

Sentencing Council

Sentencing Council meeting: 17th July 2015
Paper number: SC(15)JUL07 – Health and Safety offences, corporate manslaughter and food safety and hygiene offences
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1 ISSUE

1.1 This paper is the final consideration of responses from the health and safety, corporate manslaughter and food safety and hygiene offences consultation. The Council is required to sign off the definitive guideline today in order to achieve publication of the definitive guideline in November 2015.

1.2 This paper focuses on the final version of the guideline, which includes all amendments made during the last three meetings following the Council's consideration of consultation responses. Other issues for consideration include:

- fines and related issues for all offences within the guideline;
- the final version of the health and safety harm model;
- one further issue regarding scope of the health and safety guidelines (organisations and individuals); and
- a summary of all amendments made to the guideline over the last three meetings.

2 RECOMMENDATION

2.1 That the Council reviews and signs off the definitive guideline at the meeting.

2.2 The Council is asked specifically to:

- agree the rationales provided for the issues relating to fines for the consultation response document;
- agree the finalised harm model for health and safety offences;

- agree not to include Houses of Multiple Occupation (HMO) offences within the scope of the health and safety guideline;
- review the summary of amendments to each guideline and highlight any further areas considered to require amendment; and
- provide any drafting comments on the guidelines or the rationales within this paper which are proposed for inclusion in the consultation response document. These should be sent to;
Lisa.Frost@sentencingcouncil.gsi.gov.uk by close of play Tuesday 14th July.

3 CONSIDERATION

Fines

3.1 As the Council is aware, the most contentious issues within the responses have been the use of turnover to determine an offender's means, and levels of fines. It was agreed at earlier meetings that the Council would consider this issue at the final meeting, to allow time for a full consideration of responses and analysis of fine levels.

3.2 These issues have now been considered, and it is not recommended that changes be effected to the fines within the guideline. The issues raised in responses are set out below, and the Council is asked to consider and agree the rationales it is proposed are included in the consultation response document in relation to these.

Use of Turnover

3.3 As highlighted to the Council in an earlier consideration of responses, a number of respondents criticised the use of turnover to identify an offender's means, stating that it is not an adequate indicator of the financial health of an organisation. One respondent highlighted that a fine based on turnover may attract a very high starting point, and even with the application of steps three and four a fine may result which is disproportionate to the offence and/or the means of the offender. The Council have already stated at earlier meetings that it wishes to maintain turnover as the starting point in assessing an offender's means. It is proposed that the following rationale is provided in the consultation response document to address these concerns;

The Council has chosen to use turnover or equivalent to identify starting points at step two, which is consistent with the approach in the environmental guideline. As stated in the consultation document for the guideline, the Council considered turnover to be a clear financial indicator that can be readily identified by sentencers in accounts or annual reports, and that it is less susceptible to manipulation than other accounting measures. To address concerns that turnover may not always be an accurate indicator of the financial health of an organisation, the Council has ensured that the guideline includes adequate flexibility and guidance (at steps three and four) to allow the court to tailor the sentence to the individual circumstances of the organisation concerned. This was recognised by a number of respondents, one being the Justice Select Committee (JSC) which held a stakeholder inclusive seminar in relation to the guideline during the consultation period. The JSC response stated;

“A number of the stakeholders at our seminar expressed concerns that the use of turnover to categorise businesses in order to determine an appropriate fine was overly simplistic. We accept that using turnover to determine the size of a business is something of a blunt instrument but we believe the overall sentencing process in the proposed guideline gives sentencers the flexibility they need to ensure the interests of justice are served. Step two of the sentencing process states that sentencers must consider financial information on a company as well as turnover. Step four then requires sentencers to ‘consider other factors that may warrant adjustment of the proposed fine’. We believe that this process, and step four in particular, will give sentencers the flexibility they need to determine appropriate financial punishment for defendant organisations”.

*The Council would add to this that step three requires the court to ‘**check whether the proposed fine based on turnover is proportionate to the overall means of the offender**’. Taking into account consultation responses, the Council decided to include the word ‘**overall**’ before the words ‘means of the offender’ within the explanation of the purpose of this step, to ensure a consideration of all relevant financial information.*

The Council is satisfied that the flexibility built into the guideline does address any concerns regarding the use of turnover to identify a fines starting point, and will provide for a robust and full assessment of an organisation’s finances.

Question 1: Does the Council agree with the rationale to be provided in the consultation response document regarding the use of turnover to identify the starting point of a fine?

Levels of Fines

3.4 There have been two main criticisms in relation to fine levels. These are;

- i) The disproportionate effect of fines on micro organisations in terms of percentage of turnover represented by fines.
- ii) The increased fines for large organisations.

Disproportionate effect of fines on micro organisations

3.5 A number of consultation responses raised the disproportionate effect of fines on micro organisations when compared to organisations with higher turnovers. Statisticians have provided an illustration of the percentage of an organisation's turnover represented by the starting point of fines, which is included at **Annex A**. The Council will note that fine levels for micro organisations for both health and safety and food safety offences represent a greater proportion of their turnover in percentage terms than for large organisations. Page 1 of **Annex A** describes where this effect is most prominent.

