

# Health and safety offences, corporate manslaughter and food safety and hygiene offences

## Response to consultation

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# Foreword



**On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on sentencing guidelines for health and safety, corporate manslaughter and food safety and hygiene offences, and those who attended the consultation events. I also extend my thanks to the members of the judiciary who gave their time to participate in the research exercises undertaken to inform the development of these guidelines.**

The guidelines cover a wide range of offences, and presented unique challenges in identifying the factors that can feature in these offences. The Council is grateful to experts in health and safety and food hygiene who shared their knowledge and experience, which have helped shape the definitive guidelines. As with all Sentencing Council consultations, the views put forward by all consultees were carefully considered over a number of months, and the range of views was of tremendous value in informing the definitive guidelines.

Having recently developed the environmental offences definitive guideline, the Council identified a number of similarities with some considerations which would apply when sentencing offences covered by the new guidelines. These include the approach to

be taken in sentencing organisations and how best to ensure that the aims of sentencing are achieved by ensuring fines mark the seriousness of offences in a way that is fair and proportionate to the means of offenders. The importance of this was reflected in a recent judgment of the Lord Chief Justice in an environmental case, and the Council is satisfied that the new guidelines will support sentencers in giving effect to this principle.

The general approach outlined in the consultation has been maintained, with a number of amendments made to improve the efficacy of the guidelines. The Council anticipates that these guidelines will provide valuable guidance in sentencing what are often complex cases, and improve consistency and proportionality in the approach to sentencing these offences.

**Lord Justice Treacy  
Chairman, Sentencing Council**

# Introduction

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence.

The Sentencing Council began the development of a guideline for health and safety, corporate manslaughter and food safety and hygiene offences following on from the environmental offences guideline, which was published in February 2014.

As set out in the consultation document, prior to this guideline there was only a definitive guideline for corporate manslaughter and health and safety offences causing death, and very limited guidance for sentencers on other health and safety and food safety and hygiene offences. The Council found that given the lack of familiarity on the part of sentencers with some of these offences, guidance was required. The Council also identified a number of issues with sentencing practice, including inconsistency in how various factors were weighted and applied, and the fact that sentences in some cases were not fulfilling the purposes of sentencing.

To address these issues, the Council decided to develop for the first time one comprehensive guideline to incorporate all health and safety offences committed by organisations and individuals, including those causing death. This in turn led to the revision of the Sentencing Guidelines Council (SGC) guideline for corporate manslaughter, which also applied to health and safety offences causing death.

The Council received requests for the development of a guideline for food offences from the Food Standards Agency and others who were concerned at the absence of specific guidance for sentencing food safety offences. The development of guidelines for environmental and health and safety offences provided a further argument that food offences should not be excluded from the new approach the Council is taking to regulatory offences.

To assist the Council in developing the guideline, several information gathering and research exercises were carried out. At an early stage, approximately 90 transcripts of Crown Court sentencing remarks from health and safety, corporate manslaughter and food safety and hygiene offences cases were reviewed, in order to help understand some of the key factors influencing sentencing decisions in these cases.

The Council consulted on a draft guideline for health and safety, corporate manslaughter and food safety and hygiene offences between 13 November 2014 and 18 February 2015. During the consultation period the Council held consultation events with health and safety legal practitioners and those in construction, insurance, utilities, industry, retail, food manufacture, hospitality and leisure, as well as the Food Standards Agency and enforcement practitioners from local authorities. The Council is grateful to the Health & Safety Lawyers' Association, DWF LLP and the FSA for hosting these events.

### Consultation events

Date	Attendees	Category	Location
21/11/14	HSLA Conference	Legal practitioners	London
09/12/14	Cambridge Magistrates' Court	Magistrates	Cambridge
15/01/15	St Albans Magistrates' Court	Magistrates	St Albans
27/01/15	DWF LLP	Legal practitioners, retail and industry	London
03/02/15	Food Standards Agency	Prosecutors and local authorities	London
06/02/15	York Magistrates' Court	Magistrates	York

A Justice Select Committee event was attended by Council representatives and various interested parties, to discuss the guideline.

During the consultation period a small programme of qualitative research with magistrates and Crown Court judges was undertaken to explore how the draft guideline might work in practice. For the health and safety and food safety and hygiene offences guidelines, researchers conducted group discussions and a series of hypothetical sentencing exercises using the draft guideline with groups of magistrates in three different locations around the country. In addition, a small group of magistrates carried out the sentencing exercises individually, online.

Concurrently, for the corporate manslaughter guideline, researchers interviewed four Crown Court judges who had each recently sentenced a corporate manslaughter case.<sup>1</sup> In order to explore what impact the revised guideline might have on sentencing levels, the judges were asked to re-sentence their case using an early draft of the guideline, explaining their thinking and offering critiques and suggestions as they went along. The findings from these research exercises with magistrates and judges influenced the content of the definitive guideline.

The guideline will apply to all individual offenders aged 18 and older and to organisations who are sentenced on or after 1 February 2016 regardless of the date of the offence.

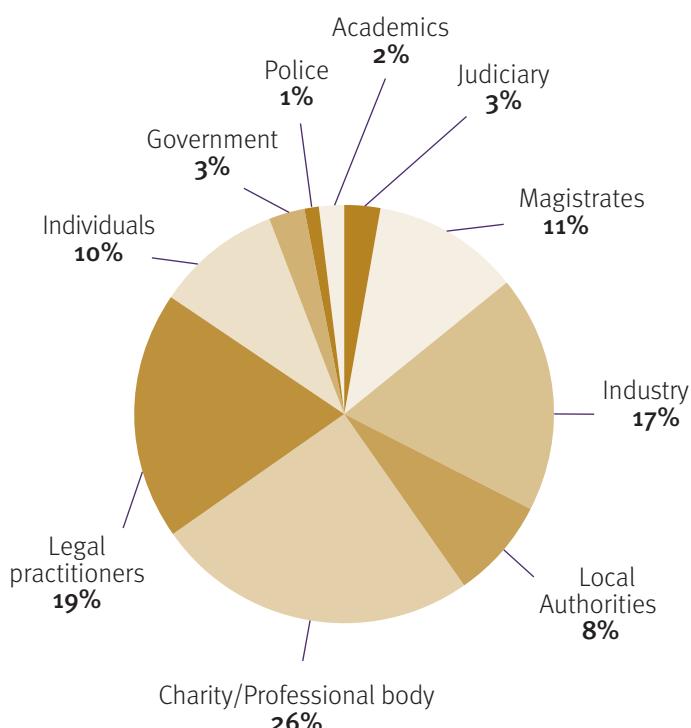
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<sup>1</sup> Although only four judges were interviewed, it must be borne in mind that since enactment of the Corporate Manslaughter and Corporate Homicide Act 2007, fewer than 10 organisations have been sentenced for Corporate Manslaughter under section 1 of the Act.

# Summary of responses

The consultation sought views from respondents on five main areas: the aims and overarching issues; the guidelines for health and safety offences; the guidelines for corporate manslaughter; the guidelines for food safety and hygiene offences; and the impact on victims and equality and diversity.

There were a total of **104** respondents to the consultation, of which **67** provided email or paper responses and **37** responded online.



## Breakdown of respondents\*

Type of Respondent	Number
Judiciary (2 representative bodies)	3
Magistrates (11 collective and 1 individual response)	12
Industry	18
Local Authorities	8
Charity/Professional body	27
Legal practitioners	20
Individuals	10
Government	3
Police	1
Academics	2
<b>Total</b>	<b>104</b>

\*Not all respondents answered each question.

In addition, feedback received from the Council's consultation events and interviews with sentencers during the consultation period is reflected in the responses to individual questions below.

In producing the definitive guideline the Council has also had regard to ensuring that sentences are consistent with and proportionate to those for environmental offences, because similar issues exist in relation to the sentencing of organisations.

The Council has carefully considered all the responses received and these are addressed in this consultation response.

The principal substantive themes emerging from responses related to:

- the approach to assessing the means of offending organisations, specifically the use of turnover to categorise an organisation's size;
- levels of fines, particularly increased fines for large organisations;
- the proportionality of proposed fines for organisations;
- the assessment of harm in health and safety offences;
- culpability factors for guidelines for organisations and individuals; and
- risk of harm in food safety offences.

### **Summary of changes**

The Council has also noted consultation responses and findings from its research with sentencers relating to the practical application and efficacy of the guideline. On the basis of feedback from this research and from other consultation responses, a number of minor changes have been made across the guideline to improve clarity. Where these are significant, the consultation document explains the rationale for amendments which have been made.

The changes relate to a number of culpability and harm factors within the guideline; the structure of the health and safety harm assessment; aggravating and mitigating factors being added or amended; greater clarity of the assessments to be made and factors to consider in various steps across the guideline.

