

Breach Offences Definitive Guideline

Contents

Applicability of guideline	2
Breach of a community order	3
Breach of a suspended sentence order	7
Breach of post-sentence supervision	13
Failure to surrender to bail	15
Breach of a protective order (Restraining and non-molestation orders)	21
Breach of a criminal behaviour order (also applicable to breach of an anti-social behaviour order)	27
Breach of of a sexual harm prevention order (also applicable to breach of a sexual offences prevention order and to breach of a foreign travel order)	33
Fail to comply with notification requirements	39
Breach of disqualification from acting as a director	45
Breach of disqualification from keeping an animal	51
Other breach offences	56
Annex	57

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Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after 1 October 2018, regardless of the date of the offence.

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older.

Structure, ranges and starting points

For the purposes of section 125(3)–(4) of the Coroners and Justice Act 2009, the guideline specifies offence ranges – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified a number of categories which reflect varying degrees of seriousness. The offence range is split into category ranges – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. The court should consider further features of the offence or the offender that warrant adjustment of the sentence within the range, including the aggravating and mitigating factors set out at step two. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial.

Credit for a guilty plea is taken into consideration only at step four in the decision making process, after the appropriate sentence has been identified.

Information on community orders is set out in the annex at page 57.

Breach of a community order

Criminal Justice Act 2003 (Schedule 8)

Breach of community order by failing to comply with requirements

The court must take into account the extent to which the offender has complied with the requirements of the community order when imposing a penalty.

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.

Overall compliance with order	Penalty
Wilful and persistent non-compliance	Revoke the order and re-sentence imposing custodial sentence (even where the offence seriousness did not originally merit custody)
Low level of compliance	Revoke the order and re-sentence original offence OR Add curfew requirement 20 - 30 days* OR 30 - 50 hours additional unpaid work/extend length of order/add additional requirement(s) OR Band C fine
Medium level of compliance	Revoke the order and resentence original offence OR Add curfew requirement 10 - 20 days* OR 20 - 30 hours additional unpaid work/extend length of order/add additional requirement(s) OR Band B fine
High level of compliance	Add curfew requirement 6 - 10 days* OR 10 - 20 hours additional unpaid work/extend length of order/add additional requirement(s) OR Band A fine

* curfew days do not have to be consecutive and may be distributed over particular periods, for example at weekends, as the court deems appropriate. The period of the curfew should not exceed the duration of the community order and cannot be for longer than 12 months.

Technical guidance

- a) If imposing more onerous requirements the length of the order may be extended up to 3 years or six months longer than the previous length, whichever is longer (but only once).
- b) If imposing unpaid work as a more onerous requirement and an unpaid work requirement was not previously included, the minimum number of hours that can be imposed is 20.
- c) The maximum fine that can be imposed is £2,500.
- d) If re-sentencing, a suspended sentence **MUST NOT** be imposed as a more severe alternative to a community order. A suspended sentence may only be imposed if it is fully intended that the offender serve a custodial sentence in accordance with the *Imposition of Community and Custodial Sentences* guideline.
- e) Where the order was imposed by the Crown Court, magistrates should consider their sentencing powers in dealing with a breach. Where the judge imposing the order reserved any breach proceedings commit the breach for sentence.

Powers of the court following a subsequent conviction

A conviction for a further offence does not constitute a breach of a community order. However, in such a situation, the court should consider the following guidance from the *Offences Taken into Consideration and Totality* guideline:¹

Offender convicted of an offence while serving a community order

The power to deal with the offender depends on his being convicted whilst the order is still in force; it does not arise where the order has expired, even if the additional offence was committed whilst it was still current.

If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.

Where an offender, in respect of whom a community order made by a Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence and the additional offence.

The sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence.

If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.