3.6 In order to address this and achieve parity in percentage of turnover represented by fines, a downward revision of fines would be required at the lower end of the table. The Council considered this briefly at an earlier meeting, and concluded that due to the very low fines for low culpability offences this would not be possible while still ensuring fines achieve a deterrent and punitive effect. A further reason for the apparent disproportionate impact of fine levels is that the Council decided to maintain the principle within the SGC guideline that 'where the offence is shown to have caused death, the appropriate fine will seldom be less than £100,000'. This is reflected in the starting points for all but low culpability categories for micro and small organisations.

3.7 It is suggested that the consultation response document recognises the responses that have highlighted the disproportionate effect of fines, and provides the following rationale;

'The Council recognises that the effect of fines for smaller organisations appears disproportionate in terms of percentage of turnover than for larger organisations. This is due to the Council's decision to maintain the principle within the SGC guideline that a fine should not be lower than £100,000 in most cases where an offence results in the loss of life or very serious injury, and to ensure that fines for all offences have a sufficiently punitive and deterrent effect. While the starting points represent a higher percentage of the turnover of micro and small organisations compared to medium and large organisations, it is important to note that steps three and four of the

guideline require the court to step back and review, and if necessary adjust, the initial fine imposed based on turnover. This enables a full assessment of whether the fine is proportionate to the overall means of the offender, and consideration of other factors which may warrant adjustment of the proposed fine. The court may adjust the fine upwards or downwards, including outside of the range, where it may be appropriate to do so.'

Question 2: Does the Council agree with the rationale to be provided for the disproportionate effect of fines on micro and small organisations?

Increased fines for large organisations

3.8 As the Council is aware, the most contentious issue raised in consultation responses was the increase in fine levels for large organisations for offences covered by the guideline. This issue was particularly prominent in responses from representatives of industry, including legal firms.

3.9 Officials held a meeting with the Confederation of British Industry (CBI) during the consultation period to discuss the proposed guidelines, and we understand that they also contacted the previous Secretary of State to raise their objections to the increased fine levels for larger organisations. Their objections, and the objections of many other respondents, are specifically that turnover is not a good indication of the financial health of an organisation; that levels of fines are not proportionate to the seriousness of offences; and that the increases in fines are not necessary to act as a deterrent to offending, which they submit is evidenced by the low volumes of these offences.

3.10 The Council took the principled decision during the development of the guidelines that fines for these offences needed to be much higher for larger organisations with greater means to achieve the aims of sentencing. The recent decision of the Court of Appeal in the Thames Water case¹ supports this position, and it is not anticipated that the Council will wish to review this decision. As evidenced at **Annex A** and referred to above, the proportionate effect of fines can actually be demonstrated to be considerably lower in percentage terms for large organisations. One option to address this criticism of increased fines for larger organisations is to highlight the effect of fine levels on micro and small organisations which is outlined above. However, while this would address this criticism to some extent, this could increase the perception that the guidelines have a greater punitive effect on smaller organisations with lower means. Further, the response document

¹ R v Thames Water Utilities Ltd [2015] EWCA Crim 960

will need to highlight that this effect is only apparent when a calculation is applied to the level of turnover of an organisation, which the Council will be keen to stress is not the only financial factor to be considered.

It is proposed that the following rationale for increased fines be included within the response document;

'85% of respondents who answered this question endorsed the approach to fines within the guidelines, and agreed that any fine imposed should be sufficiently substantial to have a real economic impact on offenders. The minority of 15% who disagreed raised concerns regarding the increase in fines for larger organisations which result from the new guidelines.

As was set out in the consultation document, one of the reasons for the Council's decision to produce updated guidance for offences captured by the SGC guidance published in 2010 was that sentences imposed on offenders in corporate manslaughter and health and safety cases causing death, particularly fines imposed on larger organisations, were not fulfilling the purposes of sentencing in this area. The Council considered Section 164 of the Criminal Justice Act 2003, which requires that any fine imposed must reflect the seriousness of the offence and take into account the financial circumstances of the offender. The Council also considered a number of recent developments, including a Court of Appeal case where the importance of identifying a level of fine that achieves the aim of sentencing given the financial circumstances of the offender in question was reiterated.²

At this point it is important to note that the position under the previous SGC guidelines, which stated that it was expected that an offence of corporate manslaughter would attract a fine between £500,000 and millions of pounds, and for health and safety offences resulting in a death the appropriate fine would seldom be less than £100,000, and may be measured in hundreds of thousands of pounds or more. The SGC guideline also noted the requirements of Section 164 of the Criminal Justice Act and noted 'it is just that a wealthy defendant should pay a larger fine than a poor one'.

Although this was set out in the previous guidance, a review of sentencing practice concluded that this was not necessarily reflected in sentences being imposed. In particular, some inconsistency in how factors were weighted and applied, and whether fines were proportionate to the seriousness of the offence given the means of the offender were identified.³

² R v Sellafield and Network Rail [2014] EWCA Crim 49

³ Specific examples of the variation in sentences were set out at page 30 of the consultation document.

