



Sentencing Guidelines Council

**Breach of a
Protective Order**

Definitive Guideline

FOREWORD

In accordance with section 170(9) of the Criminal Justice Act 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline. By virtue of section 172 of the Act, every court must have regard to a relevant guideline. This guideline applies to offenders convicted of breach of an order who are sentenced on or after **18 December 2006**.

This guideline deals specifically with the sentencing of offenders who have breached either a restraining order imposed in order to prevent future conduct causing harassment or fear of violence, or a non-molestation order which prohibits a person from molesting another person.

It highlights the particular factors that courts should take into account when dealing with the criminal offence of breaching an order and includes starting points based on the different types of activity which can constitute a breach. It also identifies relevant aggravating and mitigating factors.

Advice from the Sentencing Advisory Panel covered both domestic violence and the offences of breach of a restraining order or a non-molestation order. The Council is issuing two separate guidelines which are published simultaneously.

The Council has appreciated greatly the work of the Sentencing Advisory Panel in preparing the advice on which this guideline has been based and for those who have responded so thoughtfully to the consultation of both the Panel and the Council. The advice and this guideline are available on www.sentencing-guidelines.gov.uk or from the Sentencing Guidelines Secretariat at 8–10 Great George Street, London SW1P 3AE. A summary of the responses to the Council's consultation also appears on the website.

Chairman of the Council
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BREACH OF A PROTECTIVE ORDER

A Statutory Provisions

1.1 For the purposes of this guideline, two protective orders are considered:

(i) Restraining Order

1.2 It is an offence contrary to the Protection from Harassment Act 1997 to behave in a way which a person knows (or ought to know) causes someone else harassment (section 2) or fear of violence (section 4). When imposing sentence on an offender, a court may also impose a restraining order to prevent future conduct causing harassment or fear of violence.

1.3 An offence under these provisions may have occurred in a domestic context or may have occurred in other contexts. The Domestic Violence, Crime and Victims Act 2004 provides for such orders also to be made on conviction for any offence or following acquittal.¹

1.4 It is an offence contrary to section 5(5) of the Act to fail to comply with the restraining order without reasonable excuse. That offence is punishable with a maximum of five years imprisonment.

(ii) Non-Molestation Order

1.5 Section 42 of the Family Law Act 1996 provides that, during family proceedings, a court may make a non-molestation order containing either or both of the following provisions:

- (a) provision prohibiting a person (“the respondent”) from molesting another person who is associated with the respondent;
- (b) provision prohibiting the respondent from molesting a relevant child.

1.6 Section 1 of the Domestic Violence, Crime and Victims Act 2004² inserts a new section 42A into the 1996 Act. Section 42A (1) will provide that it is an offence to fail to comply with the order without reasonable excuse. That offence is punishable with a maximum of five years imprisonment.

1.7 In addition, breach of a non-molestation order may be dealt with as a contempt of court.

B. Sentencing for Breach

2.1 The facts that constitute a breach of a protective order may or may not also constitute a substantive offence. Where they do constitute a substantive offence, it is desirable that the substantive offence and the breach of the order should be charged as separate counts. Where necessary, consecutive sentences should be considered to reflect the seriousness of the counts and achieve the appropriate totality.

1 When in force, s.12 of the 2004 Act amends s.5 of the 1997 Act and inserts a new s.5A to that Act.

2 When in force.

2.2 Sometimes, however, only the substantive offence or only the breach of the order will be charged. The basic principle is that the sentence should reflect all relevant aspects of the offence so that, provided the facts are not in issue, the result should be the same, regardless of whether one count or two has been charged. For example:

- (i) **if the substantive offence only has been charged, the fact that it constitutes breach of a protective order should be treated as an aggravating factor;**
- (ii) **if breach of the protective order only has been charged, the sentence should reflect the nature of the breach, namely, the conduct that amounts to the substantive offence, aggravated by the fact that it is also breach of an order.**

2.3 If breach of a protective order has been charged where no substantive offence was involved, the sentence should reflect the circumstances of the breach, including whether it was an isolated breach, or part of a course of conduct in breach of the order; whether it was planned or unpre-meditated; and any consequences of the breach, including psychiatric injury or distress to the person protected by the order.

C. Factors Influencing Sentencing

3.1 **In order to ensure that a protective order achieves the purpose it is intended for – protecting the victim from harm – it is important that the terms of the order are necessary and proportionate.**

3.2 The circumstances leading to the making of one of the protective orders will vary widely. Whilst a restraining order will be made in criminal proceedings, it will almost certainly result from offences of markedly different levels of seriousness or even acquittal. A non-molestation order will have been made in civil proceedings and, again, may follow a wide variety of conduct by the subject of the order.

