

# 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.

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# 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))

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**Triable either way**

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

**Offence range:** £50 fine – £10 million fine

**STEP ONE****Determining the offence category**

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

**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 411.**

## 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			
	<b>Level A</b> <ul style="list-style-type: none"> <li>Death</li> <li>Physical or mental impairment resulting in lifelong dependency on third party care for basic needs</li> <li>Significantly reduced life expectancy</li> </ul>	<b>Level B</b> <ul style="list-style-type: none"> <li>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</li> <li>A progressive, permanent or irreversible condition</li> </ul>	<b>Level C</b> <ul style="list-style-type: none"> <li>All other cases not falling within Level A or Level B</li> </ul>
<b>High likelihood of harm</b>	Harm category 1	Harm category 2	Harm category 3
<b>Medium likelihood of harm</b>	Harm category 2	Harm category 3	Harm category 4
<b>Low likelihood of harm</b>	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.

**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
<b>Very high culpability</b>		
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
<b>High culpability</b>		
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
<b>Medium culpability</b>		
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
<b>Low culpability</b>		
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
<b>Very high culpability</b>		
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
<b>High culpability</b>		
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
<b>Medium culpability</b>		
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
<b>Low culpability</b>		
Harm category 1	£130,000	£75,000 – £300,000
Harm category 2	£40,000	£14,000 – £100,000
Harm category 3	£14,000	£3,000 – £60,000
Harm category 4	£3,000	£1,000 – £10,000

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

	Starting point	Category range
<b>Very high culpability</b>		
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
<b>High culpability</b>		
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
<b>Medium culpability</b>		
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
<b>Low culpability</b>		
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
<b>Very high culpability</b>		
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
<b>High culpability</b>		
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
<b>Medium culpability</b>		
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
<b>Low culpability</b>		
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

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
<i>Statutory aggravating factor:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Evidence of steps taken voluntarily to remedy problem
<i>Other aggravating factors include:</i>	High level of co-operation with the investigation, beyond that which will always be expected
Cost-cutting at the expense of safety	Good health and safety record
Deliberate concealment of illegal nature of activity	Effective health and safety procedures in place
Breach of any court order	Self-reporting, co-operation and acceptance of responsibility
Obstruction of justice	
Poor health and safety record	
Falsification of documentation or licences	
Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities	
Targeting vulnerable victims	

See page 416.

## 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.

**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 418.**

**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))

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**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

**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.

<b>Very high</b>
Where the offender intentionally breached, or flagrantly disregarded, the law
<b>High</b>
Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken
<b>Medium</b>
Offence committed through act or omission which a person exercising reasonable care would not commit
<b>Low</b>
Offence committed with little fault, for example, because: <ul style="list-style-type: none"><li>• significant efforts were made to address the risk although they were inadequate on this occasion</li><li>• there was no warning/circumstance indicating a risk to health and safety</li><li>• failings were minor and occurred as an isolated incident</li></ul>

See page 421.

## 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			
	<b>Level A</b> <ul style="list-style-type: none"> <li>Death</li> <li>Physical or mental impairment resulting in lifelong dependency on third party care for basic needs</li> <li>Significantly reduced life expectancy</li> </ul>	<b>Level B</b> <ul style="list-style-type: none"> <li>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</li> <li>A progressive, permanent or irreversible condition</li> </ul>	<b>Level C</b> <ul style="list-style-type: none"> <li>All other cases not falling within Level A or Level B</li> </ul>
<b>High likelihood of harm</b>	Harm category 1	Harm category 2	Harm category 3
<b>Medium likelihood of harm</b>	Harm category 2	Harm category 3	Harm category 4
<b>Low likelihood of harm</b>	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 that 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 overleaf. The court should not move up a harm category if actual harm was caused but to a lesser degree than the harm that was risked, as identified on the scale of seriousness above.

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

**STEP TWO****Starting point and category range**

Having determined the category, the court should refer to the starting points on the following page to reach a sentence within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out on page 18.

**Obtaining financial information**

In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case **which may include the inference that the offender can pay any fine.**

**Starting points and ranges**

Where the range includes a potential sentence of custody, the court should consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

**Even where the community order threshold has been passed, a fine will normally be the most appropriate disposal where the offence was committed for economic benefit.** Or, if wishing to remove economic benefit derived through the commission of the offence, consider combining a fine with a community order.

