

**94.7a 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 20

Restraining orders: [Protection from Harassment Act 1997 \(section 5\(5\) and \(5A\)\)](#)

Non-molestation orders: [Family Law Act 1996 \(section 42A\)](#)

**Breach of a protective order (restraining and non-molestation orders)**

**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	• Very serious and/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 intended to be caused.

<b>Category 1</b>	Breach causes <b>very</b> serious harm or distress
<b>Category 2</b>	Cases falling between Categories 1 and 3
<b>Category 3</b>	Breach causes little or no harm or distress*

\* Where a breach is committed in the context of a background of domestic abuse, the sentence should take care not to underestimate the harm which may be present in a breach.

**94.7b**

**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
<b>Category 2</b>	<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
<b>Category 3</b>	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> High-level community order	<b>Starting point</b> Low-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

The table above refers to single offences. Where there are multiple offences consecutive sentences may be appropriate – please refer to the [TICs and Totality Guideline 2012: Crown Court].

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

#### 94.7c [Aggravating and mitigating factors]

[Restraining Orders\; Harassment/Non-Molestation Order\; Breach of:Guidelines:Aggravating and mitigating factors](#)

Page 24 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 to court orders (where not already taken into account as a previous conviction)

Breach involves a further offence (where not separately prosecuted)

Using contact arrangements with a child/children to instigate offence and/or proven history of violence or threats by offender

Breach results in victim or protected person being forced to leave their home

Impact upon children or family members
Victim or protected subject of order breached is particularly vulnerable
Offender takes steps to prevent victim or subject harmed by breach from reporting an incident or seeking assistance
Offence committed on licence or while subject to post sentence supervision
<b>Factors reducing seriousness or reflecting personal mitigation</b>
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
Contact not initiated by offender – a careful examination of all the circumstances is required before weight is given to this factor

For additional aggravating and mitigating factors, see **94.10**.

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.

#### **94.7d Suggested approach to the guideline**

Note: I have assumed that the *Breach of a Protective Order Guideline 2006* is in part superseded. If Judges find parts of the old guideline useful, I can see no reason why those parts should not be used if they are not inconsistent with the new guideline. I have removed most of the old tariff cases, but left some because they deal with legal principles. Those cases should be treated with care as the new guideline has a new structure which must be applied. The old cases should not determine the length of the sentence. That is determined by the guideline. Ed.

#### **94.10 Aggravating and mitigating factors**

Note: The key aggravating and mitigating factors are in *Breach Offences Guideline 2018*, see **94.7c**. As the aggravating and mitigating factors in the guideline are described as ‘non-exhaustive’, these factors may be of assistance. However, these factors may not be used to determine the offence category at step one of the new guideline. Ed.