

49.2a Breach Offences Guideline 2018

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 45

Company Directors Disqualification Act 1986 (section 13)

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	<ul style="list-style-type: none"> • Breach involves deceit/dishonesty in relation to actual role within company • Breach involves deliberate concealment of disqualified status
B	<ul style="list-style-type: none"> • All other cases

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) for which the order was imposed and the circumstances in which the breach arose.

Category 1	Breach results in significant risk of or actual serious financial loss OR Breach results in significant risk of or actual serious non-financial harm to company/organisation or others
Category 2	Cases falling between Categories 1 and 3
Category 3	Breach results in very low risk of or little or no harm (financial or non-financial) to company/organisation or others

49.2b

STEP

Starting point and category range

TWO

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. The court should then consider further adjustment within the category range for aggravating or mitigating features.

Harm	Culpability	
	A	B
Category 1	Starting point 1 year's custody	Starting point 12 weeks' custody

Harm	Culpability	
	A	B
	Category range 26 weeks to 1 year 6 months' custody	Category range High-level community order to 36 weeks' custody
Category 2	Starting point 26 weeks' custody	Starting point High-level community order
	Category range 12 weeks' to 36 weeks' custody	Category range Medium-level community order to 26 weeks' custody
Category 3	Starting point 12 weeks' custody	Starting point Medium-level community order
	Category range Medium-level community order to 26 weeks' custody	Category range Band C fine to high-level community order

For the meaning of high-level and medium-level community orders, see [15.12](#). For a Band C fine, see [58.27](#).

49.2c [Aggravating and mitigating factors]

Page 48 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:

Breach committed shortly after order made

Breach continued after warnings received

Breach is continued over a sustained period of time

Breach involves acting as a director in multiple companies

Breach motivated by personal gain

Offence committed on licence or while subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

Breach not motivated by personal gain

Breach committed after long period of compliance

Genuine misunderstanding of terms of disqualification

Evidence of voluntary reparation/compensation made to those suffering loss

Breach activity minimal or committed for short duration

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

Mental disorder or learning disability where linked to the commission of the offence

Sole or primary carer for dependent relatives

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.

49.2d *Suggested approach to the guideline*

Note: I consider the old cases add little and sentencers should simply apply the guideline. Ed.