

**28.40b Post-sentence supervision, Breach of 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 13

**Breach of post-sentence supervision**

**Criminal Justice Act 2003 s 256AC and Sch 19A**

Where the court determines a penalty is appropriate for a breach of a post-sentence supervision requirement it must take into account the extent to which the offender has complied with all of the requirements of the post-sentence supervision or supervision default order when imposing a penalty.

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

- i) the offender’s 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 the breach to the imposition of the 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.

Level of compliance	Penalty
Low	Up to 7 days’ committal to custody <b>OR</b> Supervision default order in range of 30-40 hours’ unpaid work <b>OR</b> 8-12 hour curfew for minimum of 20 days
Medium	Supervision default order in range of 20-30 hours’ unpaid work <b>OR</b> 4-8 hour curfew for minimum of 20 days <b>OR</b> Band B fine
High	Band A fine

For a band A-C fine, see **58.27**.

**Breach of supervision default order**

Level of compliance	Penalty
Low	Revoke supervision default order and order up to 14 days’ committal to custody
Medium	Revoke supervision default order and impose new order in range of 40-60 hours’ unpaid work <b>OR</b> 8-16 hour curfew for minimum of 20 days
High	Band B fine

i) A supervision default order must include either:

an unpaid work requirement of between 20 hours and 60 hours

**OR**

a curfew requirement for between 2 and 16 hours for a minimum of 20 days and no longer than the end of the post-sentence supervision period.

ii) The maximum fine which can be imposed is £1,000.

**28.17 *Legitimate expectation of non-custodial sentence given***

*R v CD* 2018 EWCA Crim 571 D pleaded to sexually assaulting a child. A psychiatrist recommended a sex offender treatment programme. The Judge asked the probation officer whether there was any reason why he should not pass a community order. The officer asked for an adjournment to liaise with the sex offender programme providers and the Judge agreed saying, “I am minded to think that the case could be dealt with without a loss of liberty. I will adjourn without promises for a pre-sentence report.” D co-operated with probation and their report recommended a community order or a suspended sentence with a community sex offender programme. At the next hearing, D received 2 years. Held. The remarks were conveying mixed messages. Although the Judge said, “no promises” it was clear he was minded to give a non-custodial sentence. At the last hearing there was no new information. D could reasonably believe that if a suitable course was proposed, he would not receive immediate custody. There was a legitimate sense of injustice aroused, so we suspend the 2-year sentence with a condition of an attendance on a sex offender programme.