While the Council recognises that higher fines will not be popular with those who may have to pay them, it regards the application of these established principles as fundamental in sentencing for these offences.

It is also important to note that for less serious offences than those resulting in death or very serious harm to individuals, the Council anticipates there will be little change from current sentencing practice. The Council will consider how best to explore the impact of the guidelines following their introduction.

Question 3: Does the Council agree with the rationale to be provided for the increased fines for large organisations? Does the Council think additional wording within this section of the response should be included to refer to the percentage of turnover represented by fines actually being higher for micro and small organisations?

The Corporate Veil

3.11 Step Two of the guidelines for organisations provide that:

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.

This was challenged in responses from a small number of legal firms who perceived this as being an “erosion of the legal principle of the corporate veil.” The wording of this consideration does make it clear that this will only be applicable in exceptional circumstances, and is qualified by the inclusion of where this information ‘can properly be taken into account’. This can be highlighted in the consultation response, and we would suggest the wording below:

‘The wording in the guideline is merely a restatement of the legal position as it stands, and should not be interpreted as either extending or restricting the circumstances when the resources of a linked organisation can be taken into account.’

Question 4: Does the Council agree that this wording adequately addresses submissions regarding the validity of the resources of linked organisations being taken into account?

Health and Safety

Harm Model

3.12 At the Council's meeting in June further discussion took place regarding the health and safety harm model. Following consideration of the practical application of the model by Council members, a number of further revisions were felt necessary to the structure of the guideline to clarify the complex assessment required to establish the level of harm. Officials worked with the Council lead for the guideline, Michael Caplan, to further refine the model, which is attached at **Annex B** for the Council's consideration.

Question 5: Does the Council agree that the harm model now provides sufficient clarity for sentencers of how to conduct the assessment of harm?

Scope

3.13 A number of respondents, including the Cabinet Office, and a member of a Local Authority, suggested that offences involving Houses of Multiple Occupation (HMOs) ought to be included within the scope of the health and safety guidelines. The offences concerned are legislated for by the Housing Act 2004, and are listed below;

- Fail to comply with a housing improvement notice (s.30)
- Fail to comply with a housing prohibition order (s.32)
- Licence holder / person restricted by licence of multi occupation house fail to comply with licence conditions (s.72(3) & (7))
- Fail to comply with a housing management order (s.131)
- Disclose document / information contained in a home condition report (s.165)
- Obstruct officer of a housing enforcement authority (s.167)
- Fail to comply with regulations in respect of management of housing in multiple occupation (s.234)
- Aid / abet a failure to comply with regulations in respect of management of housing in multiple occupation (s.234)
- Fail to comply with the requirements of a housing notice under section 235 (s.236(1) & (3))
- Knowingly supply false / misleading information to a housing authority (s.238(1) & (3))
- Knowingly supply false / misleading information to another knowing it will be given to a housing authority (s.238(2) & (3))

[In 2013, 220 adult offenders were sentenced for these offences.⁴ All offenders were sentenced in magistrates' courts, and the majority of offenders (95 per cent) received a fine.]

⁴ A breakdown of convictions per offence is not available.

Other offences under the Act include;

- Controller / manager of house in multiple occupation act without a section 6(1) licence (72(1) & (6))
- Controller / manager of licensed multi occupation house knowingly permit unlicensed occupation (72(2) & (6))
- Controller / manager of residential accommodation required to be licensed under Part 3 of the Act (95(1) & (5))
- Licence holder / person fail to comply restriction of s. 90(6) licence condition (95(2) & (6))

[In 2013, approximately 140 adult offenders were sentenced for these offences⁵ and the majority (96 per cent) were sentenced in magistrates' courts. The most common sentence outcome for these offences is a fine. In 2013 fines comprised 93 per cent of all sentence outcomes.]

3.14 It is not recommended that these offences are included within the guideline for a number of reasons. Firstly, the offences are summary only, so the statutory maxima differ from other offences covered by the guideline. Officials have considered whether these offences could be included in an annex as analogous offences, but have concluded that this would not be possible due to a lack of similarity with culpability and harm factors for food hygiene offences, and the focus on risk in assessing harm for health and safety offences. Secondly, the offences were not included in the consultation, and opportunities to highlight problems or observations regarding their inclusion have not been possible. Thirdly, while these offences have increased over recent years, the low volumes of these offences would not warrant a revision of the guideline to attempt to accommodate them.

3.15 It is possible that as offences relating to HMOs are summary only, they could be considered for inclusion within a future revision of the MCSG guideline. This would respond to concerns regarding a lack of guidance for these offences.

Question 6: Does the Council agree that offences relating to HMOs should not be included within the scope of the guideline?

⁵ As footnote 4.

Summary of amendments

A summary of amendments made to the guideline following consideration of consultation responses are provided below. Amended sections are highlighted within the final version of the guideline at Annexes C to G for ease of reference.

The Council are asked to review and agree all amendments.

Health & Safety Organisations guideline (Annex C)

Culpability

- All references to 'systemic' removed or revised to ensure application to non systemic situations (to provide consistency with food offences guideline).
- Low culpability factor; 'prior event' removed.

