

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

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SC(22)MAR06 – Underage sale of knives
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1 ISSUE

1.1 At the December meeting, the Council considered a draft guideline for underage sale of knives for offenders who are organisations. The discussion raised two main issues: the police reported experience of situations where multiple knives were sold by online retailers for onward sale to young people which was not catered for in the draft guideline; and the sentence levels were deemed to be too low.

1.2 At this meeting it is hoped to resolve those issues and also to agree the guideline for offenders who are individuals.

1.3 It is hoped both guidelines can be signed off for a consultation to run from 25 May. A draft guideline for organisations is provided at **Annex A** and for individuals at **Annex B**.

2 RECOMMENDATIONS

2.1 That the Council agrees to limit the scope of the guidelines to offences that are currently prosecuted.

2.2 That the contents of the guidelines are agreed for consultation. In particular:

- The wording for a single level of harm
- The sentence levels for organisations
- The culpability factors in the guideline for individuals
- The sentence levels for individuals

3 CONSIDERATION

The concerns raised by the police

3.1 Nick Ephgrave kindly put me in touch with officers involved in the investigation of knife crime. The police are aware of situations where people are acquiring large quantities of knives from online retailers. These purchases are usually within the law as the purchaser is aged 18 or over. The knives often do not have an obvious legitimate purpose but they are

not of a type that it is unlawful to sell or possess in a private place. The police are aware that these knives are then being sold via social media without regard to the age of the purchaser (or even being targeted at underage purchasers). However, the police are not bringing prosecutions under section 141A of the Criminal Justice Act 1988 for various reasons including the difficulty of obtaining the evidence required within the time limits for a summary only offence. They are unable to use test purchasers in these situations and the purchasers of the knives, if questioned, are not able or willing to identify the seller.

3.2 The police also explained that the type of knives that are used to threaten or attack and those carried unlawfully in public places are generally not the type typically sold by general retailers but are more likely to be 'combat' style knives sold online by specialist sites. This leads to the somewhat uncomfortable conclusion that although there is a range of offending that could be caught by this legislation, in practice, the offenders that come before the courts for this offence are limited to otherwise legitimate retailers who are failing to ensure that the relevant checks are being made. There are other offences that could be used to prosecute those who sell knives, such as section 1 of the Knives Act 1997 (unlawful marketing of knives) and section 38 of the Offensive Weapons Act 2019 (delivery of bladed articles to residential premises). The Knives Act offence is rarely prosecuted (there were no adults or organisations sentenced for this offence in the period 2010 to 2020) and the s38 offence is not yet in force.

3.3 The draft guidelines have been developed to deal with the cases that we know are actually being brought before the courts. The guidelines would not be suitable for sentencing a seller who intentionally sold knives to young people or one who sold them unlawfully in large quantities. It would be possible to amend the guideline to cater for a wider range of cases that could theoretically occur, but that would be of limited if any practical value and could be positively unhelpful to sentencers. An alternative would be to add a note to the guideline setting out the situations to which it applies and inviting sentencers to go outside the guideline in other situations. Suggested wording is:

For the organisations guideline:

<p>This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers who otherwise generally operate within the law. Cases of a different nature (such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children) should be sentenced outside the guideline.</p>
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For the guideline for individuals:

This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by traders who otherwise generally operate within the law, or those employed by such traders. Cases of a different nature (such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children) should be sentenced outside the guideline.

Question 1: Does the Council agree that the guideline should cover only the types of case that are actually being prosecuted?

Question 2: If so, should an explanation be added to the guidelines, how should such and explanation be worded and where in the guideline should it be placed?

The guideline for organisations

3.4 The proposed guideline for organisations is at **Annex A**. The culpability and harm factors are drafted on the basis that the guideline will apply only to the types of cases brought by Trading Standards as a result of test purchases.

3.5 At the December meeting the only objections raised to the culpability and harm assessment related to the range of offending it covered. If the Council agrees to a single level of harm a question remains as to whether the proposed wording is right:

HARM

The harm caused by this offence relates to the risks associated with children and young people being in possession of knives. There is just one level of harm, as the same level of harm is risked by any such sale to a person aged under 18.

3.6 The CPS suggested alternative wording:

HARM

It is recognised that possession of knives by children and young people presents serious risks to their wellbeing and safety as well as to the greater community, therefore there is just one level of harm.

