

BREACH OF RESTRAINING ORDER

Protection from Harassment (NI) Order 1997

- 7.- (1) A court sentencing or otherwise dealing with a person ("the defendant") convicted of an offence may (as well as sentencing him or dealing with him in any other way) make an order under this Article.
- (2) The order may, for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from conduct which-
- (a) amounts to harassment; or
- (b) will cause a fear of violence,
- prohibit the defendant from doing anything described in the order.
- ...
- (5) If without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this Article, he shall be guilty of an offence.
- 7A.- (1) A court before which a person ("the defendant") is acquitted of an offence may, if it considers it necessary to do so to protect a person from harassment by the defendant, make an order prohibiting the defendant from doing anything described in the order.
- (2) Paragraphs (3) to (7) of Article 7 apply to an order under this Article as they apply to an order under that one.

Maximum Sentence:

Protection from Harassment (NI) Order 1997, Article 7(6)

Indictment: 5 years imprisonment or an unlimited fine or both

Summary: 6 months imprisonment or a fine not exceeding the statutory maximum (£5,000) or both

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

Examples of Possible Aggravating Factors of Offence

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)

Examples of Possible Mitigating Factor of Offence

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
3. A court dealing with a person for an offence under Article 7 or 7A may vary or discharge the order in question by a further order. – Article 7(7) of 1997 Order
4. Can be an offence of 'disorder' for the purposes of a 'Regulated Match Banning Order' where it relates to displaying any or other thing which is threatening, abusive or insulting – Section 44 of the Justice Act (NI) 2011