**See page 423.**

Starting point		Category range
<b>Very high culpability</b>		
Harm category 1	18 months' custody	1 – 2 years' custody
Harm category 2	1 year's custody	26 weeks' – 18 months' custody
Harm category 3	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 4	Band F fine	Band E fine – 26 weeks' custody
<b>High culpability</b>		
Harm category 1	1 year's custody	26 weeks' – 18 months' custody
Harm category 2	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 3	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 4	Band E fine	Band D fine – Band E fine
<b>Medium culpability</b>		
Harm category 1	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 2	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 3	Band E fine	Band D fine or low level community order – Band E fine
Harm category 4	Band D fine	Band C fine – Band D fine
<b>Low culpability</b>		
Harm category 1	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 2	Band D fine	Band C fine – Band D fine
Harm category 3	Band C fine	Band B fine – Band C fine
Harm category 4	Band A fine	Conditional discharge – Band A fine

See page 424.

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

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Evidence of steps taken voluntarily to remedy problem
Offence committed whilst on bail	High level of co-operation with the investigation, beyond that which will always be expected
<i>Other aggravating factors include:</i>	Good health and safety record
Cost-cutting at the expense of safety	Effective health and safety procedures in place
Deliberate concealment of illegal nature of activity	Self-reporting, co-operation and acceptance of responsibility
Breach of any court order	Good character and/or exemplary conduct
Obstruction of justice	Inappropriate degree of trust or responsibility
Poor health and safety record	Mental disorder or learning disability, where linked to the commission of the offence
Falsification of documentation or licences	Serious medical conditions requiring urgent, intensive or long term treatment
Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities	Age and/or lack of maturity where it affects the responsibility of the offender
Targeting vulnerable victims	Sole or primary carer for dependent relatives

See page 425.

**STEP THREE****Review any financial element of the sentence**

Where the sentence is or includes a fine, the court should ‘step back’ and, using the factors set out below, review whether the sentence as a whole meets the objectives of sentencing for these offences. The court may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range.

**General principles to follow in setting a fine**

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

**Review of the fine**

Where the court proposes to impose a fine it should ‘step back’, review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the fine arrived at in step two. Where this is not readily available, the court may draw on information available from enforcing authorities and others about the general costs of operating within the law.

In finalising the sentence, the court should have regard to the following factors relating to the wider impacts of the fine on innocent third parties; such as (but not limited to):

- impact of the fine on offender’s ability to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy.

**STEP FOUR****Consider any factors which indicate a reduction, 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**

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

***Disqualification of director***

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

***Remediation***

Under section 42(1) of the Health and Safety at Work 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 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 courts, and should say that no order is made for that reason.

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

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

**STEP SEVEN****Totality principle**

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

**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.

# 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

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### 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

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Offence range: £100 fine – £3 million fine

**STEP ONE****Determining the offence category**

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

**Culpability****Very high**

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 regulators, employees or others
- 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 secure food safety although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk to food safety

Failings were minor and occurred as an isolated incident

**Harm**

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

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

**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**

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

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

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

**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
<b>Very high culpability</b>		
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
<b>High culpability</b>		
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
<b>Medium culpability</b>		
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
<b>Low culpability</b>		
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
<b>Very high culpability</b>		
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
<b>High culpability</b>		
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
<b>Medium culpability</b>		
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
<b>Low culpability</b>		
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

<b>Small</b> Turnover or equivalent: between £2 million and £10 million				
	Starting point	Range		
<b>Very high culpability</b>				
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	
<b>High culpability</b>				
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	
<b>Medium culpability</b>				
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	
<b>Low culpability</b>				
Harm category 1	£3,000	£1,400 –	£12,000	
Harm category 2	£1,400	£700 –	£7,000	
Harm category 3	£700	£300 –	£3,000	

<b>Micro</b> Turnover or equivalent: not more than £2 million				
	Starting point	Range		
<b>Very high culpability</b>				
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	
<b>High culpability</b>				
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	
<b>Medium culpability</b>				
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	
<b>Low culpability</b>				
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	Factors reducing seriousness or reflecting mitigation
<i>Statutory aggravating factor:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Steps taken voluntarily to remedy problem
<i>Other aggravating factors include:</i>	High level of co-operation with the investigation, beyond that which will always be expected
Motivated by financial gain	Good food safety/hygiene record
Deliberate concealment of illegal nature of activity	Self-reporting, co-operation and acceptance of responsibility
Established evidence of wider/community impact	
Breach of any court order	
Obstruction of justice	
Poor food safety or hygiene record	
Refusal of free advice or training	

