

Response to Sentencing Council consultation on breach offences from Transform Justice

About Transform Justice: Transform Justice is a charity which works for more humane, open, fair and effective justice system. Transform Justice recently published “the Sentencing Council for England and Wales : brake or accelerator on the use of prison?”

Transform Justice will not respond to all the questions posed in the consultation. We are however putting forward some general comments about the consultation.

1. We are extremely concerned that the consultation has been published despite an absence of data. There is no information or data on the outcomes of most breach proceedings in magistrates’ courts - neither the sanction used, nor the outcome of that sanction. There is also no research cited on the reasons why offenders breach sentences or orders. We feel that it is not possible to appraise these guidelines in the absence of that information. The Sentencing Council is tasked with assessing the impact and effectiveness of its guidelines. We appreciate that the necessary information is not in the public domain, but would urge the Council to put resources into finding and analysing this data before publishing any new guidelines on breach.
2. Due to the absence of court data, the Sentencing Council has not estimated the impact of the new guidelines on the use of prison and probation resources. The prisons of England and Wales are in a fragile state and sentence inflation is an established trend. Given the absence of an assessment of the impact of these guidelines, there is a risk that they may lead to more punitive sanctions and an increase in prison numbers. We would urge the Council to delay publication of these guidelines until such time as they can make a proper assessment of their impact on resources.
3. The consultation says of aggravating and mitigating factors for most breach offences: “these have not been included in the draft guideline as the level of compliance determines the seriousness of the breach, and many of the appropriate factors would result in double counting of compliance related matters”. We feel this is a significant gap. Research and anecdotal evidence suggests that many of those who breach orders do so for individual or contextual reasons. Many breachers have mental or physical health problems, learning difficulties or a learning disability, many are homeless, have addiction issues and chaotic lives. All these should be taken into account in sanctioning for breach. We would urge the Council to review the research literature on the profile of those who breach and the reasons, and use this information to help sentencers mitigate the sanctions used.

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