# Response to specific questions

## Aims & Overarching issues

### Breakdown of respondents\*

Type of Respondent	Number
Judiciary (both representative bodies)	2
Magistrates (8 collective and 1 individual response)	9
Industry	18
Local Authorities	6
Charity/Professional body	24
Legal practitioners	18
Individuals	8
Government	1
Police	1
<b>Total</b>	<b>87</b>

\*Not all respondents answered each question.

Questions 1 – 9 of the consultation document related to the aims and overarching issues of the guideline. Specifically these related to the overarching principles for setting fines; the balance and flexibility of the guideline; how turnover and profit and other financial factors assist sentencers in identifying fine levels; identification of other relevant factors affecting the calculation of fines; the categorisation and approach to fines for organisations and

individuals; guidance on obtaining financial information from corporate offenders; the structure of the guidelines and the proper approach to determining fines for individuals, and whether compensation and confiscation should be considered as a separate step within the guidelines.

The majority of respondents to these questions were positive regarding the aims of the guideline.

Question 1 of the consultation sought views on the overarching principles for setting fines for the offences covered by the guideline. These principles were set out in step three of the draft guideline and articulated as follows;

*'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.'*

Eighty-five per cent of the respondents answering this question endorsed this approach.

*"Members welcome the draft guidance and the need for greater clarity and consistency in sentencing. The principle of sentences being "fair, consistent and proportionate" is supported, along with the objective that sentences should reflect the seriousness of the offence, take into account the financial circumstances of the offender and meet the aims of appropriate punishment and deterrence."*

**UK Contractors' Group**

*"Sentencing guidelines must recognise that health and safety offences are criminal acts that should be treated no differently to other crimes involving violence."*

**Unite the Union**

*"Yes, JCS supports the approach that the fines should reflect the seriousness of the offence, take account of the financial circumstances of the offender and the extent to which the offender fell below the required standard. JCS accepts that the main purposes of sentencing will be punishment and deterrence and that the level of fine should aim to remove any economic gain. For corporate offenders the JCS supports the approach that any fine should be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with legislation and achieve a safe environment. The JCS would note that this approach would be consistent with the approach under the Environmental Offences guideline."*

**Justices' Clerks' Society**

Sixty-eight per cent of overall respondents answered question 2 which related to the proposed structure of the guidelines for organisations, with more than two thirds of these endorsing the proposed structure.

*"In broad terms we agree that the guidelines strike an appropriate balance between consistency and flexibility."*

**Weightmans LLP**

*"Yes, and if these are freely available when published, they help to demystify the process to regulators and the public alike. Treating individuals as distinct from organisations is useful because many small business owners come before the courts about whom the regulator may know little. Giving structure to the sentencing to take place in these circumstances is most beneficial."*

**South East London Food Law Enforcement Liaison Group**

*"It's important that there is clear guidance provided to magistrates and Judges (especially Magistrates) but that it is guidance and not "set in stone". Each case as we know has its own unique characteristics and these need to be borne in mind when sentencing. The guidance is step by step, easy to understand and asks questions of the sentencer at each stage of the process so that relevant factors are considered and not forgotten."*

**Dyfed Powys Police**

Question 3 of the consultation asked if respondents agreed with how turnover, profit and reference to other financial factors were used in the guideline to assist sentencers in identifying fine levels. A number of responses were critical of this approach, and responses raising this issue cut across a number of questions. In particular, concerns were raised regarding use of turnover to determine an offending organisation's means, and levels of fines.

*"We do not agree with how turnover, profit and reference to other financial factors have been used in the guideline to assist sentencers in identifying fine levels. We are of the opinion that the bands will result in unfairly high fines being imposed on large organisations when there is no justification for such an increase."*

DWF LLP

*"Linking fines to turnover would lead to a situation where firms of varying sizes receive grossly different fines for similar incidents, going far beyond the differentiation needed to take account of financial means. Such a rigid structure would reduce the flexibility afforded to sentencers thus hampering their ability to tailor the fine to the situation. This in turn would move the UK towards a more compliance-based approach to health and safety. This is not what we want to see as, quite simply, more box-ticking, form filling in and monitoring is unlikely to improve the UK's record on health and safety."*

CBI

*"Turnover – a lone yardstick in this consultation for deciding on sentencing – is often a dismal measure of a company's actual resources. In our sector (notably construction) turnover may be high but it may not correlate to profits or profitability. Profitability in the sector can vary between negative (loss) and a few percent, so that a company with £10 million turnover might, for example, achieve a profit of around £100,000. Based on many of the proposed figures, a responsible mid-sized contractor could see its entire annual profits (including its ability to invest in health and safety) wiped out by a fine, for many types of offence."*

Electrical Contractors' Association

The Council considered the concerns that were raised, and the Council's observations in response to these issues are set out below.

### **Use of turnover to identify category of an organisation**

The Council has chosen to use turnover or equivalent (in the case of non-commercial organisations) to identify starting points at step two, which is consistent with the approach in the environmental guideline.

As stated in the consultation document for this guideline, the Council considered turnover to be a clear financial indicator that can be readily identified by sentencers in accounts or annual reports, and one that 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 which responded following their stakeholder inclusive seminar in relation to the guideline. The Justice Select Committee 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 the concerns regarding the use of turnover to identify the starting point of a fine, and will provide for a robust and full assessment of an organisation’s finances by the court.

### Fine Levels

Other responses focused on the levels of fines for offences covered by the guideline.

Eighty-five per cent of respondents endorsed the approach to fines within the guideline, and agreed that any fine imposed should be sufficiently substantial to have a real economic impact on offenders.

*“APIL agrees that in these cases, the fine should reflect the seriousness of the offence and society’s abhorrence at breaches of health and safety law; sending a message that such breaches will not be tolerated. We agree that the fine should reflect the extent to which the offender fell below the required standard and that it should meet, in a fair and proportionate way, the aims of punishment and deterrence.”*

**The Association of Personal Injury Lawyers**

The minority of 15 per cent who disagreed raised concerns about the increase in fines for larger organisations which could result from the new guideline.

*“With the vast majority of firms already doing all they can to ensure the health and safety of their staff, increasing the fines is very unlikely to reduce the number of incidents that occur.”*

CBI

*“We have seen no evidence to support the view that harsher sentences for large organisations is needed or that it will improve industry health and safety compliance.”*

TLT LLP

*“As business does not set out to breach the law, the extent to which higher fines would change behaviour and deter anyone from offending is questionable as being compliant is the primary intention of business.”*

DWF LLP

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 Sentencing Guidelines Council (SGC) guideline 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 judgment of the Lord Chief Justice, where the importance of identifying a level of fine that achieves the aims of sentencing given the financial circumstances of the offender in question was reiterated.<sup>2</sup>

The SGC guideline stated that for an offence of corporate manslaughter the ‘appropriate fine will seldom be less than £500,000 and may be measured in 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 stated ‘it is just that a wealthy defendant should pay a larger fine than a poor one’. A review of sentencing practice concluded that this clear statement of policy 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, was identified.<sup>3</sup>

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 fair and fundamental to sentencing for these offences.

The Council will monitor the impact of the guidelines following their introduction.

### **Disproportionate effect of fines**

A number of consultation responses raised the disproportionate effect of fines on micro organisations when compared to organisations with higher turnovers. **Annex C** provides an illustration of the proportionate effect of the starting point of fines for health and safety and food safety offences on each category of organisation.

The Council recognises that the effect of fines for smaller organisations may appear disproportionate given their size in terms of percentage of turnover, and this is particularly noticeable where offences involve a high level of harm. This is due to the Council’s decision to maintain the principle set out in 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. This is wholly in keeping with the policy of the Court of Appeal that when sentencing offences causing death, the sentence must reflect the serious consequences of the offence.<sup>4</sup>

The Council would highlight that, prior to the new guideline, sentences for offences involving a high level of harm demonstrated a much greater disproportionate effect, with fines imposed on larger organisations representing a very small percentage of their turnover in many cases. As was set out at page 30 of the consultation document, in developing fine levels the Council considered a number of cases which illustrated this point. Examples given included offences that caused death which the Council considered to be broadly comparable in terms of culpability. These included a company, with a turnover in the region of £350 million, which was fined £175,000 after an early guilty plea. This represented 0.05 per cent of the company’s turnover. A micro company, with a turnover of around £1 million, was fined £50,000 for breach of section 3 and £20,000 for a failure to undertake a risk assessment for the same incident after an early guilty plea. The overall fine imposed represented 7 per cent of the percentage of turnover of the micro organisation.

Due to the importance of maintaining the principle 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, the fines in the new guideline represent a slightly higher percentage of the turnover of micro and small organisations compared to medium and large organisations. However, the Council has ensured that this is much less marked than under previous sentencing practice. It is also important to note that, as pointed out by the Justice Select Committee response at page 9 of this

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

4 AG Reference 60, 62 and 63 (Appleby) [2009] EWCA Crim 2693

document, steps three and four of the guideline require the court to step back and review, and if necessary adjust, the initial fine proposed 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 guideline provides that the court may adjust the fine upwards or downwards, including outside of the range, where it may be appropriate to do so.

