

NOTIFICATION: SEX OFFENCES: BREACH OF REQUIREMENTS VOLUME 1

79.3a Breach Offences Guideline 2018

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 39

Sexual Offences Act 2003 (section 91)

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

In assessing culpability, the court should consider the **intention** and **motivation** of the offender in committing any breach.

A	<ul style="list-style-type: none"> • Determined attempts to avoid detection • Long period of non-compliance
B	<ul style="list-style-type: none"> • Deliberate failure to comply with requirement
C	<ul style="list-style-type: none"> • 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) for which the order was imposed and the circumstances in which the breach arose.

Category 1	Breach causes or risks very serious harm or distress
Category 2	Cases falling between Categories 1 and 3
Category 3	Breach causes or risks little or no harm or distress

79.3b

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
Category 1	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 36 weeks' custody

Harm	Culpability		
	A	B	C
	Category range 1 year's to 4 years' custody	Category range 26 weeks' to 2 years' custody	Category range 26 weeks' to 1 year 6 months' custody
Category 2	Starting point 1 year's custody	Starting point 36 weeks' custody	Starting point High-level community order
	Category range 26 weeks' to 2 years' custody	Category range 26 weeks' to 1 year 6 months' custody	Category range Medium-level community order to 36 weeks' custody
Category 3	Starting point 36 weeks' custody	Starting point High-level community order	Starting point Low-level community order
	Category range 26 weeks' to 1 year 6 months' custody	Category range Medium-level community order to 36 weeks' custody	Category range Band B fine to medium-level community order

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

79.3c [Aggravating and mitigating factors]

Page 42 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

History of disobedience of court orders (where not already taken into account as a previous conviction)

Breach constitutes a further offence (where not separately prosecuted)

Offence committed on licence or while subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

Breach committed after long period of compliance

Prompt voluntary surrender/admission of breach or failure

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.

79.3d *Suggested approach to the guideline*

Note: I suggest the best approach is to ignore the old cases and simply apply the guideline. Ed.