

# Section one: Overarching issues and the context of the guidelines

Compliance with court orders is important to ensure public confidence in the justice system, and in many cases to protect individuals or the wider public from harm either from specific types of offending or continuing criminal behaviour. Legislation provides that court orders, and some other orders not issued by the courts, can be enforced by them, to ensure appropriate sanctions can be imposed where the purpose of the order is being undermined by non-compliance.

This has been a challenging project covering a broad range of breach offences, many of which are currently subject to a changing landscape. It has been necessary to consider changes to the way in which community and suspended sentence orders are managed and the relevance of this to breach proceedings, and to develop guidelines for breach of new provisions recently introduced relating to the management of newly released offenders. Data was unavailable to enable a thorough examination of current sentencing practice for some of the breaches included. This was the case for breach of community orders in particular. Where possible the Council held discussions with professionals to inform its proposals but it is particularly keen that consultation responses highlight any issues that were not identified due to the limited scope of these discussions, or may not yet have been apparent at the time they took place. While developing the guideline, the Council also identified that some breach offences were attracting sentences much lower than the statutory maximum provides for, either due to no existing guidance being available or because existing guidance did not address offences at the upper end of seriousness. The draft guidelines provide for the full spectrum of seriousness in a breach to be assessed and the sentence ranges more closely reflect the statutory maxima for the offences.

The Council has developed the most comprehensive package of breach guidance possible, to ensure that guidance is of optimum use to sentencers. It is important to note that the objective of the guideline is to sentence breach offences and not any new offences constituting a breach, which would usually be charged separately. This has been a further challenge to guideline development; to ensure that the guideline does not 'double count' for new offences, but adequately and appropriately addresses non-compliance with court orders and the risks this presents to the protection of the public and the integrity of the criminal justice system.

## **Applicability of guidelines**

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced it will apply to all offenders aged over 18, who are sentenced on or after the date that the guideline comes into force, 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 guideline which is 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.”

### **The guideline in relation to current practice and existing guidelines**

In preparing this draft guideline, the Council has had regard to the purposes of sentencing and to its statutory duties. The Council’s aim throughout has been to ensure that all sentences are proportionate to the offence committed and in relation to other offences.

The Council considered statistical data from the Ministry of Justice Court Proceedings Database (‘CPD’) for the offences covered in the guideline to get a picture of current sentencing levels. Existing guidance was also reviewed where this was available.

Research will be carried out during the consultation period to explore sentencers’ attitudes to the proposed new guidelines.

The approach that has been taken in developing the draft guideline aims to regularise practice rather than to alter it substantially in most cases.

### **Structure, ranges and starting points**

For the purposes of section 125(3)–(4) of the Coroners and Justice Act 2009, the guidelines specify offence ranges – the range of sentences appropriate for each type of offence, or the appropriate penalty. Where relevant, 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. As in other Sentencing Council definitive guidelines, this guideline adopts offence based starting points. Starting points apply to all offences within the corresponding category and are applicable to all offenders, in all cases. Once the starting point is established, the court should consider further aggravating and mitigating factors and previous convictions where these are relevant so as to adjust the sentence within the range. 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.

**Assessing seriousness**

The assessment of seriousness in some of the draft guidelines is different to the usual approach in Sentencing Council guidelines, as the factors which affect the seriousness assessment do not fit with a stepped approach to sentencing. For the guidelines for breach of community orders, suspended sentence orders and post sentence supervision, bespoke guidelines have been developed which ensure all relevant and appropriate considerations can be made by sentencers.

The format of the other guidelines is in line with other Sentencing Council guidelines, using the stepped approach to sentencing and assessing harm and culpability, and any factors increasing seriousness. Not all of the standard steps in other Council guidelines are relevant to breach offences, so only those that apply to sentencing breach offences are included.

The particular circumstances of each breach which reaches court will be different. The draft guideline aims to help the court to decide how serious a breach is by reference to a series of factors which in turn determine what the sentence starting point or penalty should be.