

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 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;
- 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 requirements 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 requirements 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 requirements 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 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.**

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 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 offences 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 requirements 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 length and duration 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 sentence 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).

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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.**

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 requirements 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 length and duration of any compliance with the requirements specified

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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 sentence 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).

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