

Assessing the impact and implementation of the Sentencing Council's Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline

Summary

- The Sentencing Council's *Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline* came into force on 1 February 2016.
- For health and safety offences, there has been a considerable increase in fine amounts for larger organisations since the guideline came into force, which was anticipated by the Council. Fines also appear to have increased (to a lesser degree) for smaller organisations, which was not anticipated.
- For individuals sentenced for health and safety offences, there has been an unanticipated increase in higher fines, and an unanticipated change in the use of some disposal types, however the shift in disposals appears to be a short-term change which only affected a relatively small number of offenders.
- An increase in fine amounts was also evident for organisations sentenced for food safety and hygiene offences, although the increase in fines was less pronounced than that for health and safety offences.
- There was an unanticipated increase in fines imposed on individuals sentenced for food safety and hygiene offences, however the increase was very small.
- Fine amounts imposed on organisations sentenced for corporate manslaughter may have increased since the guideline came into force (as anticipated), however this finding should be treated with caution due to low volumes.
- Analysis of Crown Court judges' sentencing remarks for a sample of health and safety cases (for both organisations and individuals) suggests that the guideline is generally being applied in the manner intended.
- A comparison of a sample of judgments for health and safety cases heard by the Court of Appeal (both before and after the guideline came into force) suggests that fewer appeals have been successful following the guideline's introduction (although this finding is indicative only, due to the small sample analysed).
- The Council has considered this analysis, particularly the findings in relation to the fines imposed on smaller organisations and individuals. The Council intends to investigate further the operation of the guideline in due course, and will consider at that stage whether any revision of the guideline is necessary.

Introduction

The Sentencing Council's guideline covering health and safety offences, corporate manslaughter and food safety and hygiene offences came into force on 1 February 2016.¹ It comprises five separate guidelines including offences contrary to sections 33(1)(a) and 33(1)(c), Health and Safety at Work Act 1974 (HSWA 1974); regulation 19(1) of the Food Safety and Hygiene (England) Regulations 2013; regulation 17(1) of the Food Hygiene (Wales) Regulations 2006; regulation 4 of the General Food Regulations 2004; and section 1 of the Corporate Manslaughter and Corporate Homicide Act 2007. As with the Sentencing Council's *Environmental Offences* guideline, the health and safety and food safety and hygiene offences are covered by two separate guidelines: one for individuals and one for organisations (companies, partnerships or bodies delivering a public or charitable service).²

Prior to the Sentencing Council's guideline coming into force in February 2016, a guideline produced in 2010 by the Sentencing Guidelines Council (SGC) was in use for organisations sentenced for corporate manslaughter and health and safety offences causing death.^{3,4} The SGC guideline contained information on factors likely to affect seriousness, along with some general information on appropriate fine levels.

The Sentencing Council's guideline for health and safety offences followed a new model based on the culpability of the offender, the risk of harm created by the offence, the likelihood of harm and any actual harm caused. The guideline contains four categories of culpability and four categories of harm. Separate sentencing tables are provided for different organisation sizes (an organisation's size is determined by its annual turnover).⁵ The health and safety guideline for individuals is the same in terms of the culpability and harm model, but contains just one sentencing table to be used for all adult offenders.⁶

For food safety and hygiene offences, the guideline contains four categories of culpability and three categories of harm. As with health and safety, there is one sentencing table for individuals, and separate tables for organisations based on their size.

The Council's *Corporate Manslaughter* guideline comprises two offence categories based on the level of harm and culpability, and also includes separate sentencing tables for different organisation sizes.

This paper details the results of analysis undertaken to assess the impact of the guideline on sentence outcomes and fine amounts, and examine whether there were any

¹ <https://www.sentencingcouncil.org.uk/publications/item/health-and-safety-offences-corporate-manslaughter-and-food-safety-and-hygiene-offences-definitive-guideline/>

² There is only one guideline for corporate manslaughter, as this offence can only be committed by organisations.

³ https://www.sentencingcouncil.org.uk/wp-content/uploads/web_guideline_on_corporate_manslaughter_accessible.pdf

⁴ No guideline existed for individuals, or for organisations sentenced for food safety and hygiene offences, or health and safety offences not involving death (although there was limited guidance on health and safety offences in the Magistrates' Court Sentencing Guidelines).

⁵ Organisation sizes are classified as follows: micro – turnover of no more than £2m; small – between £2m and £10m; medium – between £10m and £50m; large – £50m and over; very large – turnover very greatly exceeds the threshold for large organisations.

⁶ Individuals sentenced for these offences can receive a range of different sentence outcomes, from a discharge up to two years' custody. In contrast, organisations can only receive a discharge, fine, or other miscellaneous disposals.

implementation issues. The analysis for health and safety and food safety and hygiene offences has been separated into two sections: organisations and individuals.

Approach

The Council's resource assessments are concerned with anticipating any impact on sentencing practice which is thought likely to occur as a result of the guideline, over and above any changes caused by unrelated or coincidental issues (for example changes in the volume and nature of offences coming before the courts). The *Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline* aimed to ensure that the levels of fines imposed for these offences were proportionate to the means of the offender and reflected the seriousness of the offence committed.⁷ Consequently, the resource assessment published alongside the guideline concluded that it would potentially result in an increase in fines in some cases. In particular, it was anticipated that more serious offences committed by larger organisations would result in higher levels of fines. No change was expected in relation to the use of disposal types, or average custodial sentence lengths (ACSLs), for individuals.⁸

Methodology

Data from the Ministry of Justice's Court Proceedings Database (CPD)⁹ have been used to analyse sentencing trends for offenders sentenced in magistrates' courts and the Crown Court, for offences covered by the guideline.^{10,11,12}

⁷ For further information on the aims of the guideline please refer to the consultation response, available here: <https://www.sentencingcouncil.org.uk/publications/item/health-and-safety-offences-corporate-manslaughter-and-food-safety-and-hygiene-offences-response-to-consultation/>

⁸ <https://www.sentencingcouncil.org.uk/publications/item/health-and-safety-offences-corporate-manslaughter-food-safety-and-hygiene-offences-final-resource-assessment/>

⁹ The CPD data presented in this paper only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented in this paper. It is important to note that the CPD data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used. Further details of the processes by which the Ministry of Justice (MoJ) validate the records in the CPD can be found within the guide to their Criminal Justice Statistics publication, which can be downloaded via the link: <https://www.gov.uk/government/collections/criminal-justice-statistics>.

¹⁰ Detailed analysis of the CPD identified that some high fine amounts which appeared to be imposed on individuals (males aged 25) actually related to organisations. A fix was therefore applied whereby records showing as males aged 25 with a fine of over £20,000 were changed from individuals to organisations.

¹¹ Actual numbers of sentences have been rounded to the nearest 100, when more than 1,000 offenders were sentenced, and to the nearest 10 when less than 1,000 offenders were sentenced. Fine amounts have been rounded to the nearest £100.

¹² The charts in this paper cover offenders sentenced in all courts, unless otherwise stated.

Prosecutions data were provided by the Health and Safety Executive (HSE),¹³ covering a 16 month 'pre-guideline' period and 16 months 'post-guideline'.^{14,15} These data were supplemented with annual turnover information from Companies House (where available), which enabled an analysis of fine amounts by size of organisation.

