

BAIL OFFENCES VOLUME 2

215.4a Breach Offences Guideline 2018

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 15

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	Failure to surrender represents deliberate attempt to evade or delay justice
B	Cases falling between Categories A and C
C	Reason for failure to surrender just short of reasonable cause

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.

Category 1	Failure to attend Crown Court hearing results in substantial delay and/or interference with the administration of justice
Category 2	Failure to attend magistrates' court hearing results in substantial delay and/or interference with the administration of justice*
Category 3	Cases in either the magistrates' court or Crown Court not in Categories 1 and 2

* In particularly serious cases where the failure to attend is in the magistrates' court and the consequences of the delay have a severe impact on victim(s) and/or witness(es) warranting a sentence outside of the powers of the magistrates' court, the case should be committed to the Crown Court pursuant to section 6(6)(a) of the Bail Act 1976 and the Crown Court should sentence the case according to the range in Category A1.

215.4b

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.

Where a custodial sentence is available within the category range and the substantive offence attracts a custodial sentence, a consecutive custodial sentence should normally be imposed for the failure to surrender offence.

Harm	Culpability		
	A	B	C
Category 1	Starting point 6 weeks' custody	Starting point 21 days' custody	Starting point Medium-level community order*
	Category range 28 days' to 26 weeks' custody ¹	Category range High-level community order* to 13 weeks' custody	Category range Low-level community order* to 6 weeks' custody
Category 2	Starting point 21 days' custody	Starting point Medium-level community order*	Starting point Band B fine
	Category range High-level community order* to 13 weeks' custody	Category range Band B fine to 6 weeks' custody	Category range Band A fine to low-level community order*
Category 3	Starting point 14 days' custody	Starting point Band C fine	Starting point Band A fine
	Category range Low-level community order* to 6 weeks' custody	Category range Band A fine to medium-level community order*	Category range Discharge to Band B fine

Maximum sentence in magistrates' court – 3 months' imprisonment

Maximum sentence in Crown Court – 12 months' imprisonment

* To include a curfew and/or unpaid work requirement only

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

215.4c [Aggravating and mitigating factors]

Page 18 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

Other aggravating factors:

History of breach of court orders or police bail

Distress to victim(s) and/or witness(es)

Offence committed on licence or while subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

¹ In A1 cases which are particularly serious and where the consequences of the delay have a severe impact on victim(s) and/or witness(es), a sentence in excess of the specified range may be appropriate.

Genuine misunderstanding of bail or requirements
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Prompt voluntary surrender

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, Reasons and Consider time spent on bail with a tag.

215.4d Suggested approach to the guideline

Note: I have assumed that the Fail to Surrender to Bail Guideline 2007 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 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.

215.17 Genuine mistake

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 18 ‘Genuine misunderstanding of bail or requirements’ is a listed factor reducing seriousness or reflecting personal mitigation.

Note: The vast majority of prosecutors choose not to prosecute the offence where there is a genuine mistake. So that there is consistency in penalties, the best approach when a genuine mistake has been made is to impress on the defendant the importance of attending and to impose no penalty. Ed.

215.18 Long absences

Breach Offences Guideline 2018, see www.banksr.com Other Matters Guidelines tab In force 1 October 2018 p 16 ‘STEP ONE **Harm** Categories 1 and 2 are:

Category 1	Failure to attend Crown Court hearing results in substantial delay and/or interference with the administration of justice
Category 2	Failure to attend magistrates’ court hearing results in substantial delay and/or interference with the administration of justice*

For the rest of the guideline, see **215.4a**.