### **Resources of linked organisations**

A small number of respondents raised concerns regarding the provision at step two of the guideline for the resources of linked organisations to be taken into account. Specifically, the guideline states;

*'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.'*

Some respondents objected to this approach as a perceived “erosion of the legal principle of the corporate veil.” Following consideration of this provision, the Council is satisfied that 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.

### **Quantifiable economic benefit**

Question 4 of the consultation related to the guideline’s provision that quantifiable economic benefit derived from the offence should be considered in calculating a fine. Ninety per cent of those who responded to this question were in agreement with this provision, feeling that it should not be cheaper for an offender to be fined for an offence than to comply with the law. Some respondents, including the HSE and FSA, highlighted the lack of a mechanism for quantifying economic benefit. The Council

considered this submission and recognised the potential difficulty for sentencers in identifying the quantifiable economic benefit of an offence. To address this, the Council decided that the definitive guideline should include the wording *"where it is not possible to quantify the economic benefit, the court may wish to draw on information from enforcing authorities about general costs of operating within the law."*

This also provides consistency with the environmental guideline.

### **Categorisation of organisations**

Seventy-seven per cent of respondents answering question 5 were in agreement with the approach used for categorising micro, small, medium and large organisations. As set out at page 15 of the consultation document, the categories of each size of organisation are loosely based on sterling equivalents of EU definitions of small and medium enterprises. There was substantial support and acknowledgment of the consistency of approach with the definitive environmental guideline in responses.

Eight respondents did, however, feel that the ‘micro’ category was too broad. The FSA highlighted that approximately 95 per cent of all food enterprises would fall into this category. It was felt by some respondents that a small independent trader with small profit margins being in the same ‘micro’ category of an organisation with a turnover of £2 million was disproportionate, and it was suggested that a sub-category should be created for very small businesses, or additional reference made to such organisations as is included for very large companies. The Council considered this, but due to the low levels of fines within this category it was felt that this would not be useful for sentencers. Again, the Council would point to the flexibility of the guideline, which will provide for full consideration to be given to the means of organisations, including those with a very low turnover. This issue was also raised and discussed at the Justice Select Committee event,

where it concluded that there was not a need for a sub-category for very small companies, as prosecuting authorities often prosecute the individual as the owner of a company in such circumstances.

Some respondents suggested that additional fine bands should be added to the ‘large organisations’ category, or that the £50 million minimum for this category be increased. The Council considered this and would point out that following the consultation responses on the environmental guideline, the large organisation category was extended from a minimum turnover of £25.9 million to £50 million. Having made this decision so recently, the Council decided not to deviate from the approach of the environmental guideline.

### **Very large organisations**

A further suggestion made by some respondents was that a proportionate multiplier be included in the guideline to clarify a suitable calculation when imposing fines for very large organisations. The Council decided not to include such a feature within the guideline for a number of reasons. Firstly, the Council wished to maintain consistency with the approach in the environmental guideline. Secondly, a number of recent cases have dealt with fines for very large organisations, which the Council believes will provide guidance for sentencers. The most recent of these was the decision of the Court of Appeal in *R v Thames Water*.<sup>5</sup> The court did not advocate the use of a proportionate multiplier in that case, stating that ‘*there must not be a mechanistic extrapolation from the levels of fine suggested for large companies*’, which supports the position the Council has taken on the matter. The judgment in that case also stated that ‘*sentencing very large organisations involves complex issues.*’ The Council agrees with this, and considers that due to this complexity a proportionate multiplier could hinder sentencers and would conflict with the guidance to ‘consider the financial circumstances of the organisation in the round.’

### **Wider factors to consider when setting fines**

Question 6 of the consultation sought views on the wider factors that the court should consider when finalising fines. These are set out in step four of the guidelines for organisations, and include the impact of a fine on innocent third parties, such as employees or service users. Seventy-seven per cent of the respondents to this question approved of the guideline providing for a consideration of these wider factors.

Seven respondents did highlight that the draft guideline gave the perception that a two tier system existed, with a more lenient approach to the fining of public or charitable bodies. The Council considered this, and recognised that this perception was caused by the presentation of the step, as in the draft guideline it appeared that the second paragraph of the consideration was only applicable to public and charitable bodies, which was not the Council’s intention.

To address this, the Council has restructured step four in the definitive guideline to clarify that the consideration of wider factors applies to fines for all organisations.

### **Guidelines for individuals**

Questions 7 and 8 related to the guidelines for individuals, with question 7 seeking views on the structure of the guidelines, and question 8 on the factors for finalising fines for individuals at step three.

Fifty per cent of those who responded answered question 7, with 85 per cent of those in agreement with the structure of the individuals’ guideline.

*“The proposed guidelines are of considerable assistance in setting out thresholds for both custody and fines.”*

The British Safety Council

5 R v Thames Water Utilities [2015] EWCA Crim 960

The six respondents that disagreed included those who felt that the guideline provided insufficient custodial sentences, and others who believed that custodial sentences should only be used in very limited cases. A fuller discussion of responses regarding custodial sentences for individuals is included in this response document, where this was raised in responses relating to a specific guideline.

Fifty per cent of respondents answered question 8, with an overwhelming majority in agreement that the guideline includes the correct factors in relation to finalising a fine for individuals.

### Compensation and confiscation

As set out in the consultation document, the Council took the decision not to include specific steps for a consideration of compensation and confiscation in relation to the offences within the guideline. This is because these are unusual considerations in health and safety and food safety and hygiene offences. The assessment of compensation in these cases will usually be complex and, where harm has occurred, there will often be civil proceedings which are more appropriate for dealing with compensation issues. To capture the few cases where a compensation order may be appropriate, the Council has referenced it at step seven of the guidelines for organisations and step six of the guidelines for individuals. A majority of 77 per cent of respondents to question 9, which sought views on this, were positive regarding this approach.

*"In almost all cases involving death or injury there will be a civil claim. It may raise complex issues of liability on e.g. contributory negligence and certainly on quantum of damages. These matters are much better left to the civil courts to determine. They are not appropriate for the summary procedure of compensation in the criminal courts. To do so would unnecessarily complicate the sentencing process without benefiting the victims or the broader interests of justice."*

Criminal Committee of the Council of H.M. Circuit Judges

## Health and safety offences

### Breakdown of respondents\*

Type of Respondent	Number
Judiciary (both representative bodies)	2
Magistrates (10 collective and 1 individual response)	11
Industry	15
Local Authorities	7
Charity/Professional body	22
Legal practitioners	15
Individuals	7
<b>Total</b>	<b>79</b>

\*Not all respondents answered each question.

Questions 10–25 related to the section of the guideline dealing with Health and Safety Offences.

### Scope

Question 10 sought views on the proposed scope of the guideline, which covers section 33(1)(a) for breaches of section 2 and 3 of the Health and Safety at Work Act 1974 (HSWA), and the offence under section 33(1)(c) of the HSWA of contravening any health and safety regulations or any requirement or prohibition imposed under such regulations. These offences apply to both organisations and individuals. The guideline also covers sections 36 and 37 of the HSWA and the offence of breaching the general duty on employees under section 7 of the HSWA, which apply to individuals only. Seventy-nine per cent of those who responded agreed with the scope.

The Council considered a number of other offences which were suggested for inclusion within the guideline.

The first of these were offences under the Control of Major Accident Hazards Regulations 1999 (COMAH). Many offences governed by these provisions are already covered by s33(1)(c) of the HSWA. The Council considered that the remaining COMAH offences would not be suitable for inclusion since they involve a range of factors and considerations not included within the guideline.

Other offences which were suggested for inclusion included fire safety offences. These were suggested by five respondents, including the London Fire and Emergency Planning Authority. The Council considered the inclusion of these offences, but decided against it. The Council felt that applying the factors in the guideline to offences involving risk of fire had the potential for distorting sentence levels.

It was also suggested to include a further category of offences relating to Houses in Multiple Occupation (HMOs). The Council considered these offences and decided that they should not be included for a number of reasons. Firstly, the offences are summary only, so the statutory maxima differ from other offences covered by the guideline. As such, the starting points and ranges provided in the guideline would not be appropriate for sentencing these offences. The Council did consider whether these offences could be included as offences relevant and analogous to other offences within the guideline, but concluded that this was not possible due to a lack of similarity with culpability and harm factors for food hygiene offences, and the risk focused harm assessment for health and safety offences. Secondly, while prosecutions for these offences have increased slightly over recent years, the low volumes of these offences would not warrant a complete revision of the guideline to attempt to accommodate them.

The Council has noted the appetite that exists for guidance to be available for all of the offences proposed, and will consider whether they would be appropriate for inclusion within other relevant guidelines that may be developed in the future.

### Culpability

Question 11 related to the proposed culpability factors for organisations and individuals at step one of the guidelines. Fifty-seven per cent of respondents answered this question. Of those who responded, 82 per cent endorsed the proposed culpability factors for organisations

and individuals at step one of the health and safety guidelines.