Harm

- Harm model structure and wording revisions.
- Remote likelihood changed to 'Low'.
- Word significant removed from consideration of number of people harmed.
- Contributory negligence wording amended from 'way that should be anticipated' to 'reasonably foreseeable', and 'highly unlikely' changed to 'unlikely'. Also added 'for sentencing purposes' to qualify application of this consideration.

Step Two

- Aggravating factor of 'targeting vulnerable victims' added.

Step Three

- Overall added to description of step to clarify full consideration required of steps 3 and 4.
- Review of the fine – wording added to confirm court may draw on information from prosecutors re costs of operating within the law.

Step Four

- Paragraphs reversed to clarify consideration of wider impacts not limited to public or charitable bodies.

Step 7

- Reference to costs included to clarify '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'.

Health & Safety Individuals guideline: (Annex D)

Culpability

- Headings changed from Deliberate/Reckless/Negligent to Very High/High/Medium and Low.
- Low culpability factor; 'prior event' removed.

Harm

- Harm model amended; structure and wording.
- Remote likelihood changed to 'Low'.
- Word significant removed from consideration of number of people harmed.
- Contributory negligence wording amended from 'way that should be anticipated' to 'reasonably foreseeable', and 'highly unlikely' changed to 'unlikely'. Also added 'for sentencing purposes' to qualify application of this consideration.

Step Two

- Aggravating factor of 'targeting vulnerable victims' added.

Step Three

- Review of the fine – wording added to confirm court may draw on information from prosecutors re costs of operating within the law.

Step 6

- Reference to costs included at Step 6 '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.'

Corporate Manslaughter: (Annex E)

Only three amendments were made to the Corporate Manslaughter guideline;

- Removal of the words 'more serious offences' from offence category A at Step Two.
- Overall added to description of step to clarify full consideration required of steps 3 and 4.
- Reference to costs included at Step 7 '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.'

Food Hygiene Organisations guideline: (Annex F)

Culpability

- Reference to regulator included at high culpability factor re ignoring concerns
- All references to systemic removed or revised to ensure application to non systemic situations.
- Low culpability factor; 'prior event' removed.

Harm

- Included risk of harm within all categories of harm.
- Reference to 'human health' replaced by individual(s) and harm to vulnerable groups included in highest category.
- Additional factor included re harm caused to religious or personal beliefs.

Step Two

- Mitigating factors of 'business closed voluntarily' and 'effective food hygiene procedures in place' removed.

Steps Three and Four

- Overall added to description of step to clarify full consideration required of steps 3 and 4.
- Added reference to totality consideration at Step 8 due to likelihood of multiple offences.

Step 7

- Reference to costs included to clarify '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'.

Food Hygiene Individuals guideline:

(Annex G)

Culpability

- Headings changed from Deliberate/Reckless/Negligent to Very High/High/Medium and Low.
- Reference to 'systemic' failures removed to ensure application to non systemic situations.
- Low culpability factor; 'prior event' removed.

Harm

- Included risk of harm within all categories of harm.
- Reference to 'human health' replaced by 'individual' and harm to vulnerable groups included in highest category.
- Additional factor included re harm caused to religious or personal beliefs.

Step Two

- Mitigating factors of 'business closed voluntarily' and 'effective food hygiene procedures in place' removed.

Steps Three

- Added reference to totality consideration at Step 8 due to likelihood of multiple offences.

Step Six

- Reference to costs included to clarify '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'.

4 IMPACT

4.1 The guideline is likely to increase the level of fines significantly for large organisations, which has attracted criticism from businesses and industry representatives.

5 RISK

5.1 Due to the criticism of increased fines within the guideline during the consultation period, this issue is highly likely to attract negative attention upon publication of the definitive guideline. It will be very important to ensure that the consultation response document provides clear, robust rationales for these elements of the guideline. For this reason the Council is asked to carefully consider the proposed rationales for these most contentious areas, which are included in this paper. Our communications strategy will seek to address any negative responses from sectors of industry to mitigate this risk.

5.2 Due to the complexity of the guideline and the assessments it requires, there is a risk that sentencers may struggle to apply it in practice, which could affect consistency of sentencing for these offences. Officials intend to commence discussions with Judicial College regarding the development of training materials for using the guideline to mitigate this risk.