A content analysis of Crown Court judges' sentencing remarks¹⁶ was carried out for 71 health and safety cases (all post-guideline).^{17,18} Analysis was also undertaken of the small number of corporate manslaughter cases available (10 pre-guideline and six post-guideline).¹⁹ The purpose of this qualitative analysis was to gain a greater understanding of how the guideline is being used to sentence cases, and identify any potential implementation issues. As this analysis was based on a sample of cases, however, numbers are only indicative and findings are tentative.

A sample of Court of Appeal (Criminal Division) (CACD) judgments were also provided by the Criminal Appeal Office (CAO), covering health and safety appeals received by the CAO since 1 February 2015 (one year before the guideline came into force).²⁰ This enabled a comparison of the outcomes of appeals coming before the CACD of cases sentenced both before and after the guideline was implemented.

The analysis in this paper includes organisations and adult offenders only (those aged 18 or over at the time of conviction), as the guideline is not applicable to children and young people.

¹³ Health and safety legislation in Great Britain is enforced by the Health and Safety Executive (HSE) or one of the over 380 local authorities (LAs) depending on the main activity carried out at any particular premises. In general LAs are the main enforcing authority for lower-risk workplaces such as retail, wholesale distribution and warehousing, hotel and catering premises, offices, and the consumer/leisure industries. The Crown Prosecution Service (CPS) can also prosecute health and safety offences, and the data provided by HSE includes prosecutions by both HSE and the CPS. Other enforcement authorities can deal with breaches of other health and safety legislation (for example, the Environment Agency, the Civil Aviation Authority, the Driver and Vehicle Standards Agency) but these pieces of legislation are not covered by the *Health and Safety* guideline, and so are not relevant for this assessment.

¹⁴ The data provided was an extract taken from HSE's operational case management system. This is a live database and therefore figures used in this analysis may differ from those used to produce official statistics published by HSE. In cases where an offender was sentenced for multiple offences, the principal offence was selected for this analysis (i.e. the offence which resulted in the highest fine).

¹⁵ A 16 month period (for both 'pre' and 'post') was used for this analysis, as 16 months of 'post-guideline' data were available at the time of the data request made to HSE.

¹⁶ Transcripts of sentencing remarks are not available from magistrates' courts.

¹⁷ Two cases involving an organisation and individual were analysed in respect of both the organisation and individual.

¹⁸ The sample was selected to cover a range of high, medium and low fines, for organisations and individuals sentenced in 2016 and 2017. Cases where particularly high fines (£500,000 and over) were imposed on organisations were oversampled, as this was an area where the resource assessment predicted the guideline would have an impact. The sample for individuals included a range of sentence outcomes.

¹⁹ The pre-guideline cases analysed were those sentenced in the period 2014 – 2015, and the post-guideline cases related to 2016 – 2017.

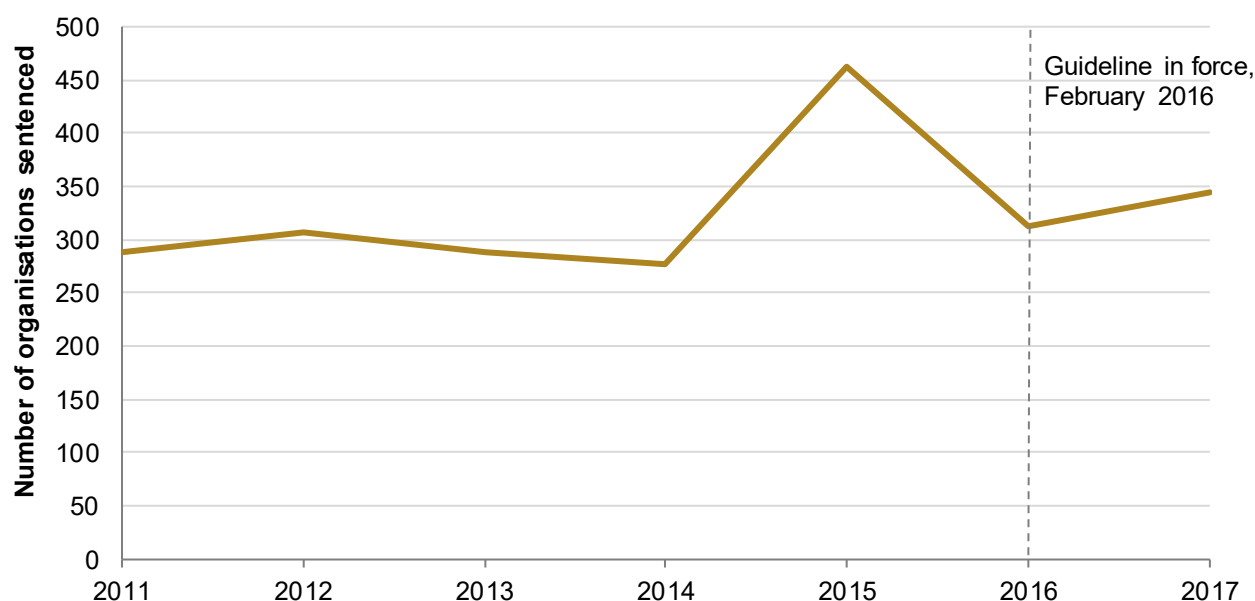
²⁰ The pre-guideline judgments included one case which related to fire safety offences. Although the guideline does not specifically cover fire safety offences, it would most likely be referred to in these cases, so this judgment was retained in the analysis.

Findings: Health and safety offences

Organisations

Between 2011 and 2014, around 300 organisations were sentenced each year for health and safety offences covered by the guideline.²¹ In 2015 the number increased to around 460, before decreasing the following year, and then increasing again to 340 in 2017 (see figure 1).

Figure 1: Number of organisations sentenced for health and safety offences covered by the guideline, 2011-2017



Source: MoJ CPD data

The majority (60 per cent) of organisations in 2017 were sentenced for offences under section 33(1)(a) of the HSWA 1974, which relates to a breach of duty of an employer towards employees and non-employees. The remainder were sentenced for offences under section 33(1)(c), which involves breaching health and safety regulations. Between 2011 and 2015 over half of organisations were sentenced in magistrates' courts, but this trend reversed in 2016, and in 2017, 55 per cent of organisations were sentenced in the Crown Court.

The vast majority of organisations sentenced for health and safety offences receive a fine (99 per cent in 2017). Analysis was undertaken on the level of fines imposed on organisations, comparing a 10 month period prior to the guideline coming into force ('pre-

²¹ Due to a data processing issue, offenders sentenced to a fine of over £10,000 in magistrates' courts during the period 2011 to 2014 may have been excluded from the data. As a result, volumes shown for this period may be lower than the actual number sentenced; however, it is likely that the number of missing records is low, as more serious offences tend to be sentenced in the Crown Court, and prior to March 2015 the maximum fine which could be imposed in magistrates' courts was £20,000.

guideline') with 10 months afterwards ('post-guideline').²² In the pre-guideline period, the mean²³ fine amount was £40,500 and the median²⁴ was £12,000. In the post-guideline period both the mean and median increased, to £221,700 and £60,000, respectively.

In the pre-guideline period, around two thirds of organisations received a fine of under £20,000, and only 17 per cent received a fine of £60,000 or more. In the post-guideline period, these proportions changed to 31 per cent and 51 per cent, respectively (see figure 2). This shows that overall, fines increased for organisations after the health and safety guideline came into force.

