

**Health and Safety
Offences, Corporate
Manslaughter and
Food Safety and
Hygiene Offences
Definitive Guideline**

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For reference only.
Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk

Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies 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.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

For individuals, this guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Structure, ranges and starting points

For the purposes of section 125(3)–(4) of the Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified a number of *categories* which reflect varying degrees of seriousness. The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. The court should consider further features of the offence or the offender that warrant adjustment of the sentence within the range, including the aggravating and mitigating factors set out at step two. In this guideline, if the proposed sentence is a fine, having identified a provisional sentence within the range at step two the court is required to consider a further set of factors that may require a final adjustment to the sentence. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only after the appropriate sentence has been identified.

Information on fine bands and community orders is set out in the annex at pages 47 and 48.

For reference only.

Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk

Organisations

Breach of duty of employer towards employees and non-employees

Breach of duty of self-employed to others

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

Breach of Health and Safety regulations

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

Triable either way

Maximum: when tried on indictment: unlimited fine
when tried summarily: unlimited fine

Offence range: £50 fine – £10 million fine

For reference only.

Please refer to the guideline(s) on the Sentencing Council website: www.sentencingcouncil.org.uk

STEP ONE
Determining the offence category

The court should determine the offence category using only the culpability and harm factors in the tables below.

Culpability

Where there are factors present in the case that fall in different categories of culpability, the court should balance these factors to reach a fair assessment of the offender’s culpability.

Very high

Deliberate breach of or flagrant disregard for the law

High

Offender fell far short of the appropriate standard; for example, by:

- failing to put in place measures that are recognised standards in the industry
- ignoring concerns raised by employees or others
- failing to make appropriate changes following prior incident(s) exposing risks to health and safety
- allowing breaches to subsist over a long period of time

Serious and/or systemic failure within the organisation to address risks to health and safety

Medium

Offender fell short of the appropriate standard in a manner that falls between descriptions in ‘high’ and ‘low’ culpability categories

Systems were in place but these were not sufficiently adhered to or implemented

Low

Offender did not fall far short of the appropriate standard; for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk to health and safety

Failings were minor and occurred as an isolated incident

See page 5.

For reference only.
Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk

Harm

Health and safety offences are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm. **The offence is in creating a risk of harm.**

- 1) Use the table below to identify an initial harm category based on the **risk of harm created by the offence**. The assessment of harm requires a consideration of **both**:
 - the seriousness of the harm risked (A, B or C) by the offender’s breach; **and**
 - the likelihood of that harm arising (high, medium or low).

Seriousness of harm risked			
	Level A	Level B	Level C
	<ul style="list-style-type: none"> • Death • Physical or mental impairment resulting in lifelong dependency on third party care for basic needs • Significantly reduced life expectancy 	<ul style="list-style-type: none"> • Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer’s ability to carry out normal day-to-day activities or on their ability to return to work • A progressive, permanent or irreversible condition 	<ul style="list-style-type: none"> • All other cases not falling within Level A or Level B
High likelihood of harm	Harm category 1	Harm category 2	Harm category 3
Medium likelihood of harm	Harm category 2	Harm category 3	Harm category 4
Low likelihood of harm	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)

- 2) Next, the court must consider if the following factors apply. These two factors should be considered in the round in assigning the final harm category.

- i) **Whether the offence exposed a number of workers or members of the public to the risk of harm.** The greater the number of people, the greater the risk of harm.
- ii) **Whether the offence was a significant cause of actual harm.** Consider whether the offender’s breach was a **significant cause*** of actual harm and the extent to which other factors contributed to the harm caused. Actions of victims are unlikely to be considered contributory events for sentencing purposes. Offenders are required to protect workers or others who may be neglectful of their own safety in a way which is reasonably foreseeable.

If one or both of these factors apply the court must consider either moving up a harm category or substantially moving up within the category range at step two overleaf. If already in harm category 1 and wishing to move higher, move up from the starting point at step two on the following pages. The court should not move up a harm category if actual harm was caused but to a lesser degree than the harm that was risked, as identified on the scale of seriousness above.

* A significant cause is one which more than minimally, negligibly or trivially contributed to the outcome. It does not have to be the sole or principal cause.

STEP TWO**Starting point and category range**

Having determined the offence category, the court should identify the relevant table for the offender on the following pages. There are tables for different sized organisations.