3.3 **In all cases the order will have been made to protect an individual from harm and action in response to breach should have as its primary aim the importance of ensuring that the order is complied with and that it achieves the protection that it was intended to achieve.**

3.4 **When sentencing for a breach of an order, the main aim should be to achieve future compliance with that order where that is realistic.**

The nature and context of the originating conduct or offence

3.5 The nature of the original conduct or offence is relevant in so far as it allows a judgement to be made on the level of harm caused to the victim by the breach and the extent to which that harm was intended by the offender.

3.6 If the original offence was serious, conduct which breaches the order might have a severe effect on the victim where in other contexts such conduct might appear minor. Even indirect contact, such as telephone calls, can cause significant harm or anxiety for a victim.

3.7 However, sentence following a breach is for the breach alone and must avoid punishing the offender again for the offence or conduct as a result of which the order was made.

The nature and context of the conduct that caused the breach

3.8 The protective orders are designed to protect a victim. When dealing with a breach, a court will need to consider the extent to which the conduct amounting to breach put the victim at risk of harm.

3.9 There may be exceptional cases where the nature of the breach is particularly serious but has not been dealt with by a separate offence being charged. In these cases, the risk posed by the offender and the nature of the breach will be particularly significant in determining the response. Where the order is breached by the use of physical violence, the starting point should normally be a custodial sentence.

3.10 Non-violent behaviour and/or indirect contact can also cause (or be intended to cause) a high degree of harm and anxiety. In such circumstances, it is likely that the custody threshold will have been crossed.

3.11 Where an order was made in civil proceedings, its purpose may have been to cause the subject of the order to modify behaviour rather than to imply that the conduct was especially serious. If so, it is likely to be disproportionate to impose a custodial sentence for a breach of the order if the breach did not involve threats or violence.

3.12 In some cases where a breach might result in a short custodial sentence but the court is satisfied that the offender genuinely intends to reform his or her behaviour and there is a real prospect of rehabilitation, the court may consider it appropriate to impose a sentence that will allow this. This may mean imposing a suspended sentence order or a community order (where appropriate with a requirement to attend an accredited domestic violence programme).

3.13 Breach of a protective order will generally be more serious than breach of a conditional discharge. Not only is a breach of a protective order an offence in its own right but it also undermines a specific prohibition imposed by the court. Breach of a conditional discharge amounts to an offender failing to take a chance that has been provided by the court.

D. Aggravating and Mitigating Factors

4.1 Many of the aggravating factors which apply to an offence of violence in a domestic context will apply also to an offence arising from breach of a protective order.

Aggravating Factors

(i) Victim is particularly vulnerable

4.2 For cultural, religious, language, financial or any other reasons, some victims may be more vulnerable than others. This vulnerability means that the terms of a protective order are particularly important and a violation of those terms will warrant a higher penalty than usual.

4.3 Age, disability or the fact that the victim was pregnant or had recently given birth at the time of the offence may make a victim particularly vulnerable.

4.4 Any steps taken to prevent the victim reporting an incident or obtaining assistance will usually aggravate the offence.

(ii) Impact on children

4.5 If a protective order is imposed in order to protect children, either solely or in addition to another victim, then a breach of that order will generally be more serious.³

(iii) A proven history of violence or threats by the offender

4.6 Of necessity, a breach of a protective order will not be the first time an offender has caused fear or harassment towards a victim. However, the offence will be more serious if the breach is part of a series of prolonged violence or harassment towards the victim or the offender has a history of disobedience to court orders.

4.7 Where an offender has previously been convicted of an offence involving domestic violence, either against the same or a different person, or has been convicted for a breach of an order, this is likely to be a statutory aggravating factor.⁴

(iv) Using contact arrangements with a child to instigate an offence

4.8 An offence will be aggravated where an offender exploits contact arrangements with a child in order to commit an offence.

(v) Victim is forced to leave home

4.9 A breach will be aggravated if, as a consequence, the victim is forced to leave home.

(vi) Additional aggravating factors

4.10 In addition to the factors listed above, the following will aggravate a breach of an order:

- the offence is a further breach, following earlier breach proceedings;
- the breach was committed immediately or shortly after the order was made.

Mitigating Factors

(i) Breach was committed after a long period of compliance

4.11 If the court is satisfied that the offender has complied with a protective order for a substantial period before a breach is committed, the court should take this into account when imposing sentence for the breach. The history of the relationship and the specific nature of the contact will be relevant in determining its significance as a mitigating factor.

(ii) Victim initiated contact

4.12 If the conditions of an order are breached following contact from the victim, this should be considered as mitigation. It is important to consider the history of the relationship and the specific nature of the contact in determining its significance as a mitigating factor.

4.13 Nonetheless it is important for the court to make clear that it is the responsibility of the offender and not the victim to ensure that the order is complied with.

