

Organisations

Breach of duty of employer towards their employees and non-employees

Breach of duty of self-employed to others

Health and Safety at Work Act 1974 (section 33(1)(a) for breaches of sections 2 and 3)

Breach of Health and Safety regulations

Health and Safety at Work Act 1974 (section 33(1)(c))

Triable either way

**Maximum: when tried on indictment: unlimited fine
 when tried summarily: £20,000 fine**

**STEP ONE:
Determining the offence category**

The court should determine the offence category using the culpability and harm factors in the tables below.

Culpability

Where there are factors present in the case that fall in different categories of culpability, the court should balance these factors to reach a fair assessment of the offender's culpability.

Very high	<ul style="list-style-type: none"> • Deliberate breach of or flagrant disregard for the law
High	<ul style="list-style-type: none"> • Offender fell far short of the appropriate standard; for example, by <ul style="list-style-type: none"> ○ failing to put in place measures that are recognised standards in the industry ○ ignoring concerns raised by employees or others ○ failing to make appropriate changes following prior incident(s) exposing risks to health and safety ○ allowing breaches to subsist over a long period of time • Evidence of serious and/or systemic failings within the organisation to address risks to health and safety
Medium	<ul style="list-style-type: none"> • Offender fell short of the appropriate standard in a manner that falls between descriptions in "high" and "low" culpability categories • Systems were in place but these were not sufficiently adhered to or implemented
Low	<ul style="list-style-type: none"> • Offender did not fall far short of appropriate standard; for example, because <ul style="list-style-type: none"> ○ significant efforts were made to address the risk although they were inadequate on this occasion ○ there was no warning indicating a risk to health and safety • Failings were minor and occurred as an isolated incident

Harm

Health and safety offences are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm. **The offence is in creating a risk of harm.**

1) Use the table below to identify an initial harm category based on the **risk of harm created by the offence**. The assessment of harm requires a consideration of **both**:

- the seriousness of the harm risked (A, B or C) by the offender's breach; **and**
- the likelihood of that harm arising (high, medium or low).

Seriousness of harm risked			
	Level A	Level B	Level C
	<ul style="list-style-type: none"> • Death • Physical or mental impairment resulting in lifelong dependency on third party care for basic needs • Health condition resulting in significantly reduced life expectancy 	<ul style="list-style-type: none"> • Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer's ability to carry out normal day-to-day activities or on their ability to return to work • A progressive, permanent or irreversible condition 	<ul style="list-style-type: none"> • All other cases not falling within Level A or Level B
High Likelihood of harm	Harm category 1	Harm category 2	Harm category 3
Medium Likelihood of harm	Harm category 2	Harm category 3	Harm category 4
Low Likelihood of harm	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)

2) The court must next consider if the following factors apply. These two factors should be considered in the round in assigning the final harm category.

i) Whether the offence exposed a number of workers or members of the public to the risk of harm. The greater number of people, the greater the risk.

ii) Whether the offence was a significant cause of actual harm.

Consider whether the offender's breach was a **significant cause*** of actual harm and the extent to which other factors contributed to the harm caused. Actions of victims **are unlikely** to be considered contributory events **for sentencing purposes**. Offenders are required to protect workers or others who may be neglectful of their own safety in a way which should be **reasonably foreseeable**.

If one or both of these factors apply the court must consider either moving up a harm category or substantially moving up within the category range at step two overleaf. If already in harm category 1 and wishing to move higher, move up from the starting point at step two overleaf. The court should not move up a harm category if actual harm was caused but to a lesser degree than the harm that was risked, as identified on the scale of seriousness above.

*A significant cause is one which more than minimally, negligibly or trivially contributed to the outcome. It does not have to be the sole or principal cause.

**STEP TWO:
Starting point and category range**

Having determined the offence category, the court should identify the relevant table for the offender on the page below. There are tables for different sized organisations.

At step two, the court will be required to focus on the organisation's turnover or equivalent to reach a starting point for a fine within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out below.

Obtaining financial information

The offender is expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case, which may include the inference that the offender can pay any fine.