Those who disagreed questioned the different terminology used for individuals and organisations, which some felt to be an unnecessary complication. Respondents raising this issue were concerned that the subjective nature of the headings 'reckless' and 'negligent' used to categorise culpability for individuals could lead to inconsistency in culpability assessments. Some respondents highlighted that there may be an increase in 'Newton' hearings to decide which level of culpability would be most appropriate, especially when dealing with offences of strict liability where the extent of culpability may not have been considered. A number of respondents raised particular concerns with the culpability factors 'negligent' and 'reckless' for individuals, stating that these terms have no specific legal definition and that an offender could be assessed as both negligent and reckless.

*"We do not agree with the different terminology for organisations and individuals, which we believe introduces unnecessary complications. There is no reason not to use the culpability levels of very high, high, medium and low for both."*

Central and South West Staffordshire Bench

*"The state of mind determination, that would have a huge impact on the level of fine under these proposals, is a complex inquiry that is not part of the evidence that would be required to prove the offence at trial. These offences are not the usual mens rea offences. Determining the state of mind factor will divert attention and require considerable work at sentencing hearings, turning them into Newton hearings, or similar. A very much simpler approach would be to use the same culpability headings for individuals as for companies."*

*The state of mind factors can still be used, but merely as indicators of the sort of behaviour that would put an individual in a particular category.”*

Turnstone Law

In our research exercises, some of the participating magistrates also felt that this terminology was unclear. For example, some struggled with the precise difference between ‘deliberate’ or ‘reckless’, resulting in a division of opinion over whether an offender in a hypothetical sentencing scenario should be placed in the highest level of culpability or the next level down.

The Council considered that these concerns were valid, and agreed that the culpability levels of ‘very high’, ‘high’, ‘medium’ and ‘low’ would be better used for both organisations and individuals, to ensure consistency of approach.

A small number of respondents did prefer the distinction of terms used to assess culpability, and one suggestion was that the individual conduct of ‘reckless’ and ‘negligent’ could instead be included as indicators of the level of culpability. However, the Council decided not to include these as factors indicating the culpability level, given the subjectivity of the terms highlighted by other responses.

### Culpability factors

During the consultation period, research was also conducted with the judiciary as to the practical application and effectiveness of the guidelines. This research highlighted an unexpected issue with the use of the word ‘systemic’ within the culpability factors in the organisations guideline. The group discussions and sentencing exercises carried out with magistrates suggested that magistrates had a higher threshold for judging an offence as ‘systemic’ than the Council was expecting. For example, in one exercise carried out, where the offending organisation did not have multiple stores magistrates tended to view an offence

as non systemic. This led to the offence being placed in a low culpability category which provided for non systemic failings, leading to a lower than expected sentence. The Council considered options to mitigate the potential for perverse results in assessing culpability, and decided that the word ‘systemic’ should be removed from all but the high culpability assessment in the definitive guideline, to prevent a default finding of low culpability.

One other culpability factor was raised as a concern by some respondents, which was the low culpability factor of ‘no prior event’. Responses highlighting this factor felt that it would not be appropriate in some cases to assess an incident as low culpability simply due to no prior event occurring, which may have been purely fortuitous. The Council agreed with this view, and in the definitive guideline the factor has been amended to read ‘there was no warning/circumstance indicating a risk to health and safety’.

### Harm

Questions 12, 13 and 14 of the consultation related to the assessment of harm for health and safety offences. Eighty-one per cent of respondents agreed with the overall approach for assessing harm.

*“We understand the challenge faced by the Council in identifying the harm caused in health and safety offences which do not require any proof of actual harm. We agree that the first step must be consideration of the risk of harm. Equally, the fact that harm has actually been caused is an important and relevant factor which will often make the offence more serious. We think that the two-stage approach will ensure that courts can impose appropriate penalties in both types of case.”*

HSE

Where respondents disagreed with the assessment of harm, concerns were raised that a risk of harm could result in high fines,

particularly where there were a substantial number of potential victims, even where no actual harm was caused. The Council would emphasise that the offences covered by the guideline relate to the *risk* of harm created, and the harm assessment must include a focus on this risk. A small number of respondents felt that the harm assessment included too great a focus on actual harm caused. This was in contrast to other responses that felt the harm assessment should include a greater focus on potential harm. The Council carefully considered these views and has maintained the principle in the definitive guideline's harm assessment that the risk of harm must be identified, with any actual harm caused increasing the offence seriousness.

The Council gave very careful consideration to all of the points raised by consultation respondents and conducted a number of reviews and testing exercises of the harm assessment to test its efficacy. While the substance of the harm assessment within the definitive guideline has been maintained, a number of amendments have been effected which seek to improve the clarity of the factors within the harm assessment. These are explained below.

One issue raised in response to question 13 of the consultation on the factors included for assessing risk was the categorisation of 'remote' likelihood of harm. It was suggested that almost every health and safety breach could carry the 'remote' risk of death, and also that the gap between the medium and remote categories was too wide. The Council agreed that 'low' would be a more suitable term to define the lowest category of harm risked, and this change has been effected in the definitive guideline.

A further concern related to the use of the word 'significant'. This word was included in the draft guideline in the first of the two factors to be considered at the second stage of the harm assessment as to whether the offence exposed a 'significant' number of people to the risk of harm; and then again in assessing 'whether the offence was a 'significant' cause of actual harm'.

*"The use of the word "significant" with reference to "a significant number of people to the risk of harm at one time." is problematic. "Significant" has a particular and quasi-technical meaning in relation to significant cause at paragraph 2. It is therefore confusing to use it in relation to the number of people. We suggest that the word significant is removed from paragraph 1. It can then read simply 'Whether the offence exposed a number of people to the risk of harm at one time.'"*

Criminal Committee of the Council of H.M. Circuit Judges

The Council agreed that the use of this word in two different contexts could cause confusion, and that the use of the word 'significant' in relation to the number of people at risk of harm was not sufficiently clear as no definition of 'significant' in this context was provided. The Council therefore decided to remove the word 'significant' from the consideration of the number of people at risk of harm in the definitive guideline, changing it to 'the greater the number of people, the greater the risk of harm'.

Ten respondents were concerned that in assessing 'whether the offence was a significant cause of actual harm' the draft guideline stated that 'the actions of victims are highly unlikely to be considered contributory events'. A number of respondents both in the written responses and attending consultation events believed that victims' actions do, on occasions, contribute to breaches of health and safety and that the guideline should recognise this. Respondents who made this point largely referred to situations where a victim may have wilfully departed from training, guidance or instruction, and knows a risk may be taken in doing so.

*"In practice the actions of victims are often contributing events where an accident has occurred. The Guidance should be made less prescriptive about ruling this factor out in assessing the level of harm. There may be cases where, but for the actions of the victim, the level of harm which could be anticipated would be much less than has actually occurred."*

DAC

*"We wonder whether the guidance ought to make specific reference to a reduction in culpability on the part of an organisation in circumstances in which an employee (or, perhaps, a number of employees) has deliberately and wilfully acted contrary to an organisation's instruction, guidance or training. In other words, where an organisation's breach arises from the wilful act of an individual 'on a frolic of his own' (so to speak) this would be likely to indicate low (and perhaps very low) culpability, which is probably not captured in the current definition."*

RoSPA

In situations such as those envisaged by RoSPA (above), if the offender has not fallen far below the standard required, then this will be reflected in the assessment of culpability as low. As a matter of principle the Council believes it would be wrong to include a general consideration of contributory negligence within the harm assessment. This is because potential offenders are required to assume their responsibilities and duties under the legislation for these offences. The Council was also alert to the possibility that if the guidelines were to provide for the actions of victims to be a consideration in the assessment of harm, then this creates the potential for victims to be used as a 'scapegoat' for the offence.

However, the Council recognised that the wording on this point was not as clear as it could be. To address this, the harm assessment in the health and safety guidelines have been slightly

restructured and reworded, to clarify that the direction not to take into account the actions of victims applies specifically to the assessment of actual harm.

The Council did accept that there are sometimes situations where the victim's actions may have been unforeseeable, and has therefore included a concession to such a situation in the definitive guideline. The draft guideline included the wording 'offenders are required to protect workers or others who may be neglectful of their own safety in a way which should be anticipated'. Some respondents highlighted that any event could be said to be anticipated with the benefit of hindsight. This wording has therefore been amended, to 'offenders are required to protect workers or others who may be neglectful of their own safety in a way which is reasonably foreseeable'.

The Council is of the view that as reasonable foreseeability is a recognised objective legal test, this will address any risk of subjectivity and hindsight in this element of the harm assessment.

The second factor in the second stage of the harm assessment now qualifies that actions of victims are unlikely to be considered as contributory events for sentencing purposes. The word 'highly' has been removed from the assessment in the definitive guideline to address concerns raised that the threshold of 'highly unlikely' within the draft guideline was too high.