At step two, the court is required to focus on the organisation's annual turnover or equivalent to reach a starting point for a fine. The court should then consider further adjustment within the category range for aggravating and mitigating features.

At step three, the court may be required to refer to other financial factors listed below to ensure that the proposed fine is proportionate.

Obtaining financial information

The offender is expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case, **which may include the inference that the offender can pay any fine.**

Normally, only information relating to the organisation before the court will be relevant, unless exceptionally it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

1. *For companies*: annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. **Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.**
2. *For partnerships*: annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited liability partnerships (LLPs) may be required to file audited accounts with Companies House. **If adequate accounts are not produced on request, see paragraph 1.**
3. *For local authorities, fire authorities and similar public bodies*: the Annual Revenue Budget ('ARB') is the equivalent of turnover and the best indication of the size of the organisation. It is unlikely to be necessary to analyse specific expenditure or reserves (where relevant) unless inappropriate expenditure is suggested.
4. *For health trusts*: the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via www.monitor-nhsft.gov.uk. Detailed analysis of expenditure or reserves is unlikely to be called for.
5. *For charities*: it will be appropriate to inspect annual audited accounts. Detailed analysis of expenditure or reserves is unlikely to be called for unless there is a suggestion of unusual or unnecessary expenditure.

For reference only.

Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk

Very large organisation

Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

Large

Turnover or equivalent: £50 million and over

	Starting point	Category range
Very high culpability		
Harm category 1	£4,000,000	£2,600,000 – £10,000,000
Harm category 2	£2,000,000	£1,000,000 – £5,250,000
Harm category 3	£1,000,000	£500,000 – £2,700,000
Harm category 4	£500,000	£240,000 – £1,300,000
High culpability		
Harm category 1	£2,400,000	£1,500,000 – £6,000,000
Harm category 2	£1,100,000	£550,000 – £2,900,000
Harm category 3	£540,000	£250,000 – £1,450,000
Harm category 4	£240,000	£120,000 – £700,000
Medium culpability		
Harm category 1	£1,300,000	£800,000 – £3,250,000
Harm category 2	£600,000	£300,000 – £1,500,000
Harm category 3	£300,000	£130,000 – £750,000
Harm category 4	£130,000	£50,000 – £350,000
Low culpability		
Harm category 1	£300,000	£180,000 – £700,000
Harm category 2	£100,000	£35,000 – £250,000
Harm category 3	£35,000	£10,000 – £140,000
Harm category 4	£10,000	£3,000 – £60,000

Medium

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

	Starting point	Category range
Very high culpability		
Harm category 1	£1,600,000	£1,000,000 – £4,000,000
Harm category 2	£800,000	£400,000 – £2,000,000
Harm category 3	£400,000	£180,000 – £1,000,000
Harm category 4	£190,000	£90,000 – £500,000
High culpability		
Harm category 1	£950,000	£600,000 – £2,500,000
Harm category 2	£450,000	£220,000 – £1,200,000
Harm category 3	£210,000	£100,000 – £550,000
Harm category 4	£100,000	£50,000 – £250,000
Medium culpability		
Harm category 1	£540,000	£300,000 – £1,300,000
Harm category 2	£240,000	£100,000 – £600,000
Harm category 3	£100,000	£50,000 – £300,000
Harm category 4	£50,000	£20,000 – £130,000
Low culpability		
Harm category 1	£130,000	£75,000 – £300,000
Harm category 2	£40,000	£14,000 – £100,000
Harm category 3	£14,000	£3,000 – £60,000
Harm category 4	£3,000	£1,000 – £10,000

For reference only.

Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk**Small**

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

	Starting point	Category range
Very high culpability		
Harm category 1	£450,000	£300,000 – £1,600,000
Harm category 2	£200,000	£100,000 – £800,000
Harm category 3	£100,000	£50,000 – £400,000
Harm category 4	£50,000	£20,000 – £190,000
High culpability		
Harm category 1	£250,000	£170,000 – £1,000,000
Harm category 2	£100,000	£50,000 – £450,000
Harm category 3	£54,000	£25,000 – £210,000
Harm category 4	£24,000	£12,000 – £100,000
Medium culpability		
Harm category 1	£160,000	£100,000 – £600,000
Harm category 2	£54,000	£25,000 – £230,000
Harm category 3	£24,000	£12,000 – £100,000
Harm category 4	£12,000	£4,000 – £50,000
Low culpability		
Harm category 1	£45,000	£25,000 – £130,000
Harm category 2	£9,000	£3,000 – £40,000
Harm category 3	£3,000	£700 – £14,000
Harm category 4	£700	£100 – £5,000