Figure 2: Fine amounts imposed on organisations sentenced for health and safety offences covered by the guideline, after any reduction for guilty plea, 10 months pre-guideline compared with 10 months post-guideline²⁵



Source: MoJ CPD data

²² The pre-guideline period covers January – October 2015, and the post-guideline period covers February – November 2016. A 10 month period was used for two reasons: firstly, the data processing issue mentioned previously meant that some cases sentenced prior to 2015 may have been excluded from the dataset. Secondly, as the guideline was published in November 2015 (but did not come into force until 1 February 2016), the period November 2015 – January 2016 was excluded from this analysis, due to the possibility that the guideline may have been referred to by sentencers prior to the 'in force' date.

²³ The mean is calculated by taking the sum of all values and then dividing by the number of values.

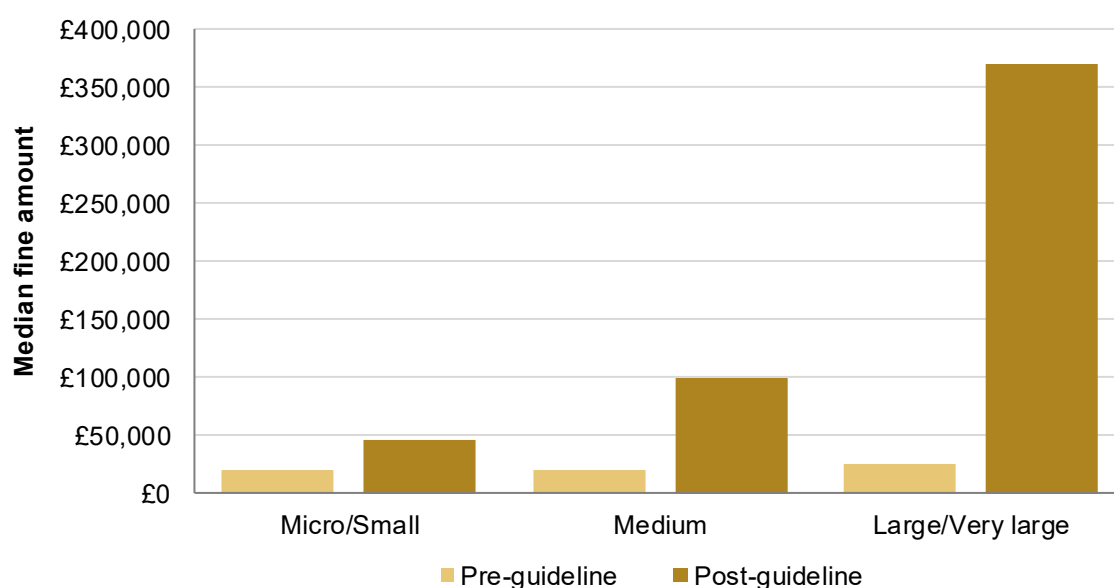
²⁴ The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order. The median is often a more suitable measure than the mean as it is less influenced by extreme values.

²⁵ Fine bands do not include the upper bound, but do include the lower bound fine amount. For example, the category 'Under £20,000' includes fine amounts less than £20,000, and '£20,000 to £40,000' includes fine amounts equal to £20,000, and up to and including £39,999.

Analysis of prosecutions data from the Health and Safety Executive (HSE) enabled a pre- and post-guideline comparison of fines imposed on organisations of different sizes,²⁶ including 161 pre-guideline cases and 129 post-guideline cases. This analysis found that fine amounts increased after the guideline came into force for organisations of all sizes, although the increase was much more apparent for 'Large/Very large' organisations (see figure 3).^{27,28}

It is, however, also important to bear in mind other factors which may affect sentencing; for example, it may be the case that offences coming before the court in the post-guideline period were more serious, which would naturally result in higher fines being imposed.²⁹

Figure 3: Median fine amounts imposed on organisations prosecuted by the Health & Safety Executive, 16 months pre-guideline compared with 16 months post-guideline³⁰



Source: HSE prosecutions data, supplemented with information from Companies House

²⁶ In this analysis, 'Micro' and 'Small' organisations were grouped together as it was not possible to determine this breakdown based on the financial information available. In addition, 'Large' and 'Very large' organisations were grouped together, as the guideline describes a 'Very large' organisation as one where its turnover 'very greatly exceeds the threshold for large organisations'. Whether an organisation is considered 'Large' or 'Very large' is therefore at the discretion of the sentencer, so it was not possible to determine this breakdown from the data available.

²⁷ This analysis includes private companies, partnerships and limited liability partnerships. Data relating to NHS trusts and local authorities were excluded due to low volumes.

²⁸ For 'Large/Very large' organisations, the median fine increased from £25,000 pre-guideline to £370,800 post-guideline. The median fines for 'Micro/Small' and 'Medium' organisations also increased, from £20,100 to £45,200, and £20,000 to £100,000, respectively. (Fine amounts have been rounded to the nearest £100.)

²⁹ In addition, magistrates' courts' fining powers became unlimited in March 2015, which may have affected fine amounts imposed, and should therefore be taken into account. However, it should also be noted that the Crown Court has always been able to impose unlimited fines, so it is probable that prior to March 2015, serious offences which were likely to attract higher fine amounts would have been sentenced in the Crown Court.

³⁰ The 'Pre-guideline' period covers July 2014 – October 2015, and 'Post-guideline' covers February 2016 – May 2017.

After an offender has been sentenced in the Crown Court, they have the opportunity to appeal their conviction and/or sentence. They must initially apply for permission to appeal; if this is granted then the appeal is heard by the Court of Appeal Criminal Division (CACD), which will either allow or dismiss the appeal.³¹

Qualitative analysis was undertaken of a small sample of judgments received by the CACD in a 12 month period both pre- and post-guideline.³² The five judgments relating to pre-guideline cases generally related to appeals against sentence, where the appellant submitted that their sentence was manifestly excessive. In two of these cases the appeal was dismissed (meaning the original sentence passed did not change). In the remaining three cases the appeal was allowed, resulting in a reduced fine.

The seven post-guideline judgments were all appeals against sentence; as previously, appellants generally submitted that their sentence was manifestly excessive for a variety of reasons. In two of these cases the CACD allowed the appeal and reduced the fine imposed, however in the other five cases the appeal was dismissed.

The analysis of this small sample of cases indicates that fewer appeals were successful after the guideline came into force – perhaps because the guideline sets out a clear step-by-step sentencing process to be followed, which promotes greater consistency when sentencing these offences. However, these findings are indicative only, due to the small number of judgments analysed.

In order to examine further how the guideline was being used in practice, a content analysis of Crown Court judges' sentencing remarks was undertaken of a sample of 53 health and safety cases, relating to organisations. Around half of these cases were selected due to the high level of fine imposed (£500,000 and over), so it should be noted that this sample is not representative of all organisations sentenced for these offences.³³

Around half of the offenders in the sample were categorised by the sentencer as either large or very large organisations. In terms of culpability, the majority of cases were either medium or high.

Under the current guideline for health and safety offences, the sentencer is required to assess whether the likelihood of harm was high, medium or low, and also whether the seriousness of harm risked was Level A (which is the most serious and includes risk of death), Level B or Level C. The combination of these two factors determines the initial harm category (see figure 4). This approach to assessing harm is more complex than the usual approach adopted in Sentencing Council guidelines. It was therefore important, as part of the guideline assessment, to examine whether sentencers encountered any issues when using this harm model to sentence cases.