Question 3: Does the Council agree to consult on the culpability factors at Annex A?

Question 4: Does the Council agree to consult on having only one level of harm? If so, how should this be worded?

Sentence levels

3.7 The majority of these offences are punished by way of a fine. Of 46 organisations sentenced in 2019, one was sentenced to a discharge and 45 were fined. In 2019, the range of fine amounts was £276 to £50,000 (the mean was £5,585 and the median £2,000). All of these fine amounts are after any reduction for a guilty plea. The intention in developing

guidelines for this offence is to ensure that fines are proportionate, particularly in the case of larger companies, which would lead to increased fines in some cases.

3.8 The fine amounts proposed in December were:

	Culpability		
	A	B	C
Large organisation Turnover or equivalent: £50 million and over	Starting point £250,000 Category range £100,000 – £500,000	Starting point £100,000 Category range £50,000 – £250,000	Starting point £25,000 Category range £10,000 – £50,000
Medium organisation Turnover or equivalent: between £10 million and £50 million	Starting point £100,000 Category range £50,000 – £250,000	Starting point £50,000 Category range £25,000 – £100,000	Starting point £12,000 Category range £5,000 – £25,000
Small organisation Turnover or equivalent: between £2 million and £10 million	Starting point £20,000 Category range £10,000 – £50,000	Starting point £10,000 Category range £5,000 – £20,000	Starting point £2,000 Category range £1,000 – £5,000
Micro organisation Turnover or equivalent: not more than £2 million	Starting point £5,000 Category range £2,000 – £20,000	Starting point £2,000 Category range £1,000 – £5,000	Starting point £500 Category range £200 – £1,000

3.9 These fine levels were set with reference to existing guidelines for organisations ([health & safety](#), [food safety](#), [environmental](#)). **Annex C** contains a comparison of sentence levels across the three existing guidelines for what might be considered to be an equivalent level of offending. The levels proposed in December were considered to be too low and so they have been revised upwards. The revised levels (see below) are higher than the equivalent sentences for environmental or food safety offences but slightly lower than those for health and safety.

3.10 An attempt has been made to make the sentence levels proportionate across the different organisation sizes, however, there is an overlap between the proposed levels for large and medium organisations, but no overlap between the other sizes of organisation. It is impossible to devise a sentencing structure that is both proportionate to the size of the organisation and to other sentencing guidelines.

3.11 It is important to bear in mind that the sentence levels should be considered in the context of step 3 – Adjustment of fine, that requires the court to check that the fine meets the objectives of the removal of all gain, appropriate additional punishment, and deterrence in a fair way taking into account the size and financial position of the offending organisation and

the seriousness of the offence. This allows for considerable flexibility in the setting of the fine.

	Culpability		
	A	B	C
Large organisation Turnover or equivalent: £50 million and over	Starting point £400,000 Category range £200,000 – £1,000,000	Starting point £200,000 Category range £100,000 – £400,000	Starting point £50,000 Category range £12,000 – £100,000
Medium organisation Turnover or equivalent: between £10 million and £50 million	Starting point £200,000 Category range £100,000 – £400,000	Starting point £100,000 Category range £50,000 – £200,000	Starting point £20,000 Category range £5,000 – £50,000
Small organisation Turnover or equivalent: between £2 million and £10 million	Starting point £50,000 Category range £25,000 – £100,000	Starting point £25,000 Category range £12,000 – £50,000	Starting point £6,000 Category range £3,000 – £12,000
Micro organisation Turnover or equivalent: not more than £2 million	Starting point £12,500 Category range £6,000 – £25,000	Starting point £6,000 Category range £3,000 – £12,000	Starting point £1,500 Category range £500 – £3,000

Question 5: Are the revised sentence levels for organisations appropriate?

3.12 As agreed at the December meeting, reference to compensation and confiscation has been included at the ancillary orders step of this guideline.

Aggravating and mitigating factors

3.13 The aggravating and mitigating factors are those considered at the October meeting with the removal of ‘falsification of documents’ which is now a culpability factor. The aggravating factor ‘Failure to take up offers of training or other assistance from Trading Standards’ is distinct from the culpability factor of ‘Offender failed to make appropriate changes following advice and/or prior incident(s)’ in that the latter refers to ignoring specific advice given while the former is a failure to take advantage of general offers of help. Some Trading Standards departments will contact retailers to offer training etc and will consider making test purchases with those who do not take up the offers.