Micro

Turnover or equivalent: not more than £2 million

	Starting point	Category range
Very high culpability		
Harm category 1	£250,000	£150,000 – £450,000
Harm category 2	£100,000	£50,000 – £200,000
Harm category 3	£50,000	£25,000 – £100,000
Harm category 4	£24,000	£12,000 – £50,000
High culpability		
Harm category 1	£160,000	£100,000 – £250,000
Harm category 2	£54,000	£30,000 – £110,000
Harm category 3	£30,000	£12,000 – £54,000
Harm category 4	£12,000	£5,000 – £21,000
Medium culpability		
Harm category 1	£100,000	£60,000 – £160,000
Harm category 2	£30,000	£14,000 – £70,000
Harm category 3	£14,000	£6,000 – £25,000
Harm category 4	£6,000	£2,000 – £12,000
Low culpability		
Harm category 1	£30,000	£18,000 – £60,000
Harm category 2	£5,000	£1,000 – £20,000
Harm category 3	£1,200	£200 – £7,000
Harm category 4	£200	£50 – £2,000

For reference only.
Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk

The table below contains a **non-exhaustive** list of factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness	Factors reducing seriousness or reflecting mitigation
<p><i>Statutory aggravating factor:</i></p> <p>Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction</p> <p><i>Other aggravating factors include:</i></p> <p>Cost-cutting at the expense of safety</p> <p>Deliberate concealment of illegal nature of activity</p> <p>Breach of any court order</p> <p>Obstruction of justice</p> <p>Poor health and safety record</p> <p>Falsification of documentation or licences</p> <p>Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities</p> <p>Targeting vulnerable victims</p>	<p>No previous convictions or no relevant/recent convictions</p> <p>Evidence of steps taken voluntarily to remedy problem</p> <p>High level of co-operation with the investigation, beyond that which will always be expected</p> <p>Good health and safety record</p> <p>Effective health and safety procedures in place</p> <p>Self-reporting, co-operation and acceptance of responsibility</p>

See page 10.

STEPS THREE AND FOUR

The court should 'step back', review and, if necessary, adjust the initial fine based on turnover to **ensure that it fulfils the objectives of sentencing** for these offences. The court may adjust the fine upwards or downwards, including outside the range.

STEP THREE

Check whether the proposed fine based on turnover is proportionate to the overall means of the offender

General principles to follow in setting a fine

The court should finalise the appropriate level of fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and that the court must take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; it should not be cheaper to offend than to take the appropriate precautions.

The fine must be **sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with health and safety legislation.**

Review of the fine based on turnover

The court should 'step back', review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above. The court may adjust the fine upwards or downwards including outside of the range.

The court should examine the financial circumstances of the offender in the round to assess the economic realities of the organisation and the most efficacious way of giving effect to the purposes of sentencing.

In finalising the sentence, the court should have regard to the following factors:

- The profitability of an organisation will be relevant. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.
- Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the fine arrived at in step two. Where this is not readily available, the court may draw on information available from enforcing authorities and others about the general costs of operating within the law.
- Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty, the court can take into account the **power to allow time for payment or to order that the amount be paid in instalments**, if necessary over a number of years.

For reference only.

Please refer to the guideline(s) on the Sentencing Council website: www.sentencingcouncil.org.uk**STEP FOUR****Consider other factors that may warrant adjustment of the proposed fine**

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

- the fine impairs offender's ability to make restitution to victims;
- impact of the fine on offender's ability to improve conditions in the organisation to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy (but not shareholders or directors).

Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of its services.

STEP FIVE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP SIX**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

See page 12.

For reference only.

Please refer to the guideline(s) on the Sentencing Council website: www.sentencingcouncil.org.uk

STEP SEVEN

Compensation and ancillary orders

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

Remediation

Under section 42(1) of the Health and Safety at Work Act 1974, the court may impose a remedial order in addition to or instead of imposing any punishment on the offender.