³¹ For more information about the appeals process, please refer to: <https://www.gov.uk/appeal-against-sentence-conviction/crown-court-verdict>

³² Five 'pre-guideline' judgments were analysed (covering appeals received by the CACD between February 2015 – January 2016), along with seven 'post-guideline' judgments (covering February 2016 – January 2017).

³³ See Methodology section for more details.

Figure 4: Harm model in the Sentencing Council's Health and Safety Offences guideline

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)

The transcript analysis found that both the seriousness of harm risked and the likelihood of harm were mentioned by sentencers in the majority of cases (81 per cent), indicating that both aspects of harm are being taken into account during the sentencing process. The most common risk factor cited was 'Level A: Death', and likelihood was mostly either medium or high.³⁴

Prior to the guideline's implementation, some concerns had been expressed that the harm model might be too subjective, and there was a risk that cases would be categorised as 'Level A' when in fact the risk of harm was lower. An examination of those cases in the sample assessed by the sentencer as 'Level A' risk of harm found that all of the assessments of harm in these were valid; in other words, there were no cases incorrectly categorised as 'Level A'. In addition, in all cases where information was provided regarding culpability and harm, the starting point mentioned by the judge was always in the appropriate category range, indicating that the guideline is being followed as intended.³⁵

In the transcript sample (53 cases), mitigating factors were cited much more frequently than aggravating factors. Mitigating factors were present in 94 per cent of cases, and the most common factors cited were 'Evidence of steps taken voluntarily to remedy problem' and 'Good health and safety record' (each mentioned in 33 cases). On average, around three mitigating factors were cited in each transcript, and each mitigating factor listed in the guideline was mentioned on over 10 occasions.³⁶

Conversely, aggravating factors were present in 28 per cent of cases. On average, less than one aggravating factor was cited per transcript, and six of the aggravating factors

³⁴ As these are Crown Court cases they would involve more serious offences, which are consequently more likely to be at the higher end of culpability and harm.

³⁵ For each category of culpability and harm, and for each type of organisation, the guideline includes a starting point and a sentence range. For example, micro organisations with 'Low' culpability in harm category 1 have a starting point of £30,000, and a range of £18,000-£60,000. The sentencer should use the appropriate starting point associated with the relevant harm and culpability category, and then adjust for aggravating or mitigating factors, and any guilty plea reduction.

³⁶ Mitigating factors were cited in the sample on 142 occasions, if only counting guideline factors (or 169 occasions if also counting factors not listed in the guideline).

listed in the guideline were not referenced in the sample.³⁷ The most common factor cited was ‘Previous convictions’ (mentioned in nine cases).

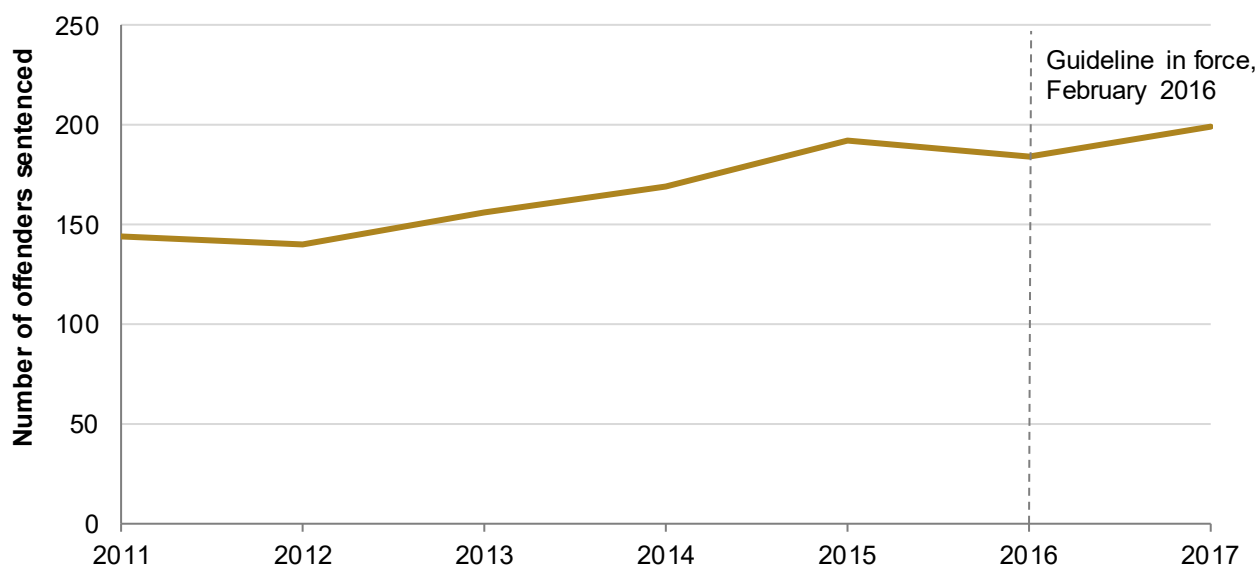
In around half of cases, the sentencer mentioned ‘stepping back’ to review the sentence.³⁸ In some cases this resulted in an adjustment to the fine, and on other occasions the sentencer allowed a longer period of time over which the fine was payable.

Generally, sentencers did not appear to experience any issues when using the guideline to sentence organisations (although this finding is purely based on an assessment of the transcripts).

Individuals

Since 2012, the number of individuals sentenced for health and safety offences covered by the guideline has generally been increasing, and in 2017 around 200 adult offenders were sentenced (see figure 5).³⁹ In 2017 just over half of offenders (55 per cent) were sentenced for offences under section 33(1)(c) of the HSWA 1974 (breaching health and safety regulations), and the majority of offenders were sentenced in magistrates’ courts (73 per cent).

Figure 5: Number of adult offenders sentenced for health and safety offences covered by the guideline, 2011-2017



Source: MoJ CPD data

³⁷ Aggravating factors were cited in the sample on 11 occasions, if only counting guideline factors (or 16 occasions if also counting factors not listed in the guideline).

³⁸ Steps three and four of the guideline for organisations require the court to ‘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. At this stage, the court may adjust the fine upwards or downwards, including outside the range.

