

Individuals

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

Breach of duty of self-employed to others

Breach of duty of employees at work

Health and Safety at Work Act 1974 (section 33(1)(a) for breaches of sections 2, 3 and 7)

Breach of Health and Safety regulations

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

Secondary Liability

Health and Safety at Work Act 1974 (sections 36 and 37(1) for breaches of sections 2 and 3 and section 33 (1) (C))

Triable either way

Maximum: when tried on indictment: unlimited fine and/or 2 years' custody
when tried summarily: £20,000 fine and/or 6 months' custody (except for breaches of section 7: £5,000 fine and/or 6 months' custody)

Offence range: Conditional discharge – 2 years' custody

**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"> Where the offender intentionally breached, or flagrantly disregarded, the law
High	<ul style="list-style-type: none"> Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken
Medium	<ul style="list-style-type: none"> Offence committed through act or omission which a person exercising reasonable care would not commit
Low	<ul style="list-style-type: none"> Offence committed with little fault, 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 isolate 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 category, the court should refer to the starting points on the page below to reach a sentence 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

In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. 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.

Starting points and ranges

Where the range includes a potential sentence of custody, the court should consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

Even where the community order threshold has been passed, a fine will normally be the most appropriate disposal where the offence was committed for economic benefit. Or, consider, if wishing to remove economic benefit derived through the commission of the offence, combining a fine with a community order.

	Starting point	Category range
Very High Culpability		
Harm category 1	18 months' custody	1 – 2 years' custody
Harm category 2	1 year's custody	26 weeks' – 18 months' custody
Harm category 3	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 4	Band F fine	Band E fine – 26 weeks' custody
High culpability		
Harm category 1	1 year's custody	26 weeks' – 18 months' custody
Harm category 2	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 3	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 4	Band E fine	Band D fine – Band E fine
Medium culpability		
Harm category 1	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 2	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 3	Band E fine	Band D fine or low level community order – Band E fine
Harm category 4	Band D fine	Band C fine – Band D fine
Low culpability		
Harm category 1	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 2	Band D fine	Band C – Band D fine
Harm category 3	Band C fine	Band B fine – Band C fine
Harm category 4	Band A fine	Conditional discharge – Band A fine

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 • Good character and/or exemplary conduct • Inappropriate degree of trust or responsibility • Mental disorder or learning disability, where linked to the commission of the offence • Serious medical conditions requiring urgent, intensive or long term treatment. • Age and/or lack of maturity where it affects the responsibility of the offender • Sole or primary carer for dependent relatives
<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 • Offence committed whilst on bail 	
<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 licenses in order to avoid scrutiny by authorities • Targeting vulnerable victims 	

**STEP THREE:
Review any financial element of the sentence**

Where the sentence is or includes a fine, the court should ‘step back’ and, using the factors set out below, review whether the sentence as a whole meets the objectives of sentencing for these offences. The court may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range.

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.

Review of the fine

Where the court proposes to impose a fine it 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.

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.**

In finalising the sentence, the court should have regard to the following factors relating to the wider impacts of the fine on innocent third parties; such as (but not limited to):

- impact of fine on offender’s ability to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy.

**STEP FOUR:
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 FIVE:
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 SIX:**Compensation and ancillary orders**

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

Disqualification of director

An offender may be disqualified from being a director of a company in accordance with section 2 of the Company Directors Disqualification Act 1986. The maximum period of disqualification is 15 years (Crown Court) or 5 years (magistrates' court).

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 courts, 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 SEVEN:**Totality principle**

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

STEP EIGHT:**Reasons**

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

STEP NINE:**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.