5.3 No impact upon prison or probation resources is anticipated as a result of the guideline.

Health and safety and food safety and hygiene offences

The starting points proposed in the draft health and safety and food safety and hygiene guidelines have been compared for organisations of different sizes. The starting points have also been compared with those in the environmental offences definitive guideline. In summary, the results show:

- For both health and safety and food safety and hygiene offences, the starting point as a proportion of turnover for micro organisations was between 2 and 3 times higher than that for large organisations, for categories 2 to 4, where the culpability was very high, high or medium. This is broadly similar to the corresponding proportions for environmental offences.
- Where the culpability was low, the starting point as a proportion of turnover for environmental and food safety and hygiene offences was between 1 and 3 times higher for micro organisations compared to large organisations.
- For health and safety offences with category 1 harm, however, the starting point as a proportion of turnover for micro organisations compared to large organisations was over 3 times higher for very high and high culpability, 4 times higher for medium culpability, and 5 times higher for low culpability (see cells highlighted red in table 1).
- For example, for micro organisations in the health and safety guideline, the starting point for low culpability, category 1 harm was £30,000. This is 2 per cent of the maximum turnover of £2m for these organisations. The corresponding starting point for large organisations was £300,000. This is only about 0.3 per cent of the £100m turnover. This means that the proportion for micro organisations is 5 times that for large organisations.
- It is important to note that for large organisations the turnover has been based on £100m, however the actual turnover could in fact be much higher than this. In those cases, the starting point as a proportion of turnover would be smaller, and would result in a greater difference between the proportions for micro and large organisations.

Tables 1 to 3 below show these results in more detail.

Table 1: Starting points for organisations of different sizes sentenced for health and safety offences

Culpability	Micro		Small		Medium		Large	
	Starting point	% of turnover (based on £2m)	Starting point	% of turnover (based on £10m)	Starting point	% of turnover (based on £50m)	Starting point	% of turnover (based on £100m)
Very high culpability								
Category 1	£250,000	13%	£450,000	5%	£1,600,000	3%	£4,000,000	4%
Category 2	£100,000	5%	£200,000	2%	£800,000	2%	£2,000,000	2%
Category 3	£50,000	3%	£100,000	1%	£400,000	1%	£1,000,000	1%
Category 4	£24,000	1%	£50,000	0.5%	£190,000	0.4%	£500,000	0.5%
High culpability								
Category 1	£160,000	8%	£250,000	3%	£950,000	2%	£2,400,000	2%
Category 2	£54,000	3%	£100,000	1%	£450,000	1%	£1,100,000	1%
Category 3	£30,000	2%	£54,000	0.5%	£210,000	0.4%	£540,000	0.5%
Category 4	£12,000	1%	£24,000	0.2%	£100,000	0.2%	£240,000	0.2%
Medium culpability								
Category 1	£100,000	5%	£160,000	2%	£540,000	1%	£1,300,000	1.3%
Category 2	£30,000	2%	£54,000	1%	£240,000	0.5%	£600,000	0.6%
Category 3	£14,000	1%	£24,000	0.2%	£100,000	0.2%	£300,000	0.3%
Category 4	£6,000	0.3%	£12,000	0.1%	£50,000	0.1%	£130,000	0.1%
Low culpability								
Category 1	£30,000	2%	£45,000	0.5%	£130,000	0.3%	£300,000	0.3%
Category 2	£5,000	0.3%	£9,000	0.1%	£40,000	0.1%	£100,000	0.1%
Category 3	£1,200	0.1%	£3,000	0.03%	£14,000	0.03%	£35,000	0.04%
Category 4	£200	0.01%	£700	0.01%	£3,000	0.01%	£10,000	0.01%

Table 2: Starting points for organisations of different sizes sentenced for food safety and hygiene offences

Culpability	Micro		Small		Medium		Large	
	Starting point	% of turnover (based on £2m)	Starting point	% of turnover (based on £10m)	Starting point	% of turnover (based on £50m)	Starting point	% of turnover (based on £100m)
Very high culpability								
Category 1	£60,000	3%	£120,000	1%	£450,000	1%	£1,200,000	1%
Category 2	£25,000	1%	£50,000	0.5%	£200,000	0.4%	£500,000	0.5%
Category 3	£10,000	0.5%	£18,000	0.2%	£80,000	0.2%	£200,000	0.2%
High culpability								
Category 1	£25,000	1%	£50,000	0.5%	£200,000	0.4%	£500,000	0.5%
Category 2	£12,000	0.6%	£24,000	0.2%	£90,000	0.2%	£230,000	0.2%
Category 3	£4,000	0.2%	£9,000	0.1%	£35,000	0.1%	£90,000	0.1%
Medium culpability								
Category 1	£10,000	0.5%	£18,000	0.2%	£80,000	0.2%	£200,000	0.2%
Category 2	£4,000	0.2%	£8,000	0.1%	£35,000	0.1%	£90,000	0.1%
Category 3	£1,400	0.1%	£3,000	0.03%	£14,000	0.03%	£35,000	0.04%
Low culpability								
Category 1	£1,200	0.1%	£3,000	0.03%	£12,000	0.02%	£35,000	0.04%
Category 2	£500	0.03%	£1,400	0.01%	£7,000	0.01%	£18,000	0.02%
Category 3	£200	0.01%	£700	0.007%	£3,500	0.007%	£10,000	0.01%

Table 3: Starting points for organisations of different sizes sentenced for environmental offences