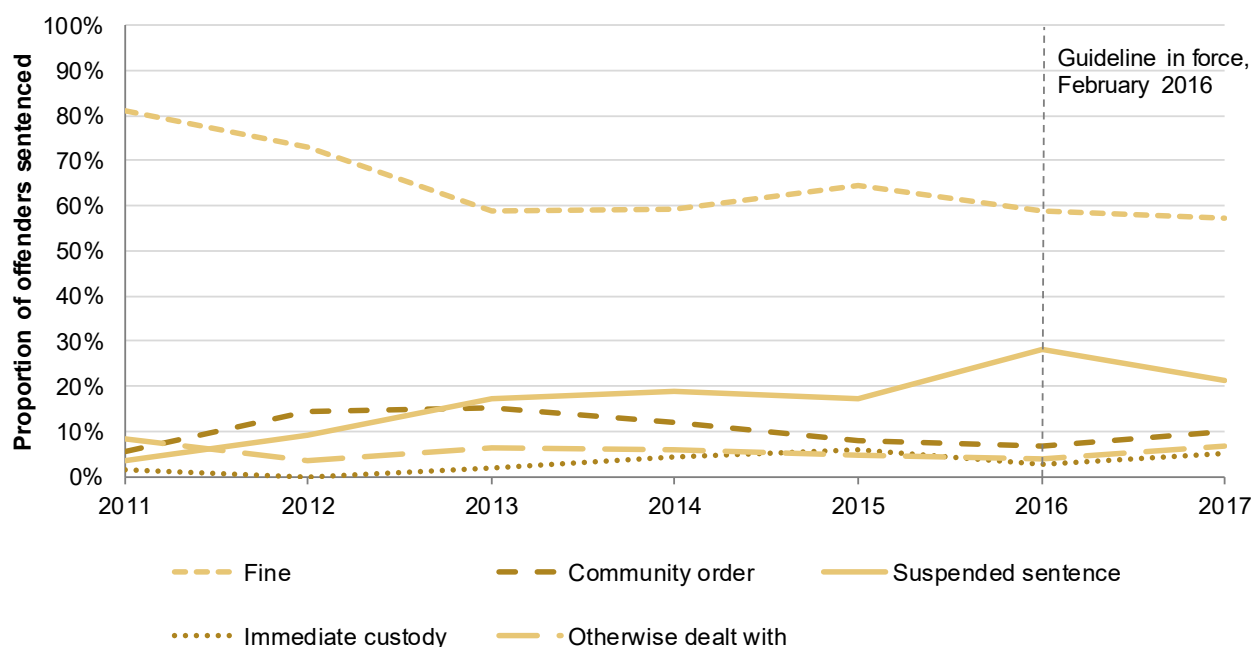
³⁹ Due to a data processing issue, offenders sentenced to a fine of over £10,000 in magistrates’ courts during the period 2011 to 2014 may have been excluded from the data. As a result, volumes shown for this period may be lower than the actual number sentenced; however, it is likely that the number of missing records is low, as more serious offences tend to be sentenced in the Crown Court, and prior to March 2015 the maximum fine which could be imposed in magistrates’ courts was £20,000.

Fines are the most frequently used sentence outcome for these offenders. Between 2011 and 2013 the proportion of offenders sentenced to a fine decreased, from 81 per cent in 2011 to 59 per cent in 2013 (see figure 6). Since 2013 this proportion has fluctuated within the range of 57 and 65 per cent, and in 2017 fines comprised 57 per cent of all sentence outcomes.

During the period 2011 to 2016 the use of suspended sentences generally increased, from three per cent in 2011 to 28 per cent in 2016, reflecting a general increase in suspended sentences seen across the wider criminal justice system.⁴⁰ In 2017, however, this proportion decreased to 21 per cent.

The use of other disposal types has fluctuated over the last six years. In 2017, 10 per cent of offenders received a community order, and five per cent were sentenced to immediate custody (this equates to 10 offenders).

Figure 6: Sentence outcomes received by adult offenders sentenced for health and safety offences covered by the guideline, 2011-2017⁴¹



Source: MoJ CPD data

The resource assessment did not anticipate any changes in the use of disposal types for individuals sentenced following the guideline's introduction. Comparing the use of disposals immediately pre- and post-guideline showed there was an increase in the use of

⁴⁰ The Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012 took effect in December 2012. It increased the maximum length of a sentence which could be suspended from one to two years, and also allowed discretion as to whether or not to impose community requirements on a suspended sentence order (previously there had to be at least one requirement). These changes are likely to have contributed to an increase in suspended sentence orders.

⁴¹ The category 'Otherwise dealt with' includes: discharges, one day in police cells; disqualification order; confiscation order; compensation; and other miscellaneous disposals.

suspended sentences (nine percentage points) in the 12 month period after the guideline came into force, along with a corresponding decrease in the use of fines.⁴²

It is possible that this shift may have been partly attributable to the sentencing guideline. The guideline for individuals contains 16 offence categories; six of these have custody as a starting point, and 10 have custody within the sentence range. The highest custodial sentence length in the sentencing table is two years' custody (the statutory maximum sentence for this offence when tried on indictment), meaning that all custodial sentences for these offences are of a length which may be suspended. Bearing in mind that no specific guideline previously existed for individuals committing health and safety offences, it is possible that the introduction of the Council's guideline may have caused more sentencers to consider custodial sentences than before.⁴³

It is not possible, however, to conclude definitively whether the guideline caused these changes based on the evidence available; there might also be other factors present which would affect sentencing, such as a change in the seriousness of cases coming before the courts. In any case, as the changes in disposals appear to be short-term, any unintended impact of the guideline is likely to be minimal (and in addition, regardless of what caused these changes, only a relatively small number of offenders were affected as this offence is fairly low volume).⁴⁴

Analysis of fine amounts comparing 10 months pre-guideline with 10 months post-guideline showed that both the mean and median fine amounts increased after the guideline came into force.⁴⁵ The mean increased from around £6,300 to £8,200, whilst the median increased from £3,000 to £5,000.

Figure 7 shows that whilst the proportion of fines imposed at the lower end (under £2,000) remained the same post-guideline, there was a decrease in the proportion of offenders receiving a fine of between £2,000-£6,000, and an increase in the proportion receiving a fine of £6,000 or more. Fifty per cent of offenders received a fine of £6,000 or more in the post-guideline period, compared with 30 per cent pre-guideline.

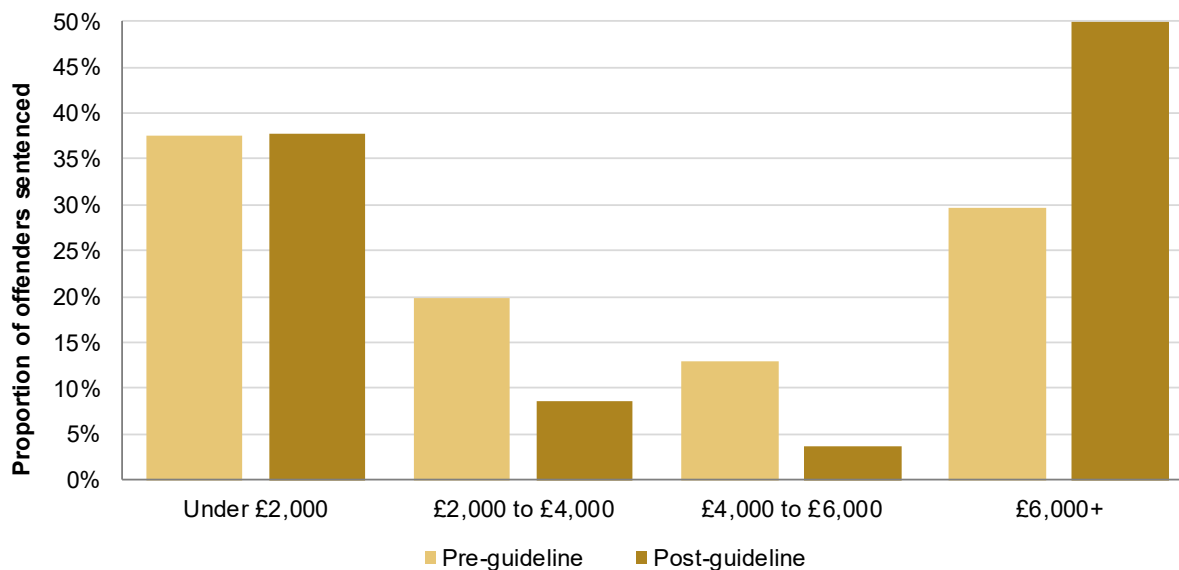
⁴² This analysis compared the use of disposals in a 12 month pre-guideline period (November 2014 – October 2015) with 12 months post-guideline (February 2016 – January 2017).