3 The definition of "harm" in s.31(9) of the Children Act 1989 as amended by s.120 of the Adoption and Children Act 2002 includes "impairment suffered from seeing or hearing the ill-treatment of another".

4 Criminal Justice Act 2003, s.143(2).

E. Factors to take into Consideration

Aims of sentencing

- (a) When sentencing for a breach of a protective order (which would have been imposed to protect a victim from further harm), the main aim should be to achieve future compliance with that order.
- (b) A court will need to assess the level of risk posed by the offender. If the offender requires treatment or assistance for mental health or other issues, willingness to undergo treatment or accept help may influence sentence.

1. Key Factors

- (a) The nature of the conduct that caused the breach of the order, in particular, whether the contact was direct or indirect, although it is important to recognise that indirect contact is capable of causing significant harm or anxiety.
- (b) **There may be exceptional cases where the nature of the breach is particularly serious but has not been dealt with by a separate offence being charged. In these cases the risk posed by the offender and the nature of the breach will be particularly significant in determining the response.**
- (c) The nature of the original conduct or offence is relevant to sentencing for the breach in so far as it allows a judgement to be made on the level of harm caused to the victim by the breach, and the extent to which that harm was intended by the offender.
- (d) The sentence following a breach is for the breach alone and must avoid punishing the offender again for the offence or conduct as a result of which the order was made.
- (e) Where violence is used to breach a restraining order or a molestation order, custody is the starting point for sentence.
- (f) Non-violent conduct in breach may cross the custody threshold where a high degree of harm or anxiety has been caused to the victim.
- (g) Where an order was made in civil proceedings, its purpose may have been to cause the subject of the order to modify behaviour rather than to imply that the conduct was especially serious. If so, it is likely to be disproportionate to impose a custodial sentence for a breach of the order if the breach did not involve threats or violence.
- (h) In some cases where a breach might result in a short custodial sentence but the court is satisfied that the offender genuinely intends to reform his or her behaviour and there is a real prospect of rehabilitation, the court may consider it appropriate to impose a sentence that will allow this. This may mean imposing a suspended sentence order or a community order (where appropriate with a requirement to attend an accredited domestic violence programme).
- (i) While, in principle, consecutive sentences may be imposed for each breach of which the offender is convicted, the overall sentence should reflect the totality principle.

2. General

- (a) Breach of a protective order should be considered more serious than a breach of a conditional discharge.
- (b) The principle of reduction in sentence for a guilty plea should be applied as set out in the Council guideline *Reduction in Sentence for a Guilty Plea*.

3. Non-custodial sentences

- (a) It is likely that all breaches of protective orders will pass the threshold for a community sentence. The reference in the starting points to medium and low range community orders refers to the Council guideline *New Sentences: Criminal Justice Act 2003* paragraphs 1.1.18 – 1.1.32.
- (b) In accordance with general principle, the fact that the seriousness of an offence crosses a particular threshold does not preclude the court from imposing another type of sentence of a lower level where appropriate.

BREACH OF A PROTECTIVE ORDER

Breach of a Restraining Order

Section 5(5) Protection from Harassment Act 1997

Breach of a Non-Molestation Order

*Section 42A Family Law Act 1996**

Maximum Penalty: 5 years imprisonment

Where the conduct is particularly serious, it would normally be charged as a separate offence. These starting points are based on the premise that the activity has either been prosecuted separately as an offence or is not of a character sufficient to justify prosecution of it as an offence in its own right.

Nature of activity	Starting points
<p>Breach (whether one or more) involving significant physical violence and significant physical or psychological harm to the victim</p> <p>More than one breach involving some violence and/or significant physical or psychological harm to the victim</p> <p>Single breach involving some violence and/or significant physical or psychological harm to the victim</p>	<p>Custodial Sentence</p> <p>More than 12 months The length of the custodial sentence imposed will depend on the nature and seriousness of the breach(es).</p> <p>26-39 weeks custody [Medium/High Custody Plus order]**</p> <p>13-26 weeks custody [Low/Medium Custody Plus order]**</p>
<p>More than one breach involving no/minimal contact or some direct contact</p> <p>Single breach involving no/minimal direct contact</p>	<p>Non-Custodial Sentence</p> <p>MEDIUM range community order</p> <p>LOW range community order</p>

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. Victim is particularly vulnerable. 2. Impact on children. 3. A proven history of violence or threats by the offender. 4. Using contact arrangements with a child to instigate an offence. 5. Victim is forced to leave home. 6. Offence is a further breach, following earlier breach proceedings. 7. Offender has a history of disobedience to court orders. 8. Breach was committed immediately or shortly after the order was made. 	<ol style="list-style-type: none"> 1. Breach occurred after a long period of compliance. 2. Victim initiated contact.

* When in force.

** When the relevant provisions of the Criminal Justice Act 2003 are in force.