Some of the judicial research participants looking at the health and safety and corporate manslaughter guidelines were also concerned about contributory negligence, suggesting that they would find it hard not to factor in the victim's actions, if they appeared negligent. In the corporate manslaughter guideline the reference to the actions of victims appears in the mitigating factors. A similar amendment to the wording of this mitigating factor has been made so that it now reads:

'Other events beyond the responsibility of the offender contributed to the death (**however**, actions of victims are 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 is reasonably foreseeable.)'

### Starting points and ranges of fines

Questions 15 – 18 asked for views on the proposed fines and starting points and ranges for organisations. Many of the issues raised in relation to starting points and ranges of fines have already been discussed earlier in this response document. Other issues that were raised in relation to these questions are discussed below.

For micro organisations, there were some concerns that starting points at the lower end of the range were far too low to fulfil the aims of sentencing for these offences. It is important to bear in mind that the micro organisation category will capture organisations with the very lowest means. Therefore while the figures for starting points for micro organisations may appear very low, they are proportionate to starting points for organisations with higher turnovers where there are similar levels of culpability and harm. As already highlighted in the aims and overarching issues section of this response paper, the guideline also provides adequate flexibility for sentencers to adjust the level of fine to ensure it is proportionate to the overall means of the offender.

Responses regarding levels of fines for small and medium organisations were generally neutral, although where concerns were raised they were that the fines are too high and could have a detrimental effect on businesses. Again, the Council would point to the flexibility of the guideline, and in particular step four which will allow the courts to consider the impact of any fine imposed upon a business.

As already highlighted in the aims and overarching issues section of this response

paper, starting points and ranges of fines for large organisations were significantly criticised, mostly by those who would be potentially affected by them, or their representatives.

*"We fundamentally disagree with these ranges and feel that there needs to be a different approach to penalising organisations described here as very large."*

Kennedys Law LLP

*"It is not agreed that the starting point for fining an organisation should be based on its turnover. This places more emphasis on finances than on culpability and this is not the correct approach to take to sentencing."*

DWF LLP

This was in contrast to 31 of the 52 responses to this question, which agreed with the approach of proportionality of fines for large and very large organisations.

*"It is very pleasing to see some realistic fine ranges being applied to all sizes of companies."*

DMG Delta Ltd

*"RoSPA believes that fines relating to breaches of legislation which fall within the scope of these guidelines should reflect the financial circumstances of the offender, and be commensurate with the seriousness of the offence. This is particularly relevant when dealing with large organisations, where we welcome the opportunity to be given to sentencers to move outwith the suggested range, thereby allowing a proportionate sentence to be reached."*

RoSPA

*"Ensuring that fines are proportionate both to the seriousness of the offence and the size and financial resources of the company is consistent with the principles contained within HSE's Enforcement Policy Statement."*

HSE

### Sentencing practice

Question 19 asked for views on the impact of the proposals on current sentencing practice for organisations that have committed health and safety offences. Concerns raised included the potential impact of increased fines on organisations in terms of the financial impact, or the effect of fines on the provision of their services. A number of respondents stated that the proposals will lead to greater consistency, by providing clearer guidance in assessing ranges and sentencing.

There were views expressed at the Justice Select Committee event, and in a few written responses, that higher fines could reduce the number of guilty pleas for offences and result in a greater number of trials. A further concern raised was that the duration of the sentencing process may increase because of the need to consider detailed financial information. The Council recognises that these offences will require complex consideration during sentencing, and will work with the Judicial College to develop training materials for sentencers.

### Sentences for individuals

Questions 20 – 23 focused on sentences for individuals. Question 20 asked for views on the proposed use of custodial starting points for individuals. Forty-two per cent of respondents answered this question, with an 84 per cent majority agreeing with the proposed custodial starting points for individuals.

Those who disagreed felt that the guideline should make it clear that a prison sentence should be the last resort, reserved for the most extreme offences. A number of respondents felt that custody for an offence involving negligence (now medium) or low culpability would be harsh, and that the Council should revisit this point. For medium and low culpability offences the starting points are non-custodial sentences, with custody included within the sentence range to capture offences where high levels of harm are present. The Council considers that such

sentences should be available to sentencers to mark the seriousness of such offences.

A number of respondents also felt that the custodial sentences for the more serious offences, particularly those involving death or very serious injury, are relatively modest. However, 2 years' custody is the statutory maximum for the offence, and the ranges within the guideline are unable to exceed this maximum.

Forty-one per cent of overall respondents answered question 21, which sought views on whether the use of community orders and fines in the health and safety guideline was appropriate and sufficient. Ninety per cent of those respondents agreed that it was.

Question 22 sought views on the remaining starting points and ranges for individuals within the guideline. Only 37 per cent of overall respondents answered this question, with the majority of respondents in agreement. Those who disagreed thought that some starting points were too low and the highest sentences were too lenient. As with all guidelines, sentence ranges are constructed within the statutory framework for offences, and a gradation of sentences within the ranges is required to reflect different levels of harm and culpability within offences.

Question 23 asked for views on the effect of the guideline on current sentencing practice for individuals who commit health and safety offences. A total of 38 respondents commented, and the general view was that the guideline would achieve greater consistency of sentences, and provide a structured sentencing process with increased transparency. Some respondents anticipated an increase in custodial sentences being imposed, and many believed penalties would act as a deterrent, which would ultimately improve health and safety in the workplace.

### **Aggravating & mitigating factors**

Question 24 sought views on the non-exhaustive list of aggravating and mitigating factors within the guideline. Of the 48 per cent of overall respondents who answered this question, 90 per cent agreed with the proposed factors.

Some respondents disagreed with a mitigating factor which gives credit to an individual or organisation for doing what it is legally obliged to do, such as complying with an investigation or self reporting an incident. A small number of respondents disagreed with the factor ‘evidence of steps taken to remedy the problem’ believing it would be unjust to allow an offender to benefit from putting things right after an offence had been committed. The Council intended that this factor would apply where an offender had voluntarily addressed a problem without being compelled to do so, believing that this should be recognised by the courts even though there is a legal duty to provide a safe place of work. Its value as mitigation flows from the fact that it shows a prompt recognition of the failure and a willingness to correct it. To ensure this is sufficiently clear, the Council has amended the factor within the definitive guideline to ‘evidence of steps taken *voluntarily* to remedy the problem’. With all mitigating factors, sentencers will decide in all the circumstances of the case whether the factor applies and if so, how much weight should be given to it.

Concern was raised regarding the inclusion of the aggravating factor ‘relevant/recent previous convictions’ in the context of health and safety offences. The concern arose in relation to organisations employing a large number of people. Some respondents suggested that these organisations are at a higher risk of committing multiple offences due to the volume of staff they employ. It was requested that this factor be qualified in terms of the relevance of any other offences. The Council considered this but decided that this would not be appropriate as previous convictions are a statutory aggravating factor. These are already qualified in terms of the relevance of the new offence to the previous

conviction and the time that has elapsed since the previous conviction, and it would not be appropriate for the Council to qualify Parliament’s intention that this factor should apply.

Additional aggravating factors suggested were seeking to exploit vulnerable people, and seeking to exploit people on grounds of race, religion, disability or sexual orientation.

To address this, the Council decided that the inclusion of an aggravating factor ‘targeting vulnerable victims’ would be appropriate, because it was felt that this factor could apply, for example, to an employer who uses a workforce less able to challenge unsafe working conditions, for example due to limited language skills. The definitive guideline includes this factor.

### **Ancillary orders & compensation**

Question 25 asked whether respondents considered the guidance on compensation and ancillary orders to be sufficient. Of the 43 respondents to this question, 37 agreed that it was. As set out earlier in this response, the assessment of compensation in these cases will usually be complex and, where harm has occurred, there will often be civil proceedings which are more appropriate for dealing with compensation issues. To capture the few cases where a compensation order may be appropriate, the Council has referenced it at step seven of the guideline for organisations and step six of the guideline for individuals.

Some responses believed the guidelines should provide a greater focus on remedial orders. Step 7 of the guideline for organisations and step 6 of the guideline for individuals provides for the court to impose a remediation order in addition to, or instead of imposing any punishment on the offender. Responses requesting a greater focus on this were in contrast to the view of the HSE, which stated:

*"In relation to the ancillary order of remediation under Section 42(1) HSWA, we think it might be helpful to provide some further guidance to avoid courts spending too much time considering such orders. In view of the powers of HSE inspectors to issue enforcement notices, it is likely that action will have already been taken to remedy the breach."*

The Council has retained this factor within the definitive guideline, and would also point to the range of mitigating factors at step two which provide for a range of positive action on the part of offenders to mitigate the seriousness of offences.

## Corporate manslaughter

### Breakdown of respondents\*

Type of Respondent	Number
Judiciary (1 representative and 1 individual response)	2
Magistrates (3 collective and 1 individual response)	4
Industry	10
Local Authorities	5
Charity/Professional body	12
Legal practitioners	12
Individuals	6
Police	1
<b>Total</b>	<b>52</b>

\*Not all respondents answered each question.

Questions 26 – 33 of the consultation related to offences of corporate manslaughter.