3.14 Consideration was given to including an aggravating factor of ‘Supply causes or contributes to antisocial behaviour’, however, in recognition of the limited circumstances in which the offence is prosecuted (i.e. as a result of test purchases) this has not been included.

Question 6: Are the aggravating and mitigating factors for organisations the right ones?

The guideline for individuals – culpability and harm

3.15 The draft guideline is at **Annex B**. Individuals prosecuted will generally be owners and/or managers of businesses who fail to put in place the required safeguards, but could also be employees who disregard the safeguards. The proposed culpability factors are similar to those in the guideline for organisations, with the addition of factors to capture that latter category of offender.

3.16 Harm should be treated in the same way as it is for organisations.

Question 7: Does the Council agree to consult on the culpability factors at Annex B?

Sentence levels

3.17 The majority of offences are punished by way of a fine. In 2019, of 27 adult offenders sentenced 24 were fined, two were made subject to a community order and one received a suspended sentence order. In previous years there have also been a small number of discharges. Fine levels for individuals in 2019 ranged from £34 to £2,000 (the mean was £409 and the median £281). All of these sentences are after any reduction for a guilty plea.

3.18 The proposed sentence levels have been set with a view to maintaining current sentencing practice in terms of the type of sentence passed, while allowing for an increase in the level of fines for the more serious cases to align with the guideline for organisations.

3.19 The reasons for not including custody in the range are to avoid sentence inflation for this offence and to recognise the limited situations in which the offence is prosecuted.

Culpability		
A	B	C
<p>Starting point Medium level community order or Band E fine</p> <p>Category range Low level community order or Band D fine – High level community order or Band F fine</p>	<p>Starting point Low level community order or Band D fine</p> <p>Category range Band B fine – Medium level community order or Band E fine</p>	<p>Starting point Band A fine</p> <p>Category range Discharge – Band B fine</p>

3.20 For reference – the fine bands are:

	Starting point	Range
Fine Band A	50% of relevant weekly income	25 – 75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75 – 125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125 – 175% of relevant weekly income
Fine Band D	250% of relevant weekly income	200 – 300% of relevant weekly income
Fine Band E	400% of relevant weekly income	300 – 500% of relevant weekly income
Fine Band F	600% of relevant weekly income	500 – 700% of relevant weekly income

3.21 As with the guideline for organisations, the fines should be considered in the context of step 3 – adjustment of fine which will be particularly applicable where the offender is the business owner. The wording has been adjusted slightly from the guideline for organisations.

Question 8: Does the Council agree to consult on the proposed sentence levels for individuals?

Question 9: Does the Council agree to consult on the proposed step 3 for individuals?

3.22 The aggravating and mitigating factors are the same as those for the guideline for organisations with the addition of standard personal mitigating factors:

- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

4 IMPACT AND RISKS

4.1 The guidelines are unlikely to have any significant impact on prison or probation resources. They may lead to an increase in fine amounts, but the guidelines specifically address the proportionality of the fine at step 3. A resource assessment will be circulated to Council members along with the consultation document.

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Sale of knives etc to persons under eighteen - Organisations

Criminal Justice Act 1988, s141A

Effective from: TBC

Triable only summarily

Maximum: unlimited fine

Offence range: £500 fine - £1,000,000 fine

Use this guideline when the offender is an organisation. If the offender is an individual please refer to the **Sale of knives etc to persons under eighteen – individuals** guideline.

This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers who otherwise generally operate within the law. Cases of a different nature (such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children) should be sentenced outside the guideline.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Step 1 – Determining the offence category

The court should determine the offender’s culpability and the harm caused with reference **only** to the factors below.

CULPABILITY
<p>High</p> <ul style="list-style-type: none"> • Offender failed to put in place standard measures to prevent underage sales - <ul style="list-style-type: none"> ○ For in store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts ○ For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection. • Offender failed to act on concerns raised by employees or others • Falsification of documents • Offender failed to make appropriate changes following advice and/or prior incident(s)
<p>Medium</p> <ul style="list-style-type: none"> • Systems were in place but these were not sufficiently adhered to or implemented • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out and/or ○ The offender’s culpability falls between the factors as described in A and C
<p>Low</p> <ul style="list-style-type: none"> • Offender made significant efforts to prevent underage sales falling short of a defence

HARM

The harm caused by this offence relates to the risks associated with children and young people being in possession of knives. There is just one level of harm, as same level of harm is risked by any such sale to a person aged under 18.

