Offences Guideline 2018*, see [www.banksr.com](http://www.banksr.com) Other Matters Guidelines tab In force 1 October 2018 p 27

#### Breach of a criminal behaviour order (also applicable to breach of an anti-social behaviour order)

Anti-Social Behaviour, Crime and Policing Act 2014 (section 30)

#### STEP ONE

##### Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

##### Culpability

A	• Very serious or persistent breach
B	• Deliberate breach falling between A and C
C	• Minor breach • Breach just short of reasonable excuse

##### Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was at risk of being caused.

In assessing any risk of harm posed by the breach, consideration should be given to the original offence(s) or activity for which the order was imposed and the circumstances in which the breach arose.

<b>Category 1</b>	• Breach causes <b>very</b> serious harm or distress • Breach demonstrates a continuing risk of serious criminal and/or anti-social behaviour
<b>Category 2</b>	• Cases falling between Categories 1 and 3
<b>Category 3</b>	• Breach causes little or no harm or distress • Breach demonstrates a continuing risk of minor criminal and/or anti-social behaviour

### 26.19a

#### STEP TWO

##### Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range from the appropriate sentence table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<b>Starting point</b> 2 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 12 weeks' custody

Harm	Culpability		
	A	B	C
	<b>Category range</b> 1 to 4 years' custody	<b>Category range</b> High-level community order to 2 years' custody	<b>Category range</b> Medium-level community order to 1 year's custody
Category 2	<b>Starting point</b> 1 year's custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High-level community order
	<b>Category range</b> High-level community order to 2 years' custody	<b>Category range</b> Medium-level community order to 1 year's custody	<b>Category range</b> Low-level community order to 26 weeks' custody
Category 3	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High-level community order	<b>Starting point</b> Medium-level community order
	<b>Category range</b> Medium-level community order to 1 year's custody	<b>Category range</b> Low-level community order to 26 weeks' custody	<b>Category range</b> Band B fine to high-level community order

**NOTE:** A conditional discharge **MAY NOT** be imposed for breach of a criminal behaviour order.

#### 26.19b [Aggravating and mitigating factors]

Page 30 The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

#### Factors increasing seriousness

##### *Statutory aggravating factors:*

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

##### *Other aggravating factors:*

Offence is a further breach, following earlier breach proceedings

Breach committed shortly after order made

History of disobedience of court orders or orders imposed by local authorities

Breach constitutes a further offence (where not separately prosecuted)

Targeting of a person the order was made to protect or a witness in the original proceedings

Victim or protected subject of order breached is particularly vulnerable due to age, disability, culture, religion, language, or other factors

Offence committed on licence or while subject to post sentence supervision

#### Factors reducing seriousness or reflecting personal mitigation

Genuine misunderstanding of terms of order

Breach committed after long period of compliance

Prompt voluntary surrender/admission of breach or failure

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Age and/or lack of maturity where it affects the responsibility of the offender

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Mental disorder or learning disability

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Sole or primary carer for dependent relatives

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STEP THREE to STEP EIGHT These are: Consider assistance to the prosecution, Reduction for guilty plea, Totality principle, Ancillary orders, Duty to give reasons and Consider time spent on bail with a tag.

**26.19c *Suggested approach to the guideline***

Note: I have listed a few old cases in the book, because they deal with legal principles. Those cases should be treated with care as the new guideline must be applied. The old cases should not determine the length of the sentence. That is determined by the guideline. Ed.

**26.25 *Previous breach appearances, Defendant has***

Breach Offences Guideline 2018, see [www.banksr.com](http://www.banksr.com) Other Matters Guidelines tab In force 1 October 2018 p 30 includes, 'Offence is a further breach, following earlier breach proceedings' as an aggravating factor.