⁴³ In addition, the general guidance for health and safety offences previously provided in the Magistrates' Court Sentencing Guidelines stated that a fine should be the starting point for sentencing these offences.

⁴⁴ The resource assessment also noted that no changes were expected in relation to average custodial sentence lengths (ACSLs), but it was not possible to undertake any meaningful analysis of ACSLs, due to the relatively low number of offenders sentenced to immediate custody for these offences.

⁴⁵ The pre-guideline period covers January – October 2015, and the post-guideline period covers February – November 2016.

Figure 7: Fine amounts imposed on adult offenders sentenced for health and safety offences covered by the guideline, 10 months pre-guideline compared with 10 months post-guideline



Source: MoJ CPD data

This indicates that the guideline has resulted in an increase in fine amounts imposed on individuals (primarily at the higher end), which was not anticipated. However, the resource assessment published alongside the guideline acknowledged there was a risk that it would have unanticipated effects on fine levels, due to the lack of data available at the time regarding financial penalties.⁴⁶ It is also important to bear in mind that fine levels for individuals are based on weekly income, so changes in fine levels could be due in part to there being more offenders with higher incomes coming before the court, which would result in higher fines being imposed. There may also be other factors present which might affect the fine amounts imposed, such as a change in the seriousness of cases coming before the court.

In order to gain a greater understanding of how the guideline for individuals was being applied in practice, a transcript analysis was undertaken of a sample of 20 health and safety cases, for individuals sentenced in the Crown Court. This analysis found there was a fairly even split between medium, high, and very high culpability.⁴⁷

As with organisations, the most common risk factor cited was 'Level A: Death', and likelihood (when mentioned) tended to be high. Examining all cases assessed as 'Level A' risk of harm found that all of these assessments of harm were valid. In addition, where information was provided regarding culpability and harm, the starting point mentioned by the judge was in the appropriate category range in the majority of cases, indicating that the guideline is being followed as intended.

Mitigating factors were cited much more frequently than aggravating factors (90 per cent of cases compared with 50 per cent, respectively). On average, around two mitigating factors

⁴⁶ The guideline for individuals specifies financial penalties based on the means of the offender (their weekly income). Although sentencing data from the Court Proceedings Database details the fine amount imposed, the means of the offender is not known.

⁴⁷ The lack of low culpability cases can be explained by the fact that these are Crown Court cases, which tend to fall at the higher end of seriousness.

were cited in each transcript,⁴⁸ and the most common mitigating factor cited was ‘Good character and/or exemplary conduct’, mentioned in 13 cases (65 per cent).⁴⁹ In some instances, the mitigating features of the case resulted in the sentencer suspending what would otherwise have been a sentence of immediate custody.

On average, less than one aggravating factor was cited in each transcript. The most common aggravating factors cited were ‘Previous convictions’ and ‘Cost-cutting at the expense of safety’ (each cited in two cases).⁵⁰

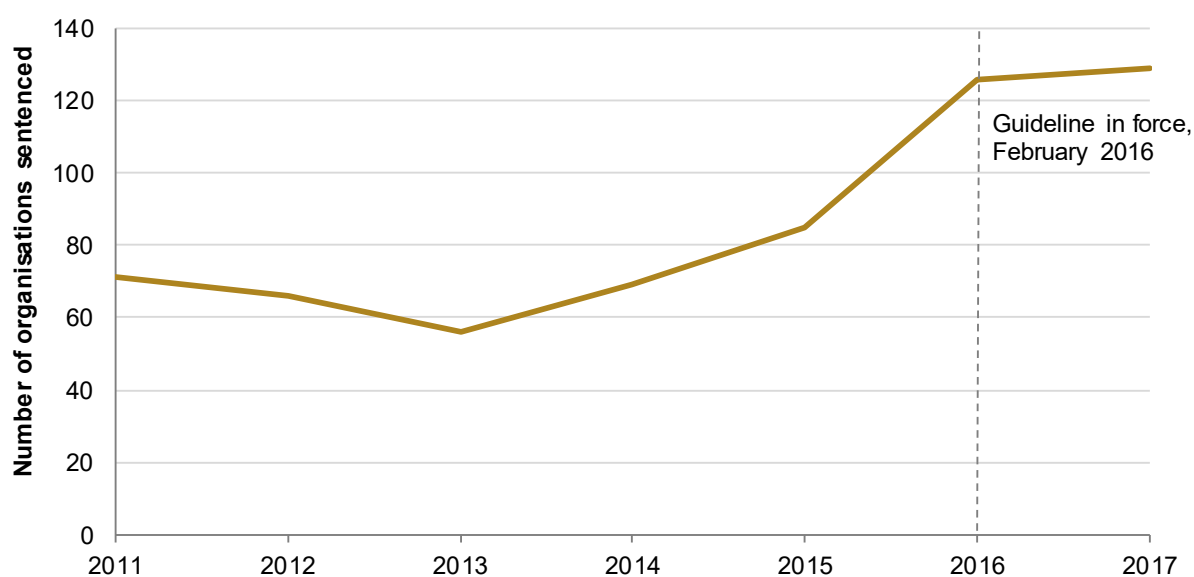
Based on an assessment of this small sample of transcripts, sentencers generally did not seem to experience any issues when using the guideline for individuals.

Food safety and hygiene offences

Organisations

Between 2013 and 2016 the number of organisations sentenced for food safety and hygiene offences more than doubled; increasing from around 60 in 2013 to 130 in 2016 (see figure 8).⁵¹ Since 2016 this figure has remained stable. The vast majority of organisations are sentenced in magistrates’ courts (97 per cent in 2017).

Figure 8: Number of organisations sentenced for food safety and hygiene offences covered by the guideline, 2011-2017



Source: MoJ CPD data

⁴⁸ If counting all mitigating factors cited in the sample (including those not listed in the guideline), the average number of mitigating factors per transcript was three.

⁴⁹ Mitigating factors were cited in the sample on 39 occasions, if only counting guideline factors (or 52 occasions if also counting factors not listed in the guideline).