¹ https://www.sentencingcouncil.org.uk/wp-content/uploads/Definitive_guideline_TICs__totality_Final_web.pdf p.14

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Breach of a suspended sentence order

Criminal Justice Act 2003 (Schedule 12)

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. 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	Activate sentence but apply reduction* to original custodial term taking into consideration any unpaid work or curfew requirements completed OR Impose more onerous requirement(s) and/or extend supervision period and/or extend operational period and/or impose fine

* 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

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).

See page 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. 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	Activate sentence but apply reduction* to original custodial term taking into consideration any unpaid work or curfew requirements completed OR Impose more onerous requirement(s) and/or extend supervision period and/or extend operational period and/or impose fine

*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

See page 11.

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).

See page 12.

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Breach of post-sentence supervision

Criminal Justice Act 2003
(section 256AC and Schedule 19A)

Breach of post-sentence supervision

Where the court determines a penalty is appropriate for a breach of a post sentence supervision requirement it must take into account the extent to which the offender has complied with all of the requirements of the post-sentence supervision or supervision default order when imposing a penalty. In assessing the level of compliance with the order the court should consider:

- i) the offender's 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 the breach to the imposition of the 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.

Level of Compliance	Penalty
Low	Up to 7 days' committal to custody OR Supervision default order in range of 30 - 40 hours unpaid work OR 8 - 12 hour curfew for minimum of 20 days
Medium	Supervision default order in range of 20 - 30 hours unpaid work OR 4 - 8 hour curfew for minimum of 20 days OR Band B fine
High	Band A fine

Breach of supervision default order

Level of Compliance	Penalty
Low	Revoke supervision default order and order up to 14 days' committal to custody
Medium	Revoke supervision default order and impose new order in range of 40 - 60 hours unpaid work OR 8 - 16 hour curfew for minimum of 20 days
High	Band B fine

- i) A supervision default order must include **either**:
an unpaid work requirement of between 20 hours - 60 hours
OR
a curfew requirement for between 2 - 16 hours for a minimum of 20 days and no longer than the end of the post sentence supervision period.
- ii) The maximum fine which can be imposed is £1,000.

Failure to surrender to bail

Bail Act 1976 (section 6)

Triable either way

Maximum: 12 months' custody

Offence range: Discharge – 26 weeks' custody

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.

See page 17.

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' – 26 weeks' custody ¹	Category range High level community order* – 13 weeks' custody	Category range Low level community order* – 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* – 13 weeks' custody	Category range Band B fine – 6 weeks' custody	Category range Band A fine – 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* – 6 weeks' custody	Category range Band A fine – Medium level community order*	Category range Discharge – 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

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.

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 factor:

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

Genuine misunderstanding of bail or requirements

Prompt voluntary surrender

Sole or primary carer for dependent relatives

See page 19.

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

In all cases the court should consider whether to make compensation and/or ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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

Restraining orders: Protection
from Harassment Act 1997 (section 5(5) and (5A))

Non-molestation orders: Family Law Act 1996
(section 42A)

Triable either way
Maximum: 5 years' custody

Offence range: Fine – 4 years' custody

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	<ul style="list-style-type: none"> • Very serious and/or persistent breach
B	<ul style="list-style-type: none"> • Deliberate breach falling between A and C
C	<ul style="list-style-type: none"> • 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.

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*

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

See page 23.

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 2 years' custody	Starting point 1 year's custody	Starting point 12 weeks' custody
	Category range 1 – 4 years' custody	Category range High level community order – 2 years' custody	Category range Medium level community order – 1 year's custody
Category 2	Starting point 1 year's custody	Starting point 12 weeks' custody	Starting point High level community order
	Category range High level community order – 2 years' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – 26 weeks' custody
Category 3	Starting point 12 weeks' custody	Starting point High level community order	Starting point Low level community order
	Category range Medium level community order – 1 year's custody	Category range Low level community order – 26 weeks' custody	Category range Band B fine – 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 *Offences Taken Into Consideration and Totality* guideline.