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Very large organisation

Where an offending 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 or equivalent: £50 million and over

Culpability		
A	B	C
Starting point £400,000	Starting point £200,000	Starting point £50,000
Category range £200,000 – £1,000,000	Category range £100,000 – £400,000	Category range £12,000 – £100,000

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

Culpability		
A	B	C
Starting point £200,000	Starting point £100,000	Starting point £20,000
Category range £100,000 – £400,000	Category range £50,000 – £200,000	Category range £5,000 – £50,000

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

Culpability		
A	B	C
Starting point £50,000	Starting point £25,000	Starting point £6,000
Category range £25,000 – £100,000	Category range £12,000 – £50,000	Category range £3,000 – £12,000

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

Culpability		
A	B	C
Starting point £12,500	Starting point £6,000	Starting point £1,500
Category range £6,000 – £25,000	Category range £3,000 – £12,000	Category range £500 – £3,000

The court should then consider adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional 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 sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- 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:

- Offence was a consequence of cost-cutting
- Obstruction of justice
- Failure to take up offers of training or other assistance from Trading Standards

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards

Obtaining financial information [Dropdown box]

Step 3 – Adjustment of fine

Having arrived at a fine level, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should 'step back' and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain
- appropriate additional punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the size and financial position of the offending organisation and the seriousness of the offence.

The fine must be substantial enough to have a real economic impact which will bring home to both management and shareholders the need to operate 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.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties.

Below is a **non-exhaustive** list of additional factual elements for the court to consider.

The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

Factors to consider in adjusting the level of fine

- Fine fulfils the objectives of punishment, deterrence and removal of gain
- The value, worth or available means of the offender
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)
- Impact of fine on performance of public or charitable function

Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 5 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 6 – 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 overall offending behaviour in accordance with the [Totality](#) guideline.

Step 7 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation). (See Proceeds of Crime Act 2002 sections 6 and 13)

- [Ancillary orders – Magistrates' Court](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

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Sale of knives etc to persons under eighteen - Individuals

Criminal Justice Act 1988, s141A

Effective from: TBC

Triable only summarily

Maximum: 6 months' custody

Offence range: Fine – community order

Use this guideline when the offender is an individual. If the offender is an individual please refer to the **Sale of knives etc to persons under eighteen – organisations** guideline.

Note: This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by traders who otherwise generally operate within the law or those employed by such traders. Cases of a different nature (such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children) should be sentenced outside the guideline

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Step 1 – Determining the offence category

The court should determine the offender’s culpability and the harm caused with reference **only** to the factors below.

CULPABILITY
<p>High</p> <ul style="list-style-type: none"> • Offender in a management position failed to put in place standard measures to prevent underage sales - <ul style="list-style-type: none"> ○ For in-store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts ○ For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection. • Offender in a management position failed to act on concerns raised by employees or others • Offender (whether or not in a management position) falsified documents • Offender (whether or not in a management position) failed to make appropriate changes following advice and/or prior incident(s) • Offender (whether or not in a management position) disregarded clear measures put in place to prevent underage sales
<p>Medium</p> <ul style="list-style-type: none"> • Offender in a management position put in place standard measures but these were not sufficiently adhered to or implemented • Offender (whether or not in a management position) failed to fully implement measures put in place to prevent underage sales

<ul style="list-style-type: none"> • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out and/or ○ The offender’s culpability falls between the factors as described in A and C
<p>Low</p> <ul style="list-style-type: none"> • Offender (whether or not in a management position) made significant efforts to prevent underage sales falling short of a defence

<p>HARM</p> <p>The harm caused by this offence relates to the risks associated with children and young people being in possession of knives. There is just one level of harm, as the same level of harm is risked by any such sale to a person aged under 18.</p>
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Step 2 – Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Culpability		
A	B	C
<p>Starting point Medium level community order or Band E fine</p> <p>Category range Low level community order or Band D fine – High level community order or Band F fine</p>	<p>Starting point Low level community order or Band D fine</p> <p>Category range Band B fine – Medium level community order or Band E fine</p>	<p>Starting point Band A fine</p> <p>Category range Discharge – Band B fine</p>

The court should then consider adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional 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 sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- 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 on bail

Other aggravating factors:

- Offence was a consequence of cost-cutting
- Obstruction of justice

- Failure to take up offers of training or other assistance from Trading Standards

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

Step 3 – Adjustment of fine

Where the sentence is or includes a fine, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should ‘step back’ and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain
- appropriate additional punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the financial position of the offender and the seriousness of the offence.