Culpability	Micro		Small		Medium		Large	
	Starting point	% of turnover (based on £2m)	Starting point	% of turnover (based on £10m)	Starting point	% of turnover (based on £50m)	Starting point	% of turnover (based on £100m)
Very high culpability								
Category 1	£50,000	3%	£100,000	1%	£400,000	1%	£1,000,000	1%
Category 2	£22,000	1%	£45,000	0.5%	£170,000	0.3%	£500,000	0.5%
Category 3	£9,000	0.5%	£17,000	0.2%	£70,000	0.1%	£180,000	0.2%
Category 4	£5,000	0.3%	£10,000	0.1%	£40,000	0.08%	£100,000	0.1%
High culpability								
Category 1	£30,000	2%	£55,000	1%	£220,000	0.4%	£550,000	1%
Category 2	£12,000	1%	£24,000	0.2%	£100,000	0.2%	£250,000	0.3%
Category 3	£5,000	0.3%	£10,000	0.1%	£40,000	0.1%	£100,000	0.1%
Category 4	£3,000	0.2%	£5,000	0.05%	£24,000	0.05%	£60,000	0.06%
Medium culpability								
Category 1	£15,000	1%	£30,000	0.3%	£120,000	0.2%	£300,000	0.3%
Category 2	£6,500	0.3%	£13,000	0.1%	£55,000	0.1%	£140,000	0.1%
Category 3	£2,500	0.1%	£6,000	0.06%	£25,000	0.05%	£60,000	0.06%
Category 4	£1,400	0.1%	£3,000	0.03%	£14,000	0.03%	£35,000	0.04%
Low culpability								
Category 1	£2,500	0.1%	£5,000	0.1%	£20,000	0.04%	£50,000	0.05%
Category 2	£1,000	0.05%	£2,500	0.03%	£10,000	0.02%	£25,000	0.03%
Category 3	£400	0.02%	£1,000	0.01%	£5,000	0.01%	£14,000	0.014%
Category 4	£200	0.01%	£700	0.007%	£3,000	0.006%	£10,000	0.010%

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 • 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**¹ 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.

¹A 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.

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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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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.

Corporate manslaughter

Corporate Manslaughter and Corporate Homicide Act 2007 (section 1)

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. 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"> • 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 	<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 • Other events beyond the responsibility of the offender contributed to the death (however, 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.)
<p><i>Other aggravating factors include:</i></p>	
<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 • Offender exploited 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 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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Organisations

Breach of food hygiene and food safety regulations

England

Food Safety and Hygiene (England) Regulations 2013 (regulation 19(1))

Triable either way

Statutory maximum:

when tried on indictment: unlimited fine

when tried summarily: £5,000 fine

Wales

Food Hygiene (Wales) Regulations 2006 (regulation 17(1))

The General Food Regulations 2004 (regulation 4)

Triable either way

Statutory maximum:

when tried on indictment: unlimited fine

when tried summarily: £5,000 fine

except for regulation 4(b) of the General Food Regulations 2004: £20,000 fine

STEP ONE: Determining the offence category

The court should determine the offence category using only the culpability and harm factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a **degree of weighting** to make an overall assessment.

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 regulators, employees or others ○ allowing breaches to subsist over a long period of time • Evidence of serious, and/or systemic failings within the organisation to address risks to food 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 the appropriate standard; for example, because <ul style="list-style-type: none"> ○ significant efforts were made to secure food safety although they were inadequate on this occasion ○ there was no warning indicating a risk to food safety • Failings were minor and occurred as an isolated incident

Harm

The table below contains factors relating to both actual harm and risk of harm. Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1	<ul style="list-style-type: none"> • Serious adverse effect(s) on individual(s) and/or having a widespread impact • High risk of an adverse effect on an individual(s) including where supply was to groups that are vulnerable
Category 2	<ul style="list-style-type: none"> • Adverse effect on individual(s) (not amounting to Category 1) • Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect • Regulator and / or legitimate industry substantially undermined by offender's activities • Relevant authorities unable to trace products in order to investigate risks to health, or are otherwise inhibited in identifying or addressing risks to health • Consumer misled regarding food's compliance with religious or personal beliefs
Category 3	<ul style="list-style-type: none"> • Low risk of an adverse effect on individual(s) • Public misled about the specific food consumed, but little or no risk of actual adverse health effect

STEP TWO: Starting point and category range

Having determined the 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

Offenders which are companies, partnerships or bodies delivering a public or charitable service are 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, police and 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 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.

Annex F

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	Range
Very high culpability		
Category 1	£1,200,000	£500,000 - £3,000,000
Category 2	£500,000	£200,000 - £1,400,000
Category 3	£200,000	£90,000 - £500,000
High culpability		
Category 1	£500,000	£200,000 - £1,400,000
Category 2	£230,000	£90,000 - £600,000
Category 3	£90,000	£50,000 - £240,000
Medium culpability		
Category 1	£200,000	£80,000 - £500,000
Category 2	£90,000	£35,000 - £220,000
Category 3	£35,000	£20,000 - 100,000
Low culpability		
Category 1	£35,000	£18,000 - £90,000
Category 2	£18,000	£9,000 - £50,000
Category 3	£10,000	£6,000 - £25,000