### Harm and culpability

The majority of respondents agreed with the overall approach to assessing seriousness at step one of the corporate manslaughter guideline, and the proposed questions relating to assessing culpability and harm. Some respondents did, however, raise concerns over the inclusion of two offence categories.

*"It is unclear why two offence category levels are required. There seems to be no sense in saying there are more serious and less serious corporate manslaughter offences. The offence by definition is of the most serious nature and it is artificial to split the offence in two."*

BLM

It was suggested that as the sentence range for the offence provides sufficient guidance as to where the starting point for the offence is, and the draft guideline ranges contained an overlap of ranges, one offence category would be sufficient.

*"Whilst we agree that even with a serious offence such as manslaughter, there can be different levels of seriousness and culpability; we do not think it is necessary to prescribe two levels. As the category ranges already overlap significantly, we think that the guideline could provide one starting point and range for each size of organisation. The court could then take into account the various factors set out in the guideline to determine where on the range the case should fall."*

HSE

Some respondents also highlighted that as the offence of corporate manslaughter will always involve a death, then one death should not be considered more serious than another.

In the research exercises, three of the four cases re-sentenced were judged to fall under category A, and these judges found it quite difficult (although not impossible) to envisage an offence which would constitute corporate manslaughter but fall into B, since corporate manslaughter by definition is always extremely serious.

In response to these observations, the Council considered improvements which could be made to the guideline in this respect.

The Council decided that the definitive guideline should retain two categories of offence. The Council did, however, agree that offences in category A should not be defined as 'more serious offences'.

The definitive guideline therefore contains two offence categories. These are presented as Category A and Category B. Step one highlights which factors should identify the category of the offence.

### Starting points and ranges

Questions 28 – 31 related to the starting points and ranges of fines for this offence. Thirty-eight per cent of overall respondents answered these questions, with a 73 per cent majority agreeing with the proposed starting points and ranges for micro, small and medium organisations in the corporate manslaughter guideline.

Forty-two per cent of overall respondents answered question 31 which related to the proposed starting points and ranges for large organisations, with 68 per cent of those in agreement with the proposals.

As with the guidelines for health and safety offences, where concerns were raised these mostly related to the use of turnover to categorise an organisation, and increased fines for large organisations. In the corporate manslaughter research exercises, some of the judges shared the concerns expressed in the consultation that turnover is a blunt instrument on which to base a fine, and all four hypothetical fines arrived at under the draft guideline were largely governed by financial factors other than turnover. The Council considers that this demonstrates that sentencers will fully consider steps three and four of the guideline when imposing fines.

After consideration, the Council has maintained the principle that proportionality must be achieved when imposing fines and also reflect the seriousness of the offence, and has not revised fine levels in the definitive guideline.

### Aggravating and mitigating factors

Question 32 sought views on the aggravating and mitigating factors for corporate manslaughter offences. A total of 42 respondents answered this question, with the majority of respondents in agreement with the proposed factors.

Similar responses were received as to question 24, which related to the health and safety guideline. They related to the mitigating factor ‘steps taken to remedy the problem’; the aggravating factor of recent and relevant convictions; and suggested additional aggravating factors for inclusion. The Council decided to take a consistent approach in the corporate manslaughter and health and safety guidelines. The definitive guideline therefore has a modified mitigating factor ‘steps taken to remedy the problem’ to include the word ‘voluntarily’, and has an additional aggravating factor of ‘targeting vulnerable victims.’

### Ancillary orders & compensation

Question 33 sought views on the adequacy of the guidance on ancillary orders and compensation in the corporate manslaughter guideline. The majority of respondents agreed that the guidance on these features was appropriate and sufficient.

Similarly to responses for health and safety offences, some respondents considered that the guideline provides an insufficient focus on remedial orders. The Council would again draw attention to step seven of the guideline which provides for remedial orders to be considered, and step two which includes a number of mitigating factors which provide for a range of positive action on the part of offenders to mitigate the seriousness of offences.

## Food safety and hygiene offences

### Breakdown of respondents\*

Type of Respondent	Number
Judiciary (both representative bodies)	2
Magistrates (11 collective and 1 individual response)	12
Industry	5
Local Authorities	7
Charity/Professional body	10
Legal practitioners	6
Individuals	2
Government	1
<b>Total</b>	<b>45</b>

\*Not all respondents answered each question.

Questions 34 – 42 related to the section of the guideline dealing with Food Hygiene and Safety Offences.

### Scope

Question 34 of the consultation sought views on the proposed scope of the guideline. Respondents generally agreed with the scope. Of the small number who disagreed, some thought the scope too wide and would have preferred a narrower focus on more serious offences, while others thought the scope should not be limited to dealing with food hygiene and safety offences.

During the development of the guideline the Council had considered the inclusion of offences concerned with the protection of consumers under the Food Safety Act 1990. The Council took the decision not to include these offences due to the low volumes of offences and the different statutory maxima on summary conviction. This rationale was recognised and approved by respondents who were positive regarding the scope of the guideline.

### Culpability

Question 35 sought views on the proposed culpability factors for organisations and individuals. As for health and safety offences,

similar issues were raised with the differing culpability factors for individuals and organisations, with the subjectivity of the individual factors of ‘reckless’ and ‘negligent’ highlighted, and associated concerns regarding the potential for inconsistency of interpretation. It was again suggested, as in responses regarding health and safety offences, that the culpability category headings used for organisations should also be used for individuals: ‘very high’, ‘high’, ‘medium’ and ‘low’. The Council agreed that these should be amended in the definitive guideline.

As for health and safety offences, the Council decided to remove the word ‘systemic’ from all but high culpability factors within the organisations guideline due to issues raised during research exercises which highlighted an issue with the interpretation of the word, and the potential for low culpability assessments as a result. Other culpability factors which included the word ‘systemic’ have been amended in the definitive guideline.

The Council has also revised the low culpability factor of ‘no prior event’ in the definitive guideline, to be consistent with the approach in the health and safety offences guideline and to address the risk of an inappropriate low culpability assessment simply due to no prior event occurring.

### Harm

A number of respondents disagreed with the approach to harm, and in particular expressed concern that the highest category of harm did not include a risk of harm. These responses stated that it is generally accepted that food safety offences do not often result in proven actual harm, but offences can create varying levels of risk. It was felt that the draft guideline therefore facilitated a lower categorisation of harm where a regulator’s intervention may have reduced or eliminated the harm actually caused, but nevertheless the offender’s actions posed a serious risk of harm.

*“The Food Hygiene Focus Group is strongly of the opinion that this proposal is wrong. Category 1 must include a risk of harm, even where there has been no actual harm, in circumstances where the consequences of the offence could be very serious. For example, serving undercooked meat will only cause illness and death on a very few occasions but if a business operator deliberately sells food that can sometimes kill it must be category 1 harm.”*

The Food Hygiene Focus Group

The Council recognised the validity of this point, and the definitive guideline provides for a risk of harm in each category. The harm factors for these offences have also been slightly reworded in the definitive guideline to provide greater clarity.

A further amendment to the definitive guideline has been made to the category 1 harm factor ‘serious adverse effect(s) on human health i.e. acute and/or chronic condition...’. Respondents pointed to the difficulties for sentencers in assessing whether conditions were acute or chronic.

*“It is not clear from the guidance or the examples given what the level of ‘acute’ is that moves the condition or the harm suffered between the categories.”*

The National Trust

*“What is meant by acute and chronic? Food poisoning might be an ‘acute’ episode or it may have much more serious impacts on those members of the community with pre-existing medical conditions, or the very young.”*

Black Country Bench

The Council recognised the difficulties which may be faced by sentencers in defining these terms, and has removed reference to acute and chronic conditions in the definitive guideline.

The definitive guideline also includes an additional harm factor which was suggested by some respondents. The guideline includes a category 3 factor where the public is misled about the specific food consumed, but this applies to situations where there is little or no risk of an actual adverse health effect. It was suggested that a greater level of harm may result if a person is misled and consumes food which contravenes their religious or personal beliefs. The Council agreed with this submission, and the definitive guideline includes the additional factor ‘consumer misled regarding food’s compliance with religious or personal beliefs’ at harm category 2.

### Fines – Individuals

Questions 37 and 38 related to the proposed starting points for individuals and the effect of the proposed starting points on current sentencing practice.

While there was general agreement that financial penalties are appropriate for these offences, there was some concern that the fine levels were too low to serve as a deterrent to offending, particularly in the low culpability and low harm ranges.

As set out in the consultation document, the Council considered a number of factors when developing fines for these offences. To ensure that the starting points and ranges of fines were fair and proportionate, offences across the spectrum of seriousness were considered. Offences in the higher range of culpability and harm can attract significantly high fines of up to 600 per cent of an offender’s weekly income. As with most guidelines, fines are gradated from this point as the seriousness of the offence reduces. It was also important in developing fine levels for individuals to ensure that the relationship with starting points and ranges for micro organisations was proportionate, in light of the fact that offenders running small businesses could be prosecuted either as individuals or organisations. The Council considers that the fine levels for individuals are

appropriate and have not effected any changes to fines in the definitive guideline.