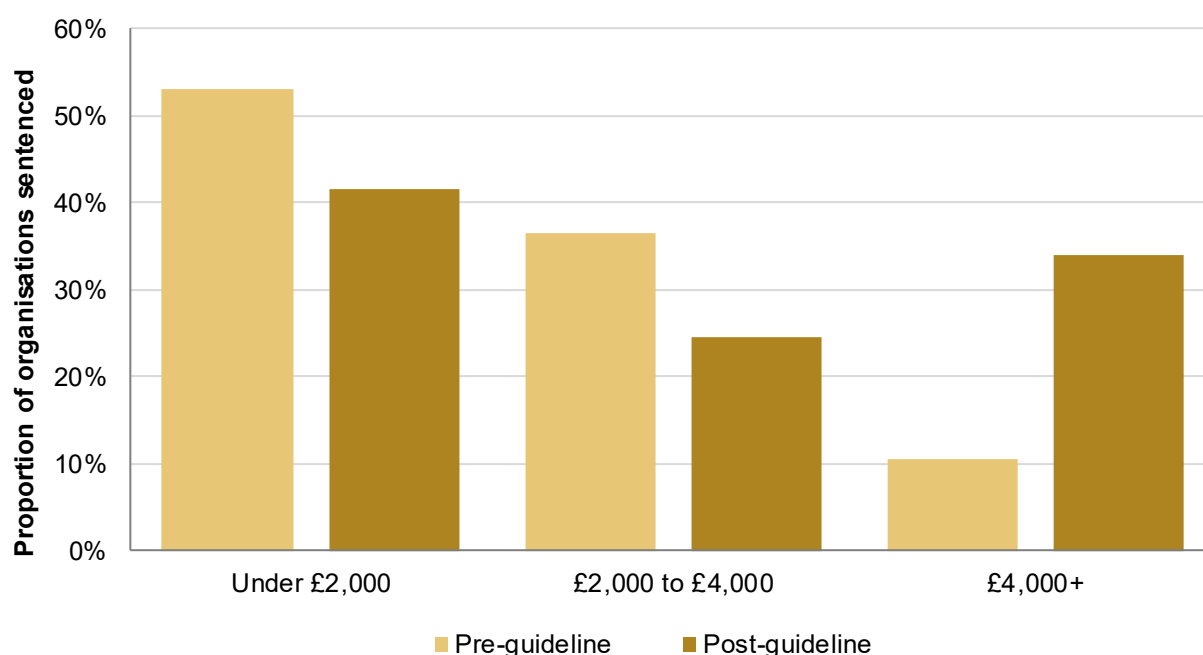
⁵⁰ Aggravating factors were cited in the sample on eight occasions, if only counting guideline factors (or 13 occasions if also counting factors not listed in the guideline).

⁵¹ Due to a data processing issue, offenders sentenced to a fine of over £10,000 in magistrates’ courts during the period 2011 to 2014 may have been excluded from the data. As a result, volumes shown for this period may be lower than the actual number sentenced; however, it is likely that the number of missing records is low, as more serious offences tend to be sentenced in the Crown Court, and prior to March 2015 the maximum fine which could be imposed in magistrates’ courts was £20,000.

Most organisations sentenced for these offences receive a fine (94 per cent in 2017). An analysis of fine amounts comparing 10 months pre-guideline with 10 months post-guideline found that the mean fine amount increased from £2,200 pre-guideline to £7,100 in the post-guideline period.⁵² The median also increased, from £1,500 to £2,500.

Although fines imposed for these offences are generally lower than those imposed for health and safety offences, a similar pattern occurred with a greater proportion of organisations receiving a fine at the higher end, of £4,000 or more (see figure 9). This proportion increased from 11 per cent pre-guideline to 34 per cent post-guideline.

Figure 9: Fine amounts imposed on organisations sentenced for food safety and hygiene offences covered by the guideline, 10 months pre-guideline compared with 10 months post-guideline⁵³



Source: MoJ CPD data

The *Food Safety and Hygiene* guideline was expected to result in an increase in fines for larger organisations committing more serious offences. The analysis undertaken shows that overall there was an increase in fines imposed on organisations sentenced for food safety and hygiene offences, however based on the data analysed it is not possible to determine whether the increase affected organisations of all sizes, or solely larger organisations, as intended.⁵⁴ In addition, it is necessary to bear in mind other factors which may have affected fine amounts imposed; for example, it may be the case that offences coming before the court in the post-guideline period were more serious, which would naturally result in higher fines being imposed, or there might have been a higher proportion

⁵² The pre-guideline period covers January – October 2015, and the post-guideline period covers February – November 2016.

⁵³ Fine bands do not include the upper bound, but do include the lower bound fine amount. For example, the category 'Under £2,000' includes fine amounts less than £2,000, and '£2,000 to £4,000' includes fine amounts equal to £2,000, and up to and including £3,999.

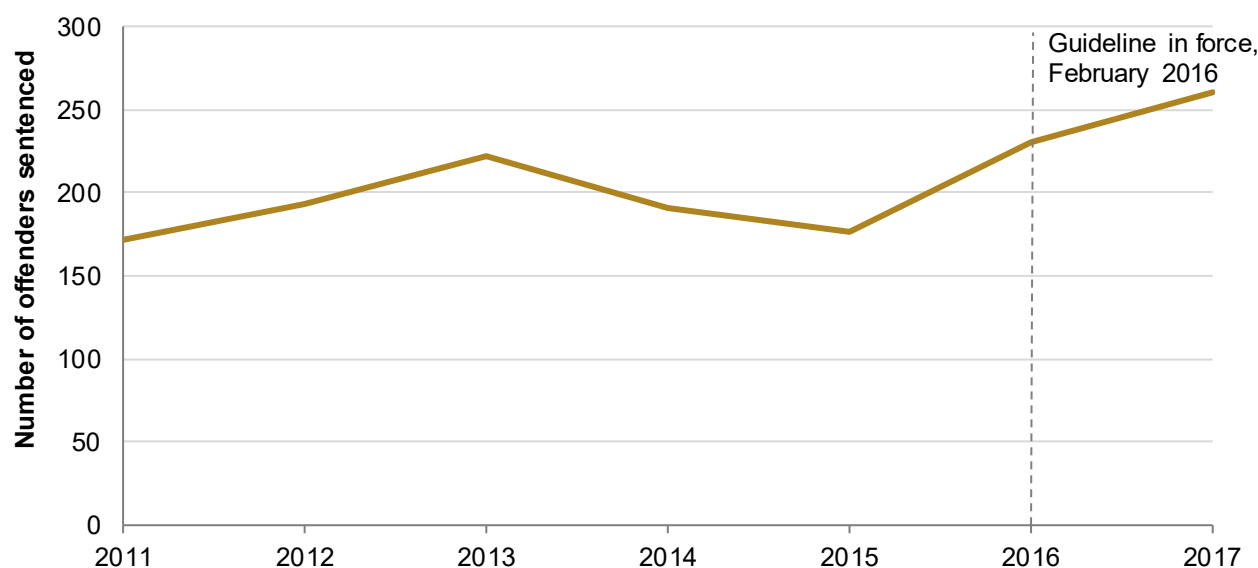
⁵⁴ A content analysis of Crown Court judges' sentencing remarks was not undertaken for food safety and hygiene offences, due to the low number of cases sentenced in the Crown Court.

of larger organisations sentenced during the post-guideline period, which would also cause an increase in fines.

Individuals

The number of adult offenders sentenced for food safety and hygiene offences covered by the guideline has been increasing in recent years, from 180 in 2015 to 260 in 2017 (see figure 10).⁵⁵ The majority of offenders are sentenced in magistrates' courts (92 per cent in 2017).

Figure 10: Number of adult offenders sentenced for food safety and hygiene offences covered by the guideline, 2011-2017



Source: MoJ CPD data

The most frequently used disposal for adult offenders is a fine; in 2017, a fine was imposed on 92 per cent of offenders. A further three per cent received a suspended sentence, two per cent received a community order, and less than one per cent were sentenced to immediate custody.