Medium

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

	Starting point	Range
Very high culpability		
Category 1	£450,000	£200,000 - £1,200,000
Category 2	£200,000	£80,000 - £500,000
Category 3	£80,000	£40,000 - £200,000
High culpability		
Category 1	£200,000	£90,000 - £500,000
Category 2	£90,000	£35,000 - £220,000
Category 3	£35,000	£18,000 - £90,000
Medium culpability		
Category 1	£80,000	£35,000 - £190,000
Category 2	£35,000	£14,000 - £90,000
Category 3	£14,000	£7,000 - £35,000
Low culpability		
Category 1	£12,000	£7,000 - £35,000
Category 2	£7,000	£3,500 - £18,000
Category 3	£3,500	£2,000 - £10,000

Small

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

	Starting point	Range
Very high culpability		
Category 1	£120,000	£50,000 - £450,000
Category 2	£50,000	£18,000 - £200,000
Category 3	£18,000	£9,000 - £80,000
High culpability		
Category 1	£50,000	£22,000 - £200,000
Category 2	£24,000	£8,000 - £90,000
Category 3	£9,000	£4,000 - £35,000
Medium culpability		
Category 1	£18,000	£7,000 - £70,000
Category 2	£8,000	£3,000 - £35,000
Category 3	£3,000	£1,500 - £12,000
Low culpability		
Category 1	£3,000	£1,400 - £12,000
Category 2	£1,400	£700 - £7,000
Category 3	£700	£300 - £3,000

Micro*

Turnover or equivalent: not more than £2 million

	Starting point	Ranges
Very high culpability		
Category 1	£60,000	£25,000 - £120,000
Category 2	£25,000	£10,000 - £50,000
Category 3	£10,000	£5,000 - £18,000
High culpability		
Category 1	£25,000	£10,000 - £50,000
Category 2	£12,000	£4,000 - £22,000
Category 3	£4,000	£2,000 - £9,000
Medium culpability		
Category 1	£10,000	£3,000 - £18,000
Category 2	£4,000	£1,400 - £8,000
Category 3	£1,400	£700 - £3,000
Low culpability		
Category 1	£1,200	£500 - £3,000
Category 2	£500	£200 - £1,400
Category 3	£200	£100 - £700

* **Note on statutory maxima on summary conviction.** For offences under *regulation 19(1) Food Safety and Hygiene (England) Regulations 2013* and *regulation 17(1) Food Hygiene (Wales) Regulations 2006* the maximum sentence magistrates may pass on summary conviction is a £5,000 fine. The *General Food Regulations 2004* are only in force in Wales. The maximum sentence on summary conviction for offences under *regulations 4(a) and 4(c) – (e)* is a £5,000 fine, and under *regulation 4(b)*, a £20,000 fine.

Annex F

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
Statutory aggravating factors	<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 food safety / hygiene record • 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 	
Other aggravating factors include	
<ul style="list-style-type: none"> • Motivated by financial gain • Deliberate concealment of illegal nature of activity • Established evidence of wider/community impact • Breach of any court order • Obstruction of justice • Poor food safety or hygiene record • Refusal of free advice or training 	

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.

Full regard should be given to the totality principle at step 8.

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 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 operate within the law.**

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 enable the court to assess the economic realities of the company 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 total 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 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

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

Compensation and ancillary orders

Compensation

Where the offence results in the loss or damage the court must consider whether to make a compensation order. 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.

Hygiene Prohibition Order

If the court is satisfied that the health risk condition in Regulation 7(2) is fulfilled it **shall** impose the appropriate prohibition order in Regulation 7(3)

Where a food business operator is convicted of an offence under the Regulations and the court thinks it is proper to do so in all the circumstances of the case, the court **may** impose a prohibition on the operator pursuant to Regulation 7(4). An order under Regulation 7(4) is not limited to cases where there is an immediate risk to public health; the court might conclude that there is such a risk of some future breach of the regulations or the facts of any particular offence or combination of offences may alone justify the imposition of a Hygiene Prohibition Order. In deciding whether to impose an order, the court will want to consider the history of convictions or a failure to heed warnings or advice in deciding whether an order is proportionate to the facts of the case. Deterrence may also be an important consideration.

(These orders are available under both the Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006.)

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, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

Where the offender is convicted of more than one offence where a fine is appropriate, the court should consider the following guidance from the definitive guideline on Totality.

“The total fine is inevitably cumulative.

The court should determine the fine for each individual offence based on the seriousness of the offence* and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court.

The court should add up the fines for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways this can be achieved.

For example

- *where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose on the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed on the other offences.*
- *where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.*

Where separate fines are passed, the court must be careful to ensure that there is no double counting. ±

Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.”

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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Individuals

Breach of food hygiene regulations

England

Food Safety and Hygiene (England) Regulations 2013 (regulation 19(1))

Triable either way

Maximum:

when tried on indictment: unlimited fine and / or 2 years' custody

when tried summarily: £5,000 fine

Wales

Food Hygiene (Wales) Regulations 2006 (regulation 17(1))

Triable either way

Maximum:

when tried on indictment: unlimited fine and / or 2 years' custody

when tried summarily: £5,000 fine

The General Food Regulations 2004 (regulation 4)

Triable either way

Maximum:

when tried on indictment: unlimited fine and / or 2 years' custody

when tried summarily: £5,000 fine and / or 6 months' custody

except for regulations 4(b): £20,000 fine and / or 6 months' custody

STEP ONE: Determining the offence category

The court should determine the offence category using only the culpability and harm factors in the tables below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting to make an overall assessment.