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

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

Forfeiture

Where the offence involves the acquisition or possession of an explosive article or substance, section 42(4) enables the court to order forfeiture of the explosive.

Compensation

Where the offence has resulted in loss or damage, the court must consider whether to make a compensation order. The assessment of compensation in cases involving death or serious injury will usually be complex and will ordinarily be covered by insurance. In the great majority of cases the court should conclude that compensation should be dealt with in the civil court, and should say that no order is made for that reason.

If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited.

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

STEP EIGHT

Totality principle

If sentencing an offender for more than one offence, consider whether the total sentence is just and proportionate to the offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP NINE

Reasons

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

Individuals

Breach of duty of employer towards employees and non-employees

Breach of duty of self-employed to others

Breach of duty of employees at work

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

Breach of Health and Safety regulations

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

Secondary liability

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

Triable either way

Maximum: when tried on indictment: unlimited fine and/or 2 years' custody
when tried summarily: unlimited fine and/or 6 months' custody

Offence range: Conditional discharge – 2 years' custody

Organisations

Breach of food safety and food hygiene regulations

England

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

Triable either way

Maximum: when tried on indictment: unlimited fine
when tried summarily: unlimited fine

Wales

Food Hygiene (Wales) Regulations 2006 (regulation 17(1))
The General Food Regulations 2004 (regulation 4)

Triable either way

Maximum: when tried on indictment: unlimited fine
when tried summarily: unlimited fine

Offence range: £100 fine – £3 million fine

For reference only.

Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk**Very large organisation**

Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

Large

Turnover or equivalent: £50 million and over

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

Medium

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

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

For reference only.
Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk

Small			
Turnover or equivalent: between £2 million and £10 million			
	Starting point	Range	
Very high culpability			
Harm category 1	£120,000	£50,000 –	£450,000
Harm category 2	£50,000	£18,000 –	£200,000
Harm category 3	£18,000	£9,000 –	£80,000
High culpability			
Harm category 1	£50,000	£22,000 –	£200,000
Harm category 2	£24,000	£8,000 –	£90,000
Harm category 3	£9,000	£4,000 –	£35,000
Medium culpability			
Harm category 1	£18,000	£7,000 –	£70,000
Harm category 2	£8,000	£3,000 –	£35,000
Harm category 3	£3,000	£1,500 –	£12,000
Low culpability			
Harm category 1	£3,000	£1,400 –	£12,000
Harm category 2	£1,400	£700 –	£7,000
Harm category 3	£700	£300 –	£3,000

Micro			
Turnover or equivalent: not more than £2 million			
	Starting point	Range	
Very high culpability			
Harm category 1	£60,000	£25,000 –	£120,000
Harm category 2	£25,000	£10,000 –	£50,000
Harm category 3	£10,000	£5,000 –	£18,000
High culpability			
Harm category 1	£25,000	£10,000 –	£50,000
Harm category 2	£12,000	£4,000 –	£22,000
Harm category 3	£4,000	£2,000 –	£9,000
Medium culpability			
Harm category 1	£10,000	£3,000 –	£18,000
Harm category 2	£4,000	£1,400 –	£8,000
Harm category 3	£1,400	£700 –	£3,000
Low culpability			
Harm category 1	£1,200	£500 –	£3,000
Harm category 2	£500	£200 –	£1,400
Harm category 3	£200	£100 –	£700

The table below contains a **non-exhaustive** list of factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in a substantial upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factor:

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Other aggravating factors include:

Motivated by financial gain

Deliberate concealment of illegal nature of activity

Established evidence of wider/community impact

Breach of any court order

Obstruction of justice

Poor food safety or hygiene record

Refusal of free advice or training

Factors reducing seriousness or reflecting mitigation

No previous convictions **or** no relevant/recent convictions

Steps taken voluntarily to remedy problem

High level of co-operation with the investigation, beyond that which will always be expected

Good food safety/hygiene record

Self-reporting, co-operation and acceptance of responsibility

STEPS THREE AND FOUR

The court should 'step back', review and, if necessary, adjust the initial fine based on turnover to **ensure that it fulfils the objectives of sentencing** for these offences. The court may adjust the fine upwards or downwards, including outside the range. Full regard should be given to the totality principle at step eight where multiple offences are involved.