See 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

Factors reducing seriousness or reflecting personal mitigation

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

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

In all cases the court should consider whether to make compensation and/or ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Breach of a criminal behaviour order (also applicable to breach of an anti-social behaviour order)

Anti-Social Behaviour, Crime and Policing Act
2014 (section 30)

Triable either way

Maximum: 5 years' custody

Offence range: Fine – 4 years' custody

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	<ul style="list-style-type: none"> • Very serious or persistent breach
B	<ul style="list-style-type: none"> • Deliberate breach falling between A and C
C	<ul style="list-style-type: none"> • 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) or activity for which the order was imposed and the circumstances in which the breach arose.

Category 1	<ul style="list-style-type: none"> • Breach causes very serious harm or distress • Breach demonstrates a continuing risk of serious criminal and/or anti-social behaviour
Category 2	<ul style="list-style-type: none"> • Cases falling between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Breach causes little or no harm or distress • Breach demonstrates a continuing risk of minor criminal and/or anti-social behaviour

See page 29.

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 2 years' custody	Starting point 1 year's custody	Starting point 12 weeks' custody
	Category range 1 – 4 years' custody	Category range High level community order – 2 years' custody	Category range Medium level community order – 1 year's custody
Category 2	Starting point 1 year's custody	Starting point 12 weeks' custody	Starting point High level community order
	Category range High level community order – 2 years' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – 26 weeks' custody
Category 3	Starting point 12 weeks' custody	Starting point High level community order	Starting point Medium level community order
	Category range Medium level community order – 1 year's custody	Category range Low level community order – 26 weeks' custody	Category range Band B fine – High level community order

NOTE: A Conditional Discharge **MAY NOT** be imposed for breach of a criminal behaviour order.

See page 30.

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:

Offence is a further breach, following earlier breach proceedings

Breach committed shortly after order made

History of disobedience of court orders or orders imposed by local authorities

Breach constitutes a further offence (where not separately prosecuted)

Targeting of a person the order was made to protect or a witness in the original proceedings

Victim or protected subject of order breached is particularly vulnerable due to age, disability, culture, religion, language, or other factors

Offence committed on licence or while subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

Genuine misunderstanding of terms of order

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

Sole or primary carer for dependent relatives

Offence committed on licence or while subject to post sentence supervision

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

In all cases the court should consider whether to make compensation and/or ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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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 (section 103I)

Triable either way
Maximum: 5 years' custody

Offence range: Fine – 4 years and 6 months' custody

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	<ul style="list-style-type: none"> • Very serious or persistent breach
B	<ul style="list-style-type: none"> • Deliberate breach falling between A and C
C	<ul style="list-style-type: none"> • 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 or risks very serious harm or distress
Category 2	Cases falling between categories 1 and 3
Category 3	Breach causes or risks little or no harm or distress

See page 35.

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 – 4 years 6 months' custody	Category range 36 weeks – 3 years' custody	Category range High level community order – 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 – 3 years' custody	Category range High level community order – 2 years' custody	Category range Medium level community order – 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 – 2 years' custody	Category range Medium level community order – 36 weeks' custody	Category range Band B fine – High level community order

See 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

See page 37.

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

In all cases the court should consider whether to make compensation and/or ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Fail to comply with notification requirements

Sexual Offences Act 2003 (section 91)

Triable either way
Maximum: 5 years' custody

Offence range: Fine – 4 years' custody

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	<ul style="list-style-type: none"> • Determined attempts to avoid detection • Long period of non compliance
B	<ul style="list-style-type: none"> • Deliberate failure to comply with requirement
C	<ul style="list-style-type: none"> • 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 or risks very serious harm or distress
Category 2	Cases falling between categories 1 and 3
Category 3	Breach causes or risks little or no harm or distress

See page 41.

