

Breach of a Protective Order (Restraining and non-molestation orders)

Restraining orders: Protection from Harassment
Act (Section 5(5))

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

Triable either way

Maximum: 5 years' custody

Offence range: Fine – 5 years' custody

Breach of a Protective Order

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"> • Flagrant, serious or persistent breach
B	<ul style="list-style-type: none"> • Factors in categories A and C not present
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 to an individual
Category 2	Factors in categories 1 and 3 not present
Category 3	Breach causes little or no harm or distress to an individual

See page 79.

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 36 weeks' custody	Starting point 12 weeks' custody
	Category range 1 – 4 years' custody	Category range 26 weeks' – 2 years' custody	Category range Medium level community order – 1 year's custody
Category 2	Starting point 1 years' 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.

The table on the next page 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

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

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 dependant 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 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.