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 food safety ▪ Failings were minor and occurred as an isolated incident

Harm

The table below contains factors relating to both actual harm and risk of harm. Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does.

Category 1	<ul style="list-style-type: none"> Serious adverse effect(s) on an individual(s) and/or having a widespread impact High risk of an adverse effect on individual(s) – including where supply was to persons that are vulnerable
Category 2	<ul style="list-style-type: none"> Adverse effect on individual(s) (not amounting to Category 1) Medium risk of an adverse effect on individual(s) or low risk of serious adverse effect Regulator and / or legitimate industry substantially undermined by offender's activities Relevant authorities unable to trace products in order to investigate risks to health, or are otherwise inhibited in identifying or addressing risks to health Consumer misled regarding food's compliance with religious or personal beliefs
Category 3	<ul style="list-style-type: none"> low risk of an adverse effect on individual(s) Public misled about the specific food consumed, but little or no risk of actual adverse effect on individual(s)

STEP TWO: Starting point and category range

Having determined the category, the court should refer to the starting points on the next page 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. Or, consider, if wishing to remove economic benefit derived through the commission of the offence, combining a fine with a community order*.

* **Note on statutory maxima on summary conviction.** For offences under *regulation 19(1) Food Safety and Hygiene (England) Regulations 2013* and *regulation 17(1) Food Hygiene (Wales) Regulations 2006*, the maximum sentence magistrates may pass on summary conviction is a £5,000 fine; therefore for these offences, magistrates may not pass a

Annex G

	Starting Point	Range
Deliberate		
Harm category 1	9 months' custody	Band F fine – 18 months' custody
Harm category 2	Band F fine	Band E fine – 9 months' custody
Harm category 3	Band E fine	Band D fine – 26 weeks' custody
Reckless		
Harm category 1	Band F fine	Band E fine – 9 months' custody
Harm category 2	Band E fine	Band D fine – 26 weeks' custody
Harm category 3	Band D fine	Band C fine – Band E fine
Medium		
Harm category 1	Band E fine	Band D fine – Band F fine
Harm category 2	Band D fine	Band C fine – Band E fine
Harm category 3	Band C fine	Band B fine – Band C fine
Low		
Harm category 1	Band C fine	Band B fine – Band C fine
Harm category 2	Band B fine	Band A fine – Band B fine
Harm category 3	Band A fine	Conditional discharge – Band A fine

community order. *Regulation 4 of The General Food Regulations 2004* is in force in Wales but not in England. For offences under *regulation 4(a)* and *4(c) – (e)*, the maximum sentence on summary conviction is 6 months' custody and / or a £5,000 fine. For an offence under *regulation 4(b)*, the maximum sentence on summary conviction is 6 months' custody and / or a £20,000 fine.

Annex G

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
Statutory aggravating factors	<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 food safety / hygiene record • Self-reporting, co-operation and acceptance of responsibility • Good character and/or exemplary conduct • 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 	
Other aggravating factors include	
<ul style="list-style-type: none"> • Motivated by financial gain • Deliberate concealment of illegal nature of activity • Established evidence of wider/community impact • Breach of any court order • Obstruction of justice • Poor food safety or hygiene record • Refusal of free advice or training 	

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 in step three, 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.

Full regard should be given to the totality principle at step 7.

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 total fine arrived at in step two.

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

Compensation

Where the offence results in loss or damage the court must consider whether to make a compensation order. 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.

Ancillary Orders

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

Hygiene Prohibition Order

If the court is satisfied that the health risk condition in Regulation 7(2) is fulfilled it **shall** impose the appropriate prohibition order in Regulation 7(3).

Where a food business operator is convicted of an offence under the Regulations and the court thinks it proper to do so in all the circumstances of the case, the court **may** impose a prohibition on the operator pursuant to Regulation 7(4). An order under Regulation 7(4) is not limited to cases where there is an immediate risk to public health; the court might conclude that there is such a risk of some future breach of the regulations or the facts of any particular offence or combination of offences may alone justify the imposition of a Hygiene Prohibition Order. In deciding whether to impose an order the court will want to consider the history of convictions or a failure to heed warnings or advice in deciding whether an order is proportionate to the facts of the case. Deterrence may also be an important consideration.

(These orders are available under both the Food Safety and Hygiene (England) Regulations 2013 and the Food Hygiene (Wales) Regulations 2006)

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).

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.

Where the offender is convicted of more than one offence where a fine is appropriate, the court should consider the following guidance from the definitive guideline on Totality.

The court should determine the fine for each individual offence based on the seriousness of the offence¹ and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court.

The court should add up the fines for each offence and consider if they are just and proportionate.

If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.

For example:

where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose on the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences.

Where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.

Where separate fines are passed, the court must be careful to ensure that there is no double counting.

Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.”

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

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.

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