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 2 years' custody	Starting point 1 year's custody	Starting point 36 weeks' custody
	Category range 1 year's – 4 years' custody	Category range 26 weeks' – 2 years' custody	Category range 26 weeks' – 1 year 6 months' custody
Category 2	Starting point 1 year's custody	Starting point 36 weeks' custody	Starting point High level community order
	Category range 26 weeks' – 2 years' custody	Category range 26 weeks' – 1 year 6 months' custody	Category range Medium level community order – 36 weeks' custody
Category 3	Starting point 36 weeks' custody	Starting point High level community order	Starting point Low level community order
	Category range 26 weeks' – 1 year 6 months' custody	Category range Medium level community order – 36 weeks' custody	Category range Band B fine – Medium level community order

See page 42.

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

Breach constitutes a further offence (where not separately prosecuted)

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 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

See page 43.

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

In all cases the court should consider whether to make compensation and/or ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Breach of disqualification from acting as a director

**Company Directors Disqualification Act 1986
(section 13)**

Triable either way

Maximum: 2 years' custody

Offence range: Discharge – 1 year and 6 months' custody

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	<ul style="list-style-type: none"> • Breach involves deceit/dishonesty in relation to actual role within company • Breach involves deliberate concealment of disqualified status
B	<ul style="list-style-type: none"> • All other cases

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) or activity for which the order was imposed and the circumstances in which the breach arose.

Category 1	Breach results in significant risk of or actual serious financial loss OR Breach results in significant risk of or actual serious non-financial harm to company/organisation or others
Category 2	Cases falling between categories 1 and 3
Category 3	Breach results in very low risk of or little or no harm (financial or non-financial) to company/organisation or others

See page 47.

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. The court should then consider further adjustment within the category range for aggravating or mitigating features.

Harm	Culpability	
	A	B
Category 1	Starting point 1 year's custody	Starting point 12 weeks' custody
	Category range 26 weeks – 1 year 6 months' custody	Category range High level community order – 36 weeks' custody
Category 2	Starting point 26 weeks' custody	Starting point High level community order
	Category range 12 weeks' – 36 weeks' custody	Category range Medium level community order – 26 weeks' custody
Category 3	Starting point 12 weeks' custody	Starting point Medium level community order
	Category range Medium level community order – 26 weeks' custody	Category range Band C Fine – High level community order

See page 48.

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

Breach continued after warnings received

Breach is continued over a sustained period of time

Breach involves acting as a director in multiple companies

Breach motivated by personal gain

Offence committed on licence or while subject to post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

Breach not motivated by personal gain

Breach committed after long period of compliance

Genuine misunderstanding of terms of disqualification

Evidence of voluntary reparation/compensation made to those suffering loss

Breach activity minimal or committed for short duration

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**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

In all cases the court should consider whether to make compensation and/or ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Breach of disqualification from keeping an animal

Animal Welfare Act 2006 (section 32)

Triable either way
Maximum: 6 months' custody

Offence range: Discharge – 26 weeks' custody

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	Serious and/or persistent breach
B	All other cases

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	<ul style="list-style-type: none"> • Breach causes or risks death or very serious harm or suffering to animal(s) • Breach results in risk of or actual serious harm to individual(s)
Category 2	<ul style="list-style-type: none"> • Cases falling between categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Breach causes or risks little or no harm or suffering to animal(s) • Breach results in very low risk of or little or no harm to individual(s)

See page 53.

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. The court should then consider further adjustment within the category range for aggravating or mitigating features.

Harm	Culpability	
	A	B
Category 1	Starting point 16 weeks' custody	Starting point 8 weeks' custody
	Category range 6 weeks' – 26 weeks' custody	Category range Medium level community order – 16 weeks' custody
Category 2	Starting point 8 weeks' custody	Starting point Medium level community order
	Category range Medium level community order – 16 weeks' custody	Category range Band C Fine – High level community order
Category 3	Starting point Medium level community order	Starting point Band A Fine
	Category range Band C Fine – High level community order	Category range Discharge – Band B Fine

See page 54.