## STEPS THREE AND FOUR

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

**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.

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# Individuals

## 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 and/or 2 years' custody  
when tried summarily: unlimited fine

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### Wales

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

Triable either way

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

#### The General Food Regulations 2004 (regulation 4)

Triable either way

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

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**Offence range:** Conditional discharge – 18 months' custody

**STEP ONE****Determining the offence category**

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

**Culpability****Very high**

Where the offender intentionally breached, or flagrantly disregarded, the law

**High**

Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken

**Medium**

Offence committed through act or omission which a person exercising reasonable care would not commit

**Low**

Offence committed with little fault, 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 food safety
- failings were minor and occurred as an isolated incident

**Harm**

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

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

**STEP TWO****Starting point and category range**

Having determined the category, the court should refer to the starting points on the next page to reach a sentence within the category range. The court should then consider further adjustment within the category range for aggravating and mitigating features, set out on page 42.

## Obtaining financial information

In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to his financial position as will enable it to assess what he can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case **which may include the inference that the offender can pay any fine.**

## Starting points and ranges

Where the range includes a potential sentence of custody, the court should consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

**Even where the community order threshold has been passed, a fine will normally be the most appropriate disposal.** Or, consider, if wishing to remove economic benefit derived through the commission of the offence, combining a fine with a community order.

	Starting point	Range
<b>Very high culpability</b>		
Harm category 1	9 months' custody	Band F fine – 18 months' custody
Harm category 2	Band F fine	Band E fine – 9 months' custody
Harm category 3	Band E fine	Band D fine – 26 weeks' custody
<b>High culpability</b>		
Harm category 1	Band F fine	Band E fine – 9 months' custody
Harm category 2	Band E fine	Band D fine – 26 weeks' custody
Harm category 3	Band D fine	Band C fine – Band E fine
<b>Medium culpability</b>		
Harm category 1	Band E fine	Band D fine – Band F fine
Harm category 2	Band D fine	Band C fine – Band E fine
Harm category 3	Band C fine	Band B fine – Band C fine
<b>Low culpability</b>		
Harm category 1	Band C fine	Band B fine – Band C fine
Harm category 2	Band B fine	Band A fine – Band B fine
Harm category 3	Band A fine	Conditional discharge – Band A fine

**Note on statutory maxima on summary conviction.** For offences under *regulation 19(1) Food Safety and Hygiene (England) Regulations 2013* and *regulation 17(1) Food Hygiene (Wales) Regulations 2006*, the maximum sentence magistrates may pass on summary conviction is an unlimited fine; therefore for these offences, magistrates may not pass a community order. *Regulation 4 of The General Food Regulations 2004* is in force in Wales but not in England. For offences under *regulation 4*, the maximum sentence on summary conviction is 6 months' custody and/or an unlimited fine.

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

Factors increasing seriousness	Factors reducing seriousness or reflecting personal mitigation
<i>Statutory aggravating factors:</i>	No previous convictions <b>or</b> no relevant/recent convictions
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	Steps voluntarily taken to remedy problem
Offence committed whilst on bail	High level of co-operation with the investigation, beyond that which will always be expected
<i>Other aggravating factors include:</i>	Good food safety/hygiene record
Motivated by financial gain	Self-reporting, co-operation and acceptance of responsibility
Deliberate concealment of illegal nature of activity	Good character and/or exemplary conduct
Established evidence of wider/community impact	Mental disorder or learning disability, where linked to the commission of the offence
Breach of any court order	Serious medical conditions requiring urgent, intensive or long-term treatment
Obstruction of justice	Age and/or lack of maturity where it affects the responsibility of the offender
Poor food safety or hygiene record	Sole or primary carer for dependent relatives
Refusal of free advice or training	

See page 441.

**STEP THREE****Review any financial element of the sentence**

Where the sentence is or includes a fine, the court should ‘step back’ and, using the factors set out in step three, review whether the sentence as a whole meets the objectives of sentencing for these offences. The court may increase or reduce the proposed fine reached at step two, if necessary moving outside of the range.

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

**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.

**Review of the fine**

Where the court proposes to impose a fine it should ‘step back’, review and, if necessary, adjust the initial fine reached at step two to **ensure that it fulfils the general principles** set out above.

Any quantifiable economic benefit derived from the offence, including through avoided costs or operating savings, should normally be added to the total fine arrived at in step two. 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.

In finalising the sentence, the court should have regard to the following factors relating to the wider impacts of the fine on innocent third parties; such as (but not limited to):

- impact of the fine on offender’s ability to comply with the law;
- impact of the fine on employment of staff, service users, customers and local economy.

**STEP FOUR****Consider any factors which indicate a reduction, 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.

**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.

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