The inclusion of risk of harm at each level of harm will now mean that offences which may previously have been captured only at the lowest category of harm and thus attracted a lower fine could now be captured within a higher category. While this was not the motivation in including risk of harm at each category, the effect may address some of the concerns that fines for these offences will not act as a suitable deterrent to offending.

### Fines – Organisations

Questions 39 – 42 of the consultation sought views on fines for organisations.

Given the relationship between fines for individuals and fines for micro organisations, it was unsurprising that the point regarding fines being too low at the lower end of the scale was repeated for micro organisations.

Conversely, as with health and safety offences, some responses highlighted the proportionately higher fines for micro and small organisations compared to larger organisations. This effect is not as prominent in food safety and hygiene offences, as these offences are much less likely to result in a death. It is not possible to negate the disproportionate effect of fines in terms of percentage of turnover without significantly reducing fines, which would then cause them to be too low at the higher end of culpability and harm for micro organisations. For this reason no changes have been effected to fine levels for these offences in the definitive guideline. The Council would again point to steps three and four of the guideline for these offences, which will enable the court to review, and adjust where necessary, any fine received to ensure it is proportionate to the overall means of the offender.

Questions 41 and 42 sought views on fines for medium and large organisations. Respondents were generally in agreement with the levels

of fines for these organisations, although a very small number felt they were too high for more serious offences in contrast to other respondents who believed they were too low.

No changes have been effected to fine levels in the definitive guideline.

### **Sentencing practice**

Question 43 of the consultation asked respondents for their views on what effect the proposals would have on current sentencing practice for organisations convicted of food safety and hygiene offences.

There was wide recognition that the guidelines will provide for consistency in sentencing, and act as a deterrent to offending thereby increasing public safety.

*"We consider that it will certainly provide more stability and consistency around fines."*  
The National Trust

*"It is hoped that they will serve to act as a deterrent and herald the imposition of stiff sentences which, when publicised, will lead to greater recognition of the need to be familiar with relevant legislation and to ensure compliance with it."*

South East London Food Law Enforcement Liaison Group

*"It will give a clear message to organisations on the consequences of offending and hopefully reduce offending. Public safety will be enhanced."*

Southern Derbyshire Magistrates' Bench

### **Aggravating & mitigating factors**

Question 44 asked for views on the proposed non-exhaustive list of aggravating and mitigating factors. A number of additional aggravating factors were suggested for inclusion.

The first of these was a factor relating to vulnerable groups being affected by an offence,

because it was suggested that this would be preferable as an aggravating factor rather than being considered when assessing harm. The Council considered this, but took the view that this factor was more appropriately addressed at step one when considering those who may have been harmed by offences, as vulnerable groups are likely to suffer greater harm if they are victims of offences.

A further aggravating factor suggested was a failure to heed warnings or act upon a regulator's advice. The Council instead decided to include this at step one by amending the factor '*ignoring concerns raised by employees or others*' to specifically include regulators. Again, the Council felt that such a factor would increase the step one seriousness of the offence, and would be more appropriately considered at that point.

There was some criticism of two particular mitigating factors. The first of these was;

*"Business closed voluntarily on discovery of problems in order to take remedial steps."*

It was suggested that mitigation should not be available for voluntary closure, as this is a recognised procedure often invoked as part of enforcement proceedings, and it was argued that if a voluntary closure procedure was necessary it could actually aggravate an offence. It was pointed out that situations intended to be captured by a business closing voluntarily on discovery of problems in order to take remedial steps would be mitigated under '*evidence of steps taken to remedy the problem*'. The Council considered this, and given its amendment of the factor to '*evidence of steps taken voluntarily to remedy the problem*' decided to remove the mitigating factor 'business closed voluntarily'.

The second factor criticised was;

*"Effective food hygiene/safety procedures in place."*

It was pointed out that all food businesses are required to have an approved plan which includes hygiene procedures in place to comply with the law, so this should not be present as a mitigating factor.

The Council agreed that this factor should be removed from the definitive guideline.

### Ancillary orders and compensation

Question 45 asked for views on the guidance included for ancillary orders and compensation. There was broad agreement that the guidance is adequate and sufficient, and no changes have been made.

### Totality

Question 46 asked for views on the guidance on totality. Many respondents held the view that this was particularly useful given that there are often multiple charges of these offences.

It was felt that given its importance in sentencing these offences, totality could be given more prominence, as it appears late in the guideline (at step eight of the organisations guideline and step seven of the individuals guideline). The Council therefore decided to include a reference to it earlier in the guideline, to alert sentencers that it would be a consideration during the sentencing exercise.

Step three of the definitive guideline now includes a reference to totality:

**'Full regard should be given to the totality principle at step eight where multiple offences are involved.'**

## Victims, equality and diversity and other comments

### Breakdown of respondents\*

Type of Respondent	Number
Judiciary (both representative bodies)	2
Magistrates (6 collective and 1 individual response)	7
Industry	12
Local Authorities	7
Charity/Professional body	17
Legal practitioners	11
Individuals	8
Government	1
Academics	2
<b>Total</b>	<b>67</b>

\*Not all respondents answered each question.

### Victims

Question 47 asked respondents for views on further ways in which the guideline could or should consider victims.

A number of respondents felt that the guidelines should give greater consideration to the impact on victims of offences, by specifically requiring consideration of victim personal statements (VPS).

The Council does not include a reference to the VPS in sentencing guidelines. The production of a VPS is the responsibility of the police/prosecutor. It would be inappropriate for the Council, through its guidelines, to go further than the law or the Victims' Code in setting an expectation that a VPS will be available to the court or in placing a requirement on the prosecutor to produce a VPS. Courts must facilitate presentation of a VPS, if one exists. The rules for this are set out in the Criminal Practice Directions. It would be inappropriate and outside the Council's remit to seek to prescribe such elements of criminal procedure.

All guidelines include consideration of the impact on victims as an integral component of assessing seriousness. This need not be based

on a VPS, although where one exists, it will be taken into account by the court.

### **Equality and Diversity**

Question 48 of the consultation asked for respondents to identify any equality or diversity matters that the Council should consider. The main issue raised in responses to this question related to harm caused by consumption of food which conflicts with religious or personal beliefs. As noted in this document earlier, the Council took action to address this issue.

One respondent suggested a direct apology to victims be included as a mitigating factor. The Council decided not to include this as an additional factor, as it would not be applicable to all offences as some would not have identifiable victims. As the list of mitigating factors is non-exhaustive the court would not be prevented from considering an apology in appropriate cases.

### **Other comments**

Question 49 asked respondents for any further comments that were not covered elsewhere in the consultation. Comments received generally repeated the strongest views of respondents in relation to a specific area. Notably, the use of turnover in assessing the size of an organisation, increased fines and the potential impact of increased fines on businesses was emphasised. These have been discussed in the aims and overarching issues section of this document.

Other comments recommended the implementation of various procedural practices which are outside of the remit of the guidelines, as well as highlighting that training for sentencers in using the guidelines will be important. Many respondents expressed their approval of the guideline, and noted the value of the guidelines in promoting consistency in sentencing often difficult and uncommon offences.

# Conclusion and next steps

**The consultation has been an important part of the Council's consideration of this guideline. Responses received from a variety of organisations and individuals have informed changes made.**

The definitive guideline will apply to all organisations and offenders aged 18 and older, who are sentenced on or after 1 February 2016, regardless of the date of the offence.

The online version of the Magistrates' Court Sentencing Guidelines will be updated on the day of launch of the guideline with hard copies being available soon after.

Following the implementation of the definitive guideline, the Council will monitor the impact of the guideline.

The Equality Impact Assessment Initial Screening is available on the Sentencing Council website. No evidence was provided during the consultation period which suggested that the guideline would have any adverse impact on equalities issues which would warrant a full Equality Impact Assessment.