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 to court orders

Breach conducted in commercial context

Breach involves deceit regarding ownership of/responsibility for animal

Harm risked or caused to multiple animals (where not taken into account at step one)

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

Genuine misunderstanding of terms of order

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

See page 55.

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SIX**Ancillary orders**

In all cases the court should consider whether to make compensation and/or ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Other breach offences

Where an offence is not covered by a sentencing guideline a court is also entitled to use, and may be assisted by, a guideline for an analogous offence subject to differences in the elements of the offences and the statutory maxima.

In sentencing the breach offences below, the court should refer to the sentencing approach in step one of the guideline for breach of a criminal behaviour order to determine culpability and harm, and determine an appropriate sentence bearing in mind the maximum penalty for the offence.

Offence	Mode of Trial	Maximum Sentence
Breach of football banning order (section 14) Football Spectators Act 1989	Triable summarily only	A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.
Failure to comply with dispersal order Part 3 Anti-social Behaviour, Crime and Policing Act 2014 (Requires a person committing, or likely to commit ASB to leave an area for up to 48 hours.)	Triable summarily only	A person guilty of an offence under subsection (1) (Failure to move on) is liable on summary conviction - to imprisonment for a period not exceeding 3 months, or to a fine not exceeding level 4 on the standard scale. A person guilty of an offence under subsection (3) (Failure to hand over items) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.
Community protection notice Part 4, Chapter 1 Anti-social Behaviour, Crime and Policing Act 2014 (Stops a person, business or organisation committing ASB which spoils the community's quality of life.)	Triable summarily only	A person guilty of an offence under this section is liable on summary conviction - to a fine not exceeding level 4 on the standard scale, in the case of an individual; to a fine of up to £20,000, in the case of a body. (If dealt with by way of fixed penalty, a fixed penalty notice of up to £100.)
Breach of public spaces protection order Part 4, Chapter 2 Anti-social Behaviour, Crime and Policing Act 2014 (Stops people committing ASB in a particular public place.)	Triable summarily only	A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. (If dealt with by way of fixed penalty, a fixed penalty notice of up to £100.)
Closure Power Part 4, Chapter 3 Anti-social Behaviour, Crime and Policing Act 2014 (Allows the police or local council to close premises where ASB is being committed, or is likely to be committed.)	Triable summarily only	A person guilty of obstructing a person acting under section 79 or 85(1) is liable on summary conviction - (a) to imprisonment for a period not exceeding 3 months, or (b) to a fine A person who is guilty of remaining on or entering premises in contravention of a closure order is liable on summary conviction - (a) to imprisonment for a period not exceeding 6 months, or (b) to a fine, or to both.

Annex:

Fine bands and community orders

FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B, C).

Fine Band	Starting point (<i>applicable to all offenders</i>)	Category range (<i>applicable to all offenders</i>)
Band A	50% of relevant weekly income	25–75% of relevant weekly income
Band B	100% of relevant weekly income	75–125% of relevant weekly income
Band C	150% of relevant weekly income	125–175% of relevant weekly income

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

An illustrative description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003).

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include <ul style="list-style-type: none"> • Any appropriate rehabilitative requirement(s) • 40 – 80 hours of unpaid work • Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks) • Exclusion requirement, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Any appropriate rehabilitative requirement(s) • Greater number of hours of unpaid work (for example 80 – 150 hours) • Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months) • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • Any appropriate rehabilitative requirement(s) • 150 – 300 hours of unpaid work • Curfew requirement up to 16 hours per day for 4 – 12 months • Exclusion order lasting in the region of 12 months
* If order does not contain a punitive requirement, suggested fine levels are indicated below:		
BAND A FINE	BAND B FINE	BAND C FINE

The *Magistrates' Court Sentencing Guidelines* includes further guidance on fines. The table above is also set out in the *Imposition of Community and Custodial Sentences* guideline which includes further guidance on community orders.

NOTES

NOTES

ANNEX