Where the offender is operating as a business, the fine must be substantial enough to have a real economic impact which emphasises the need to operate 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 offender 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.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties.

Below is a **non-exhaustive** list of additional factual elements for the court to consider.

The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

Factors to consider in adjusting the level of fine

- Fine fulfils the objectives of punishment, deterrence and removal of gain
- The value, worth or available means of the offender
- Impact of fine on offender’s ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders/ partners)

- Impact of fine on performance of public or charitable function

Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 5 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 6 – 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 overall offending behaviour in accordance with the [Totality](#) guideline.

Step 7 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation). (See Proceeds of Crime Act 2002 sections 6 and 13)

- [Ancillary orders – Magistrates' Court](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

Equivalent levels in other guidelines**Health & Safety**

Culp: High = fell far short of standard

Med = systems in place but not sufficiently followed

Low = did not fall far short of the appropriate standard

Harm: 3 = low likelihood of death OR medium likelihood of serious injury

Food Safety

Culp: High = fell far short of standard

Med = systems in place but not sufficiently implemented

Low = did not fall far short of the appropriate standard

Harm: 2 = med risk of some harm OR low risk or serious harm

Environmental

Culp: High = reckless failure to put in place and enforce systems

Med = negligent failure to put in place and enforce systems

Low = offence committed with little or no fault

Harm: 2 = risk of high harm

Large organisation - Turnover or equivalent: £50 million and over

Guideline	High	Med	Low
Health & Safety	£540,000 £250,000 – £1,450,000	£300,000 £130,000 – £750,000	£35,000 £10,000 – £140,000
Food Safety	£230,000 £90,000 – £600,000	£90,000 £35,000 – £220,000	£18,000 £9,000 – £50,000
Environmental	£250,000 £100,000 – £650,000	£140,000 £60,000 – £350,000	£25,000 £14,000 – £70,000

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

Guideline	High	Med	Low
Health & Safety	£210,000 £100,000 – £550,000	£100,000 £50,000 – £300,000	£14,000 £3,000 - £60,000
Food Safety	£90,000 £35,000 – £220,000	£35,000 £14,000 – £90,000	£7,000 £3,500 – £18,000
Environmental	£100,000 £40,000 – £250,000	£55,000 £25,000 – £140,000	£10,000 £5,500 – £25,000

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

Guideline	High	Med	Low
Health & Safety	£54,000 £25,000 – £210,000	£24,000 £12,000 – £100,000	£3,000 £700 – £14,000
Food Safety	£24,000 £8,000 – £90,000	£8,000 £3,000 – £35,000	£1,400 £700 – £7,000
Environmental	£24,000 £10,000 – £100,000	£13,000 £6,000 – £55,000	£2,500 £1,000 – £10,000

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

Guideline	High	Med	Low
Health & Safety	£30,000 £12,000 – £54,000	£14,000 £6,000 – £25,000	£1,200 £200 - £7,000
Food Safety	£12,000 £4,000 – £22,000	£4,000 £1,400 – £8,000	£500 £200 – £1,400
Environmental	£12,000 £1,500 – £24,000	£6,500 £1,000 – £13,000	£1,000 £350 – £2,400

Individuals

Guideline	High	Med	Low
Health & Safety	Band F fine Band E fine – 26 weeks' custody	Band E fine Band D fine or low level community order – Band E fine	Band C fine Band B fine – Band C fine
Food Safety	Band E fine Band D fine – 26 weeks' custody	Band D fine Band C fine – Band E fine	Band B fine Band A fine – Band B fine
Environmental	Band F fine Band E fine or medium level community order – 26 weeks' custody	Band E fine Band D fine or low level community order – Band E fine	Band C fine Band B fine – Band C fine