

BREACH OF NON-MOLESTATION ORDER

Family Homes and Domestic Violence (NI) Order 1998

25.- Any person who without reasonable excuse contravenes-

- (a) a non-molestation order;
 - (b) where there is in force a non-molestation order prohibiting that person from molesting another person, an occupation order or an order under Article 18;
 - (c) an exclusion requirement included by virtue of Article 57A of the Children (Northern Ireland) Order 1995 in an interim care order under Article 57 of that Order; or
 - (d) an exclusion requirement included by virtue of Article 63A of the Children (Northern Ireland) Order 1995 in an emergency protection order under Article 63 of that Order,
- shall be guilty of an offence ...

Maximum Sentence:

Family Homes and Domestic Violence (NI) Order 1998, Article 25

Summary only: 6 months imprisonment or a Level 5 Fine (£5,000) or both [for offences committed on or after 15 November 2005]

Assessment of Offence

(Starting points and ranges based on 1st time offender convicted following contest)

<u>Nature of Offence</u>	<u>Starting Point</u>	<u>Sentencing Range</u>
Breach of a technical nature	Fine + Compensation Order	Fine to Community Order + Compensation Order
Breach of a fundamental nature	3 month Custody + Compensation Order	Community Order to 6 months Custody + Compensation Order

<u>Examples of Possible Aggravating Factors of Offence</u>	<u>Examples of Possible Mitigating Factor of Offence</u>
<ol style="list-style-type: none"> 1. Planning or pre-meditation 2. Offender ignores obvious distress to victim 3. Offender involves other persons to assist in the offence 4. Using contact arrangements with a child to instigate/perpetuate the offence 5. Victim requires medical treatment/counselling as a result of the offence 6. Offence caused children to be distressed/frightened 7. Victim forced to leave home 8. Victim particularly vulnerable 9. Offence motivated by, or demonstrating, hostility to victim on account of their membership of a racial group, religious group, sexual orientation group, disability or presumed disability.* 10. Offender using social media to target victim and/or commit the offence (e.g. cyber-bullying) 	<ol style="list-style-type: none"> 1. Victim encouraged/facilitated breach

Relevant Cases:

NI Cases:

N/A

English Cases:

1. R v Liddle; R v Hayes [2000] 1 Cr App R(S) 131
2. R v Hargreaves [2011] EWCA Crim 934
3. R v Thomas [2011] EWCA Crim 2340
4. R v Pace [2005] 1 Cr App R (S) 74
5. R v Guminski [2012] EWCA Crim 42

Notes:

1. *Where a court finds the offence was aggravated by 'hostility' it shall state in open court that the offence was so aggravated – Criminal Justice (No.2)(NI) Order 2004, Article 2)
2. A court sentencing or otherwise dealing with a defendant convicted of an offence may, additionally, make a 'Restraining Order' prohibiting the defendant from doing anything described in the order for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which amounts to harassment or cause a fear of violence. – Article 7 of the 1997 Order