STEP THREE

Check whether the proposed fine based on turnover is proportionate to the overall means of the offender

General principles to follow in setting a fine

The court should finalise the fine in accordance with section 164 of the Criminal Justice Act 2003, which requires that the fine must reflect the seriousness of the offence and that the court must take into account the financial circumstances of the offender.

The level of fine should reflect the extent to which the offender fell below the required standard. **The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence;** it should not be cheaper to offend than to take the appropriate precautions.

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

Review of the fine based on turnover

The court should ‘step back’, review and, if necessary, adjust the initial fine reached at step two to ensure that it fulfils the general principles set out above. The court may adjust the fine upwards or downwards including outside of the range.

The court should examine the financial circumstances of the offender in the round to enable the court to assess the economic realities of the company and the most efficacious way of giving effect to the purposes of sentencing.

In finalising the sentence, the court should have regard to the following factors:

- The profitability of an organisation will be relevant. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.
- Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total fine arrived at in step two. Where this is not readily available, the court may draw on information available from enforcing authorities and others about the general costs of operating within the law.
- Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty, the court can take into account the **power to allow time for payment or to order that the amount be paid in instalments**, if necessary over a number of years.

STEP FOUR**Consider other factors that may warrant adjustment of the proposed fine**

Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of their services.

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

- impact of the fine on offender’s ability to improve conditions in the organisation to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy (but not shareholders or directors).

STEP FIVE

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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP SIX**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.

STEP SEVEN**Compensation and ancillary orders***Hygiene Prohibition Order*

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

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

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

Compensation

Where the offence results in the loss or damage the court must consider whether to make a compensation order. If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited.

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

For reference only.

Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk

STEP EIGHT

Totality principle

If sentencing an offender for more than one offence, consider whether the total sentence is just and proportionate to the offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline from which the following guidance is taken:

“The total fine is inevitably cumulative.

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

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

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

For example:

- where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.

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

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

STEP NINE

Reasons

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

For reference only.

**Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk**

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STEP FOUR**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FIVE**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP SIX**Compensation and ancillary orders****Ancillary orders**

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

Hygiene Prohibition Order

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

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

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

Disqualification of director

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

Compensation

Where the offence results in loss or damage the court must consider whether to make a compensation order. If compensation is awarded, priority should be given to the payment of compensation over payment of any other financial penalty where the means of the offender are limited.

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

For reference only.

Please refer to the guideline(s) on the Sentencing Council website: www.sentencingcouncil.org.uk

STEP SEVEN

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

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

“The total fine is inevitably cumulative.

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

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

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

For example:

- where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences;
- where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.

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

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

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

For reference only.

**Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk**

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For reference only.

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Annex

Fine bands and community orders

FINE BANDS

In this guideline, fines are expressed as one of six fine bands (A, B, C, D, E or F).

Fine Band	Starting point (<i>applicable to all offenders</i>)	Category range (<i>applicable to all offenders</i>)
Band A	50% of relevant weekly income	25–75% of relevant weekly income
Band B	100% of relevant weekly income	75–125% of relevant weekly income
Band C	150% of relevant weekly income	125–175% of relevant weekly income
Band D	250% of relevant weekly income	200–300% of relevant weekly income
Band E	400% of relevant weekly income	300–500% of relevant weekly income
Band F	600% of relevant weekly income	500–700% of relevant weekly income

Band F is provided as an alternative to a community order or custody in the context of this guideline.

See page 48.

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium or high). An illustrative description of examples of requirements that might be appropriate for each level is provided below.

Where two or more requirements are ordered, they must be compatible with each other. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003).

LOW	MEDIUM	HIGH
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> • 40–80 hours unpaid work • Curfew requirement within the lowest range (e.g. up to 16 hours per day for a few weeks) • Exclusion requirement, without electronic monitoring, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Greater number of hours of unpaid work (e.g. 80–150 hours) • Curfew requirement within the middle range (e.g. up to 16 hours for 2–3 months) • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • 150–300 hours unpaid work • Curfew requirement up to 16 hours per day for 4–12 months • Exclusion order lasting in the region of 12 months

The *Magistrates' Court Sentencing Guidelines* includes further guidance on fines and community orders.

For reference only.
Please refer to the guideline(s)
on the Sentencing Council website:
www.sentencingcouncil.org.uk