

SEXUAL HARM PREVENTION ORDER: BREACH OF VOLUME 1

106.5 Breach Offences Guideline 2018

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 33

Breach of a sexual harm prevention order (also applicable to breach of a sexual offences prevention order and to breach of a foreign travel order)

Sexual Offences Act 2003 (s 103I)

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 or persistent breach
B	• Deliberate breach falling between Categories 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) for which the order was imposed and the circumstances in which the breach arose.

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

106.5a

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 3 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 to 4 years 6 months' custody	Category range 36 weeks' to 3 years' custody	Category range High-level community order to 2 years' custody
Category 2	Starting point 2 years' custody	Starting point 1 year's custody	Starting point High-level community order
	Category range 36 weeks' to 3 years' custody	Category range High-level community order to 2 years' custody	Category range Medium-level community order to 26 weeks' custody
Category 3	Starting point 1 year's custody	Starting point 26 weeks' custody	Starting point Medium-level community order
	Category range High-level community order to 2 years' custody	Category range Medium-level community order to 36 weeks' custody	Category range Band B fine to high-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](#).

106.5b [Aggravating and mitigating factors]

Page 36 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 immediately or shortly after order made

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

Breach involves a further offence (where not separately prosecuted)

Targeting of particular individual the order was made to protect

Victim or protected subject of order 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

Factors reducing seriousness or reflecting personal mitigation

Breach committed after long period of compliance

Prompt voluntary surrender/admission of breach

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.

106.5c *Suggested approach to the guideline*

Note: I have listed some old cases in the book, 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.