

112.15a Breach Offences Guideline 2018 Conviction for a further offence

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 8

Breach of a suspended sentence order

1) Conviction for further offence committed during operational period of order

The court **must activate the custodial sentence** unless it would be unjust in all the circumstances to do so [see **112.15c**]. The predominant factor in determining whether activation is unjust relates to the level of compliance with the suspended sentence order and the facts/nature of any new offence. **These factors are already provided for in the penalties below which are determined by the nature of the new offence and level of compliance, but permit a reduction to the custodial term for relevant completed or partially completed requirements where appropriate.**

The facts/nature of the new offence is the primary consideration in assessing the action to be taken on the breach.

Where the breach is in the second or third category below, the prior level of compliance is also relevant. In assessing the level of compliance with the order the court should consider:

- i) the 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 breach to imposition of 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.

Breach involves	Penalty
Multiple and/or more serious new offence(s) committed	Full activation of original custodial term
New offence similar in type and gravity to offence for which suspended sentence order imposed and: a) No/low level of compliance with suspended sentence order OR b) Medium or high level of compliance with suspended sentence order	Full activation of original custodial term Activate sentence but apply appropriate reduction* to original custodial term taking into consideration any unpaid work or curfew requirements completed
New offence less serious than original offence but requires a custodial sentence and: a) No/low level of compliance with suspended sentence order OR b) Medium or high level of compliance with suspended sentence order	Full activation of original custodial term Activate sentence but apply appropriate reduction* to original custodial term taking into consideration any unpaid work or curfew requirements completed

New offence does not require custodial sentence	<p>Activate sentence but apply reduction* to original custodial term taking into consideration any unpaid work or curfew requirements completed</p> <p>OR</p> <p>Impose more onerous requirement(s) and/or extend supervision period and/ or extend operational period and/or impose fine</p>
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* It is for the court dealing with the breach to identify the appropriate proportionate reduction depending on the extent of any compliance with the requirements specified

112.15b Breach Offences Guideline 2018 Failure to comply with the requirements

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 10

2) Failure to comply with a community requirement during the supervision period of the order

The court **must activate the custodial sentence** unless it would be unjust in all the circumstances to do so [see 112.15c]. The predominant factor in determining whether activation is unjust relates to the level of compliance with the suspended sentence order. **This factor is already provided for in the penalties below which are determined by the level of compliance, but permit a reduction to the custodial term for relevant completed or partially completed requirements where appropriate.**

The court must take into account the extent to which the offender has complied with the suspended sentence order when imposing a sentence.

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

- i) the 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; and
- iii) the proximity of breach to imposition of 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.

Breach involves	Penalty
No/low level of compliance	Full activation of original custodial term
Medium level of compliance	Activate sentence but apply reduction* to original custodial term taking into consideration any unpaid work or curfew requirements completed
High level of compliance	<p>Activate sentence but apply reduction* to original custodial term taking into consideration any unpaid work or curfew requirements completed</p> <p>OR</p> <p>Impose more onerous requirement(s) and/or extend supervision period and/ or extend operational period and/or impose fine</p>

* It is for the court dealing with the breach to identify the appropriate proportionate reduction depending on the extent of any compliance with the requirements specified.

112.15c Breach Offences Guideline 2018 Meaning of ‘unjust’

[Suspended Sentence Orders\ Breach of:Guidelines:Meaning of unjust](#)

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 9 and 11 (where the entry is the same in each place)

Unjust in all the circumstances

The court dealing with the breach should remember that the court imposing the original sentence determined that a custodial sentence was appropriate in the original case.

In determining if there are other factors which would cause activation to be unjust, the court may consider all factors including:

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether immediate custody will result in significant impact on others.

Only new and exceptional factors/circumstances not present at the time the suspended sentence order was imposed should be taken into account.

In cases where the court considers that it would be unjust to order the custodial sentence to take effect, it must state its reasons and it **must** deal with the offender in one of the following ways:

- (a) impose a fine not exceeding £2,500; OR
- (b) extend the operational period (to a maximum of two years from date of original sentence); OR
- (c) if the SSO imposes community requirements, do one or more of:
 - (i) impose more onerous community requirements;
 - (ii) extend the supervision period (to a maximum of two years from date of original sentence);
 - (iii) extend the operational period (to a maximum of two years from date of original sentence).