# Annex A: Consultation respondents

**Responses were received from the following organisations:**

Ashurst LLP  
Association of Personal Injury Lawyers  
Association of Train Operating Companies (ATOC)  
B & Q Plc  
Babergh and Mid Suffolk District Council  
Basildon Borough Council  
Black Country Magistrates' Bench  
BLM Law  
British Association of Leisure Parks, Piers, and Attractions (BALPPA)  
British Ceramic Confederation  
British Frozen Food Federation  
British Hospitality Association  
British Retail Consortium  
British Safety Council  
The Cabinet Office  
Communication Workers Union  
Confederation of British Industry (CBI)  
Coveris Flexible (Hartlepool) UK  
Criminal Committee of the Council of H.M. Circuit Judges  
DAC Beachcroft Claims Ltd  
Dept. for Economy, Science and Transport – Welsh Government  
DLA Piper UK LLP  
DMG Delta Ltd  
DWF LLP  
Electrical Contractors' Association  
Engineering Construction Industry Association (ECIA)

Engineering Employers' Federation (EEF)  
Environmental Services Association  
Essex Food Group  
Essex Health and Safety Liaison Group  
Eversheds LLP  
Food Hygiene Focus Group  
Food Standards Agency (FSA)  
Froude Hofmann Ltd  
GMB (Trade Union)  
Health and Safety Executive  
Hertfordshire and Bedfordshire Local Authorities  
Innovia Films  
Institute of Occupational Safety and Health (IOSH)  
Justices' Clerks' Society  
Justices' Clerks' Society and National Bench Chairmen's forum (JCS & NBCF)  
Kennedys Law LLP  
Knights LLP  
Legal Committee of the Council of Her Majesty's District Judges  
London Borough of Hackney  
London Criminal Courts Solicitors' Association (LCCSA)  
London Fire and Emergency Planning Authority  
The Magistrates' Association  
Michael J Ponsonby Ltd  
Mid and South East Northumberland Magistrates' Bench  
National Association of Probation Officers (NAPO)  
National Farmers' Union (NFU)  
The National Trust

The Northumbria Community Rehabilitation Company Ltd  
Office of Rail Regulation  
Omya UK Ltd  
Packaging and Films Association (PAFA)  
Parabis Law  
Pinsent Masons LLP  
Prospect  
Reading County Council  
Roythornes Limited  
The Royal Society for the Prevention of Accidents (RoSPA)  
Somerset Magistrates' Bench  
South and East Cheshire Magistrates' Bench  
South Cambridgeshire Bench  
South East London Bench  
South East London Food Law Enforcement Liaison Group  
Southern Derbyshire Magistrates' Bench  
Staffordshire Magistrates' Bench  
TLT LLP Solicitors  
Trading Standards South East (TSSE)  
Turnstone Law  
UK Contractors Group  
Unite the Union  
Veolia  
Watford Borough Council  
Weightmans LLP  
Welwyn Hatfield Borough Council  
Wm Morrisons Supermarkets Plc

Raymond Mapp  
Professor Alan C Neal  
Martin New  
Roy Nightingale  
Sarah Page  
Simon Phillips QC  
Sara Pye JP  
Martin Thurgood  
Gillian Wilson

**Unattributed responses were also received from members of the public**

**Responses were also received from the following individuals:**

Richard Ash  
John Barber  
Julie Barker and Samantha Walters – Wakefield Council Environmental Health Service  
Alan Bush  
Stacey Collins  
Jonathan Davies – Wales Heads of Trading Standards Food and Agriculture Panel  
Anthony Evans – Dyfed Powys Police  
Gerald Forlin QC  
His Honour Judge Gilbart QC  
Ben Grewen  
Paul Hancock  
Stephen King

# Annex B:

## Consultation questions

### Section one: Aims and overarching issues

- Q1.** Do you agree with the overarching principles for setting fines for these offences, set out in step three of the draft guidelines?
- Q2.** Do you agree that the proposed structure of the guidelines for organisations provides the right balance of guidance and flexibility for sentencers?
- Q3.** Do you agree with how turnover, profit and reference to other financial factors have been used in the guideline to assist sentencers in identifying fine levels? If not, what alternative to assessing the means of the offender would you suggest?
- Q4.** Do you agree that quantifiable economic benefit derived from the offence should be considered in calculating the fine?
- Q5.** Do you agree with the approach used for categorising micro, small, medium and large organisations at step two and the guidance provided for dealing with very large organisations?
- Q6.** Do you agree with the wider factors set out in step four of the guidelines for organisations that the court should consider when finalising fines?
- Q7.** Do you agree that the structure of the guidelines for individuals is appropriate?
- Q8.** Do you agree that the correct factors relating to finalising a fine on an individual are included in step three?
- Q9.** Do you agree with the decision not to include separate and specific steps for compensation and confiscation in the guidelines?

### Section two: Guidelines for health and safety offences

- Q10.** Do you agree with the proposed scope of the health and safety guidelines for organisations and individuals?

- Q11.** Do you agree with the proposed culpability factors for organisations and individuals at step one of the health and safety guidelines? If not, please specify what you would change and why.
- Q12.** Do you agree with the *overall* approach proposed for assessing harm for health and safety offences?
- Q13.** Do you agree that the proposed factors for assessing risk of harm in the health and safety guidelines are clear and appropriately gradated? If not, what changes would you make?
- Q14.** Do you agree with the factors included in the second stage of the assessment of harm process? If not, please identify what you would change and why.
- Q15.** Do you agree with the proposed starting points and ranges for micro organisations in the health and safety guideline?
- Q16.** Do you agree with the proposed starting points and ranges for small organisations in the health and safety guideline?
- Q17.** Do you agree with the proposed starting points and ranges for medium organisations in the health and safety guideline?
- Q18.** Do you agree with the starting points and ranges for large organisations in the health and safety guideline? Please consider the relevance of the top of the range given the guidance that: “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”.
- Q19.** What impact do you think the proposals will have on current sentencing practice for organisations that have committed health and safety offences?
- Q20.** Do you agree with the proposed use of custodial starting points for individuals in the health and safety guideline?
- Q21.** Do you consider the guidance regarding the use of community orders and fines in the health and safety guideline to be appropriate and sufficient?
- Q22.** Do you agree with the remainder of the proposed starting points and ranges for individuals in the health and safety guideline?
- Q23.** What effect do you think the draft guideline will have on current sentencing practice relating to individuals who commit health and safety offences?
- Q24.** Do you agree with the proposed aggravating and mitigating factors in the health and safety guideline?

**Q25.** Is the guidance provided on ancillary orders and compensation in the health and safety guidelines for organisations and individuals appropriate and sufficient?

**Section three: Guideline for corporate manslaughter**

**Q26.** Do you agree with the overall approach to assessing offence seriousness at step one of the corporate manslaughter guideline?

**Q27.** Do you agree with the proposed questions relating to culpability and harm in step one of the corporate manslaughter guideline?

**Q28.** Do you agree with the proposed starting points and ranges for micro organisations in the corporate manslaughter guideline?

**Q29.** Do you agree with the proposed starting points and ranges for small organisations in the corporate manslaughter guideline?

**Q30.** Do you agree with the proposed starting points and ranges for medium organisations in the corporate manslaughter guideline?

**Q31.** Do you agree with the proposed starting points and ranges for large organisations in the corporate manslaughter guideline? Please consider the relevance of the top of the range given the guidance that: “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”.

**Q32.** Do you agree with the proposed aggravating and mitigating factors for corporate manslaughter?

**Q33.** Do you agree that the guidance on ancillary orders and compensation in the corporate manslaughter guideline is appropriate and sufficient?

**Section four: Guideline for food safety and hygiene offences**

**Q34.** Do you agree with the proposed scope of the food safety and hygiene offences guideline?

**Q35.** Do you agree with the proposed culpability categories for organisations and for individuals in the draft food safety and hygiene offences guideline?

**Q36.** Do you agree with the proposed harm factors in the draft guideline for food safety and hygiene offences?

**Q37.** Do you agree with the proposed starting points and ranges for individuals in the food safety and hygiene guidelines?

**Q38.** What effect do you think the proposed starting points and ranges will have on current sentencing practice for individuals convicted of food safety and hygiene offences?

**Q39.** Do you agree with the proposed starting points and ranges for micro organisations in the food safety and hygiene offences guideline?

- Q40.** Do you agree with the proposed starting point and ranges for small organisations in the food safety and hygiene offences guideline?
- Q41.** Do you agree with the proposed starting points and ranges for medium organisations in the food safety and hygiene offences guideline?
- Q42.** Do you agree with the proposed starting points and ranges for large organisations in the food safety and hygiene offences guideline? Please consider the relevance of the top of the range given the guidance that: “where the 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.”
- Q43.** What effect do you think the proposals will have on current sentencing practice for organisations convicted of food safety and hygiene offences?
- Q44.** Do you agree with the proposed aggravating and mitigating factors in the food safety and hygiene offences guidelines?
- Q45.** Is the guidance provided on ancillary orders and compensation in the guidelines for food safety and hygiene offences appropriate and sufficient?
- Q46.** Do you agree that the proposed guidance on totality in the food safety and hygiene offences guideline is appropriate and sufficient?

#### **Section five: Victims and equality and diversity**

- Q47.** Are there further ways in which you think victims can or should be considered?
- Q48.** Are there any equality or diversity matters that the Council should consider? Please provide evidence of any issues where possible.
- Q49.** Are there any further comments you wish to make that have not been covered elsewhere in the consultation?

# Annex C:

## Proportionate effect of fines

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

	Micro		Small		Medium		Large	
Culpability	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)
<b>Very high culpability</b>								
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%
<b>High culpability</b>								
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%
<b>Medium culpability</b>								
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%
<b>Low culpability</b>								
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**

	Micro		Small		Medium		Large	
Culpability	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)
<b>Very high culpability</b>								
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%
<b>High culpability</b>								
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%
<b>Medium culpability</b>								
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%
<b>Low culpability</b>								
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%