For food safety and hygiene offences committed by individuals, the guideline was not expected to cause any change in relation to the use of disposal types or average custodial sentence lengths. The use of different disposal types has remained fairly stable over the last few years, subject to the minor fluctuations inherent in low volume offences. Comparing the use of disposals immediately pre- and post-guideline did not show any considerable shifts in disposal types, which was in line with guideline expectations.⁵⁶

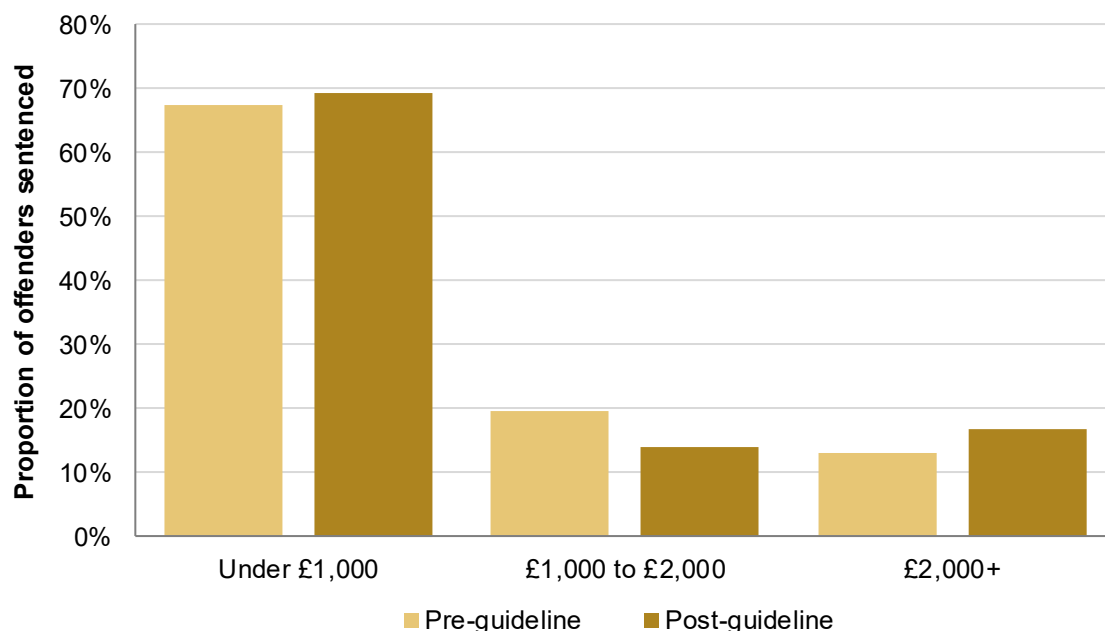
A comparison of the mean and median fine amounts for 10 months pre- and post-guideline found that the mean increased from around £930 to £1,300 post-guideline, whereas the

⁵⁵ Due to a data processing issue, offenders sentenced to a fine of over £10,000 in magistrates' courts during the period 2011 to 2014 may have been excluded from the data. As a result, volumes shown for this period may be lower than the actual number sentenced; however, it is likely that the number of missing records is low, as more serious offences tend to be sentenced in the Crown Court, and prior to March 2015 the maximum fine which could be imposed in magistrates' courts was £20,000.

⁵⁶ It was not possible to undertake any meaningful analysis on average custodial sentence lengths, due to the very low number of offenders sentenced to immediate custody for these offences.

median increased from £500 to £520.⁵⁷ Figure 11 shows that there was a small increase in the proportion of adult offenders receiving a fine of £2,000 or more, from 13 per cent to 17 per cent.

Figure 11: Fine amounts imposed on adult offenders sentenced for food safety and hygiene offences covered by the guideline, 10 months pre-guideline compared with 10 months post-guideline



Source: MoJ CPD data

These small changes suggest that the guideline may have contributed to an unanticipated increase in fine levels for individuals; however, the increase was minimal. In addition, as mentioned previously in regard to health and safety offences, fine levels for individuals are based on weekly income. This means that any changes in fine amounts imposed may be due in part to a change in the type of offenders coming before the court; for example, higher incomes result in higher fines being imposed. A change in the seriousness of cases coming before the court might also influence fine amounts imposed.

Corporate Manslaughter

Corporate manslaughter is a very low volume offence, with around 20 organisations sentenced over the last decade.⁵⁸ The penalty for corporate manslaughter is a fine.

It was anticipated that the guideline for corporate manslaughter might result in an increase in fine levels, particularly for large organisations. Analysis of CPD data for these offences indicates that fines may have increased since the guideline came into force, however this

⁵⁷ The pre-guideline period covers January – October 2015, and the post-guideline period covers February – November 2016.

⁵⁸ Source: Court Proceedings Database, Ministry of Justice.

finding should be treated with caution due to the extremely low volume of offenders sentenced.

An analysis of Crown Court judges' sentencing remarks was undertaken for the small number of corporate manslaughter offences available (including cases sentenced both before and after the guideline came into force).⁵⁹ This qualitative analysis found that there was a greater emphasis on the organisation's turnover in the cases sentenced post-guideline; this is as expected because the current guideline provides separate sentencing tables for different organisation sizes, whereas the previous SGC guideline only provided more general guidance on fine levels. Analysis of the post-guideline cases indicated that sentencers appeared to use the guideline without any issues (although this assessment is based purely on interpretation of the transcripts).

Conclusion and next steps

The analysis undertaken as part of this exercise has enabled an assessment of the impact and implementation of the Sentencing Council's *Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline*.

Sentencing data from the Court Proceedings Database has been used to ascertain any changes in sentence outcomes and fine amounts, examining data both before and after the guideline came into force. Prosecutions data from the Health and Safety Executive have also been used to examine fine amounts imposed on different sizes of organisations for health and safety offences, both before and after the guideline was introduced. This analysis has then been compared to the impact estimated in the resource assessment.

For health and safety offences, the findings suggest that the guideline has caused a substantial increase in fine amounts for larger organisations, which was anticipated by the Council. Fines also appear to have increased (to a lesser degree) for smaller organisations, which was not anticipated. For individuals, the guideline appears to have contributed to an unanticipated increase in fine amounts at the higher end, and resulted in an unanticipated change in the use of some disposal types. This change in disposals appears to be a short-term shift, however, and any unintended impact of the guideline is likely to be minimal, due to the relatively low volumes for this offence.

An increase in fine amounts was also evident for organisations sentenced for food safety and hygiene offences, although the increase in fines was less pronounced than that for health and safety offences. There was an unanticipated increase in fines for individuals after the guideline came into force, but the increase was very small.

For corporate manslaughter, the findings suggest that the guideline may have contributed to an increase in fine amounts, as anticipated (although due to low volumes for corporate manslaughter this conclusion is less explicit).

The content analysis of Crown Court judges' sentencing remarks has provided an indication of how the health and safety guideline is being used by sentencers in practice. This analysis shows that the vast majority of offenders sentenced (both organisations and individuals) were within the appropriate category range, which implies that the guideline is

⁵⁹ Sixteen cases were analysed (10 pre-guideline and six post-guideline).

generally being applied in the manner intended. In addition, this analysis indicated that overall, sentencers did not appear to experience any difficulties applying the guideline.

Analysis of a sample of judgments for health and safety cases heard by the Court of Appeal (sentenced both before and after the guideline came into force) suggests that fewer appeals have been successful following the guideline's introduction.

The Council has considered this analysis, particularly the findings in relation to the fines imposed on smaller organisations and individuals. The Council intends to investigate further the operation of the guideline in due course, and will consider at that stage whether any revision of the guideline is necessary.

Author

Caroline Nauth-Misir
Office of the Sentencing Council