

**Corporate manslaughter**

**Corporate Manslaughter and Corporate Homicide Act 2007 (section 1)**

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**Triable only on indictment**

**Maximum: unlimited fine**

### **STEP ONE: Determining the seriousness of the offence**

By definition, the **harm** and **culpability** involved in corporate manslaughter will be very serious. Every case will involve death and corporate fault at a high level. The court should assess factors affecting the seriousness of the offence within this context by asking:

**(a) How foreseeable was serious injury?**

The more foreseeable it was the graver usually will be the offence. Failure to heed warnings or advice from the authorities, employees or others or to respond appropriately to “near misses” arising in similar circumstances may be factors indicating greater foreseeability of serious injury.

**(b) How far short of the appropriate standard did the offender fall?**

Where an offender falls far short of the appropriate standard, the level of culpability is likely to be high. Lack of adherence to recognised standards in the industry or the inadequacy of training, supervision and reporting arrangements may be relevant factors to consider.

**(c) How common is this kind of breach in this organisation?**

How widespread was the non-compliance? Was it isolated in extent or, for example, indicative of a systematic departure from good practice across the offender’s operations or representative of systemic failings? Widespread non-compliance is likely to indicate a more serious offence.

**(d) Was there more than one death, or a high risk of further deaths, or serious personal injury in addition to death?**

The greater the number of deaths, very serious personal injuries or people put at high risk of death, the more serious the offence.

Where the answers to these questions indicate a high level of harm or culpability within the context of this offence the court should consider starting point A at step two. For all other offences the court should consider starting point B.

### STEP TWO: Starting point and category range

The court should consider the starting points set out below, before considering additional aggravating and mitigating factors. There are tables for different sized organisations.

#### 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 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](http://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. 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 organisation (turnover more than £50 million)

Offence category	Starting point	Category range
A	£7,500,000	£4,800,000 – £20,000,000
B	£5,000,000	£3,000,000 - £12,500,000

#### Medium organisation (turnover £10 million to £50 million)

Offence category	Starting point	Category range
A	£3,000,000	£1,800,000 - £7,500,000
B	£2,000,000	£1,200,000 - £5,000,000

#### Small organisation (turnover £2 million to £10 million)

Offence category	Starting point	Category range
A	£800,000	£540,000 - £2,800,000
B	£540,000	£350,000 - £2,000,000

#### Micro organisation (turnover up to £2 million)

Offence category	Starting point	Category range
A	£450,000	£270,000 - £800,000
B	£300,000	£180,000 - £540,000

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.

Factors increasing seriousness	Factors reducing seriousness
<p><i>Statutory aggravating factors:</i></p> <ul style="list-style-type: none"> <li>• 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</li> </ul>	<ul style="list-style-type: none"> <li>• No previous convictions <b>or</b> no relevant/recent convictions</li> <li>• Evidence of steps taken to remedy problem</li> <li>• High level of co-operation with the investigation, beyond that which will always be expected</li> <li>• Good health and safety record</li> <li>• Effective health and safety procedures in place</li> <li>• Self-reporting, co-operation and acceptance of responsibility</li> <li>• Other events beyond the responsibility of the offender contributed to the death (<b>however</b>, actions of victims are highly unlikely to be considered contributory events. Offenders are required to protect workers or others who are neglectful of their own safety in a way which should be anticipated.)</li> </ul>
<p><i>Other aggravating factors include:</i></p>	
<ul style="list-style-type: none"> <li>• Cost-cutting at the expense of safety</li> <li>• Deliberate concealment of illegal nature of activity</li> <li>• Breach of any court order</li> <li>• Obstruction of justice</li> <li>• Poor health and safety record</li> <li>• Falsification of documentation or licenses</li> <li>• Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities</li> <li>• Offender exploited vulnerable victims</li> </ul>	

### 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 requires the court to take into account the financial circumstances of the offender.

Fines cannot and do not attempt to value a human life in money. The fine should meet the objectives of punishment, the reduction of offending through deterrence and removal of gain derived through the commission of the offence. The fine **must be sufficiently substantial to have a real economic impact which will bring home to management and shareholders the need to achieve a safe environment for workers and members of the public affected by their activities.**

#### 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 a relevant factor. 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.
- Whether the fine will have the effect of putting the offender out of business will be relevant; in some 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**

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.

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

- 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).

### **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:

##### ***Publicity Orders***

#### **(Section 10 Corporate Manslaughter and Corporate Homicide Act 2007)**

Publicity Orders should ordinarily be imposed in a case of corporate manslaughter. They may require publication in a specified manner of:

- a) the fact of conviction;
- b) specified particulars of the offence;
- c) the amount of any fine;
- d) the terms of any remedial order.

The object of the publicity order is deterrence and punishment.

- (i) The order should specify with particularity the matters to be published in accordance with section 10(1). Special care should be taken with the terms of the particulars of the offence committed.
- (ii) The order should normally specify the place where public announcement is to be made, and consideration should be given to indicating the size of any notice or advertisement required. It should ordinarily contain a provision designed to ensure that the conviction becomes known to shareholders in the case of companies and local people in the case of public bodies. Consideration should

be given to requiring a statement on the offender's website. A newspaper announcement may be unnecessary if the proceedings are certain to receive news coverage in any event, but if an order requires publication in a newspaper it should specify the paper, the form of announcement to be made and the number of insertions required.

- (iii) The prosecution should provide the court in advance of the sentencing hearing, and should serve on the offender, a draft of the form of order suggested and the Judge should personally endorse the final form of the order.
- (iv) Consideration should be given to stipulating in the order that any comment placed by the offender alongside the required announcement should be separated from it and clearly identified as such.

A publicity order is part of the penalty. Any exceptional cost of compliance should be considered in fixing the fine. It is not, however, necessary to fix the fine first and then deduct the cost of compliance.

### **Remediation**

(Section 9 Corporate Manslaughter and Corporate Homicide Act 2007)

A defendant ought by the time of sentencing to have remedied any specific failings involved in the offence and if it has not will be deprived of significant mitigation.

If, however, it has not, a remedial order should be considered if it can be made sufficiently specific to be enforceable. The prosecution is required by section 9(2) Corporate Manslaughter and Corporate Homicide Act 2007 to give notice of the form of any such order sought, which can only be made on its application. The Judge should personally endorse the final form of such an order.

The cost of compliance with such an order should not ordinarily be taken into account in fixing the fine; the order requires only what should already have been done.

### **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 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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