Normally, only information relating to the organisation before the court will be relevant, unless exceptionally it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

1. *For companies*: annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. **Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.**
2. *For partnerships*: annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited liability partnerships (LLPs) may be required to file audited accounts with Companies House. **If adequate accounts are not produced on request, see paragraph 1.**
3. *For local authorities, fire authorities and similar public bodies*: the Annual Revenue Budget ("ARB") is the equivalent of turnover and the best indication of the size of the defendant organisation. It is unlikely to be necessary to analyse specific expenditure or reserves (where relevant) unless inappropriate expenditure is suggested.
4. *For health trusts*: the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via www.monitor-nhsft.gov.uk. Detailed analysis of expenditure or reserves is unlikely to be called for.
5. *For charities*: it will be appropriate to inspect annual audited accounts. Detailed analysis of expenditure or reserves is unlikely to be called for unless there is a suggestion of unusual or unnecessary expenditure.

At step two, the court is required to focus on the organisation's annual turnover or equivalent to reach a starting point for a fine. At step three, the court may be required to refer to the other financial factors listed above to ensure that the proposed fine is proportionate.

Very large organisations

Where a defendant organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

Large Turnover or equivalent: £50 million and over

	Starting point	Category range
Very high culpability		
Harm category 1	£4,000,000	£2,600,000 - £10,000,000
Harm category 2	£2,000,000	£1,000,000 - £5,250,000
Harm category 3	£1,000,000	£500,000 - £2,700,000
Harm category 4	£500,000	£240,000 - £1,300,000
High culpability		
Harm category 1	£2,400,000	£1,500,000 - £6,000,000
Harm category 2	£1,100,000	£550,000 - £2,900,000
Harm category 3	£540,000	£250,000 - £1,450,000
Harm category 4	£240,000	£120,000 - £700,000
Medium culpability		
Harm category 1	£1,300,000	£800,000 - £3,250,000
Harm category 2	£600,000	£300,000 - £1,500,000
Harm category 3	£300,000	£130,000 - £750,000
Harm category 4	£130,000	£50,000 - £350,000
Low culpability		
Harm category 1	£300,000	£180,000 - £700,000
Harm category 2	£100,000	£35,000 - £250,000
Harm category 3	£35,000	£10,000 - £140,000
Harm category 4	£10,000	£3,000 - £60,000

Medium Turnover or equivalent: between £10 million and £50 million

	Starting point	Category range
Very high culpability		
Harm category 1	£1,600,000	£1,000,000 - £4,000,000
Harm category 2	£800,000	£400,000 - £2,000,000
Harm category 3	£400,000	£180,000 - £1,000,000
Harm category 4	£190,000	£90,000 - £500,000
High culpability		
Harm category 1	£950,000	£600,000 - £2,500,000
Harm category 2	£450,000	£220,000 - £1,200,000
Harm category 3	£210,000	£100,000 - £550,000
Harm category 4	£100,000	£50,000 - £250,000
Medium culpability		
Harm category 1	£540,000	£300,000 - £1,300,000
Harm category 2	£240,000	£100,000 - £600,000
Harm category 3	£100,000	£50,000 - £300,000
Harm category 4	£50,000	£20,000 - £130,000
Low culpability		
Harm category 1	£130,000	£75,000 - £300,000
Harm category 2	£40,000	£14,000 - £100,000
Harm category 3	£14,000	£3,000 - £60,000
Harm category 4	£3,000	£1,000 - £10,000

Small Turnover or equivalent: between £2 million and £10 million

	Starting point	Category range
Very high culpability		
Harm category 1	£450,000	£300,000 - £1,600,000
Harm category 2	£200,000	£100,000 - £800,000
Harm category 3	£100,000	£50,000 - £400,000
Harm category 4	£50,000	£20,000 - £190,000
High culpability		
Harm category 1	£250,000	£170,000 - £1,000,000
Harm category 2	£100,000	£50,000 - £450,000
Harm category 3	£54,000	£25,000 - £210,000
Harm category 4	£24,000	£12,000 - £100,000
Medium culpability		
Harm category 1	£160,000	£100,000 - £600,000
Harm category 2	£54,000	£25,000 - £230,000
Harm category 3	£24,000	£12,000 - £100,000
Harm category 4	£12,000	£4,000 - £50,000
Low culpability		
Harm category 1	£45,000	£25,000 - £130,000
Harm category 2	£9,000	£3,000 - £40,000
Harm category 3	£3,000	£700 - £14,000
Harm category 4	£700	£100 - £5,000

Micro: Turnover or equivalent: not more than £2 million

	Starting Point	Category range
Very high culpability		
Harm category 1	£250,000	£150,000 - £450,000
Harm category 2	£100,000	£50,000 - £200,000
Harm category 3	£50,000	£25,000 - £100,000
Harm category 4	£24,000	£12,000 - £50,000
High culpability		
Harm category 1	£160,000	£100,000 - £250,000
Harm category 2	£54,000	£30,000 - £110,000
Harm category 3	£30,000	£12,000 - £54,000
Harm category 4	£12,000	£5,000 - £21,000
Medium culpability		
Harm category 1	£100,000	£60,000 - £160,000
Harm category 2	£30,000	£14,000 - £70,000
Harm category 3	£14,000	£6,000 - £25,000
Harm category 4	£6,000	£2,000 - £12,000
Low culpability		
Harm category 1	£30,000	£18,000 - £60,000
Harm category 2	£5,000	£1,000 - £20,000
Harm category 3	£1,200	£200 - £7,000
Harm category 4	£200	£50 - £2,000

Annex C

The table below contains a **non-exhaustive** list of factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	<ul style="list-style-type: none"> • No previous convictions or no relevant/recent convictions • Evidence of steps taken to remedy problem • High level of co-operation with the investigation, beyond that which will always be expected • Good health and safety record • Effective health and safety procedures in place • Self-reporting, co-operation and acceptance of responsibility
<ul style="list-style-type: none"> • Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction 	
<i>Other aggravating factors include:</i>	
<ul style="list-style-type: none"> • Cost-cutting at the expense of safety • Deliberate concealment of illegal nature of activity • Breach of any court order • Obstruction of justice • Poor health and safety record • Falsification of documentation or licenses • Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities • Targeting vulnerable victims 	

STEPS THREE AND FOUR

The court should 'step back', review and, if necessary, adjust the initial fine based on turnover to **ensure that it fulfils the objectives of sentencing** for these offences. The court may adjust the fine upwards or downwards, including outside the range.

STEP THREE:

Check whether the proposed fine based on turnover is proportionate to the overall means of the offender

General principles to follow in setting a fine

The court should finalise the appropriate level of fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and the court to take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

The fine must be **sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with health and safety legislation.**

Review of the fine based on turnover

The court should 'step back', review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above. The court may adjust the fine upwards or downwards including outside of the range.

The court should examine the financial circumstances of the offender in the round to assess the economic realities of the organisation and the most efficacious way of giving effect to the purposes of sentencing.

In finalising the sentence, the court should have regard to the following factors.

- The profitability of an organisation will be relevant. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.
- Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the fine arrived at in step two. **Where this is not readily available, the court may draw on information available from enforcing authorities and others about general costs of operating within the law.**
- Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty, the court can take into account the **power to allow time for payment or to order that the amount be paid in instalments**, if necessary over a number of years.

STEP FOUR:

Consider other factors that may warrant adjustment of the proposed fine

The court should consider any wider impacts of the fine within the organisation or on innocent third parties; such as (but not limited to):

- fine impairs offender's ability to make restitution to victims;
- impact of fine on offender's ability to improve conditions in the organisation to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy.(but not shareholders or directors)

Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of their services.

STEP FIVE:

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP SIX:

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP SEVEN:

Compensation and ancillary orders

In all cases, the court must consider whether to make ancillary orders. These may include:

Remediation

Under section 42(1) of the Health and Safety at Work etc. Act 1974, the court may impose a remedial order in addition to or instead of imposing any punishment on the offender.

Forfeiture

Where the offence involves the acquisition or possession of an explosive article or substance, section 42(4) enables the court to order forfeiture of the explosive.

Compensation

Where the offence has resulted in loss or damage, the court must consider whether to make a compensation order. The assessment of compensation in cases involving death or serious injury will usually be complex and will ordinarily be covered by

insurance. In the great majority of cases the court should conclude that compensation should be dealt with in the civil court, and should say that no order is made for that reason.

If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited.

Where the offender does not have sufficient means to pay the total financial penalty considered appropriate by the court, compensation and fine take priority over costs.

STEP EIGHT:

Totality principle

If sentencing an offender for more than one offence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP NINE:

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

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