

Sentencing Council

Sentencing Council meeting: 19th June 2015
Paper number: SC(15)JUN04 – Health and Safety offences, corporate manslaughter and food safety and hygiene offences
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1 ISSUE

- 1.1 This paper considers responses from the health and safety, corporate manslaughter and food safety and hygiene offences consultation. There is one further meeting to consider food safety and hygiene offences with a view to signing off the definitive guideline in July 2015.
- 1.2 This paper focuses on the health and safety guideline harm model, which is carried over for further consideration from the last meeting, as well as issues raised in response to questions 34-46 (food hygiene and food safety). Specifically, these relate to:
- the overall approach to assessing the culpability and harm of food hygiene offences,
 - the starting points and ranges of fines,
 - the proposed aggravating and mitigating factors, and
 - the use of ancillary orders and compensation.

2 RECOMMENDATION

- 2.1 That the Council considers an issue carried over from the last meeting, and agree the model for assessing harm in health and safety offences which includes some minor revisions. The Council is asked to carry out the application of case study scenarios to the harm model to test its practical use and effectiveness prior to the meeting to enable consideration of any issues with the model to be raised at the meeting.

2.2 The Council is then asked to consider responses to the fourth and fifth set of questions in the consultation and agree the revisions recommended, which are specifically;

- To retain the scope of the guideline,
- Amend the culpability headings for individuals and some of the culpability factors,
- To include risk of harm in Category 1 of harm, and amend the position and wording of other harm factors,
- Amend some of the aggravating factors and remove two mitigating factors,
- Consider whether to include a reference to totality within Steps 3 and 4.

3 CONSIDERATION

Health and Safety

Harm Model

3.1 At the Council's meeting in May discussion took place regarding the health and safety harm model. Council members felt that the model may need to be simplified for ease of use by sentencers. It was suggested that the model be reconsidered at this meeting by applying case scenarios to test its practical use. **Annex A** includes a copy of the harm model which incorporates the revisions agreed at the last meeting. **Annex B** includes four scenarios developed for testing with the harm model.

3.2 Due to the time required to conduct this exercise it would not be feasible for this to be carried out at the meeting. The harm model and scenarios have therefore been circulated to four Council members outside of the meeting, to seek feedback and identify any areas for improvement. Other Council members are invited to undertake the exercise and raise any matters for consideration at the meeting. A minor suggested amendment made by an initial Council member tester was to the structure of the explanation of dimensions of risk, where it was suggested the two dimensions should appear as a list rather than in one sentence to provide greater clarity as to the two step process in using the harm model. This amendment was made prior to the model being circulated to three other Council members for testing.

3.3 While the testers were able to apply the scenarios to the model to identify the risk of harm, two of the testers did note that the assessment of risk is a very difficult one to make. It was highlighted that the assessment involves such subjectivity that one sentencer could reach a number of different conclusions regarding the level of risk an offence posed, and therefore arrive at various assessments of the level of harm risked. This was the case with assessments made by two separate testers, who gradated likelihood of harm differently in all but one scenario. The problem is particularly evident in the determination of medium and high risk of harm. It cannot be ignored that a level of subjectivity will be involved in determining risk, and that it is very complex to conduct an assessment of something that has not actually occurred. The danger is that inconsistent assessments of the level of harm risked may be made when the guideline is used.

3.4 One tester suggested that the highest level of risk could capture cases where the risk actually materialised. However, this could bring consideration of actual harm into the assessment of risk of harm, and merge elements of the two stage test. The Council decided during the development of the guideline that the risk posed by the offenders breach must be considered foremost in assessing harm, as the seriousness of the offence is increased by the level of risk posed. Actual harm caused should then increase the seriousness and elevate the category of harm identified. If this principle is to be maintained, then the likelihood of risk assessment is an inherent element of the sentencing exercise. A potential solution could be to qualify the likelihood assessment by stating that the likelihood must be considered in 'reasonably foreseeable' terms. This is a recognised objective legal test and would help to address any subjectivity in the assessment. The Council also agreed at the last meeting to include this as a test in the consideration of any contributory negligence of employees, so this would provide consistency with that approach.

Question 1: Does the Council agree that the risk of harm assessment should be qualified as likelihood of risks which are reasonably foreseeable?

3.5 The final stage of the harm assessment provides for the level of harm to be increased if a greater number of people were exposed to it, and for actual harm caused to be adequately assessed. Some testers felt that the presentation of these other factors was confusing, and that improvement would be desirable. This was largely due to there appearing to be two 'two step' assessments. **Annex A** includes a possible amendment to this structure, which seeks to clarify the purpose of the final stage of the harm assessment. Other suggested amendments to the wording of the

harm model have been included as comments to **Annex A**, which the Council is asked to consider.

Question 2: Does the Council agree to the amendments to the structure and wording in the harm model illustrated at Annex A?

General themes: Food Hygiene Offences

Scope

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

3.7 The Council had considered the inclusion of offences concerned with the protection of consumers under the Food Safety Act 1960 during the development of the guidelines, but decided not to include these due to the low volumes of offences and the different statutory maxima on summary conviction. This rationale was recognised and approved by respondents who were positive regarding the scope, and we do not recommend that the scope be revised.

Question 3: Does the Council agree to retain the current scope of the guideline?

Culpability categories

3.8 Similar issues were raised with the differing culpability factors for individuals and organisations as were raised in response to the Health and Safety guidelines, which the Council considered at their May meeting and largely related to the subjectivity of the individual factors and concerns regarding the potential for inconsistency of interpretation. **Annex C** provides an illustration of the current presentation of these factors for individuals and organisations, which mirror the approach taken in Health and Safety in that an individual's culpability requires an assessment of whether behaviour was deliberate, negligent or reckless. It was again suggested that the culpability category headings used for organisations should also be used for individuals: Very High, High, Medium and Low. This was the approach

the Council agreed to take when considering health and safety responses, and it is suggested that it would be desirable to be consistent across the guidelines.

Question 4: Does the Council agree to use the same culpability headings of Very High, High, Medium and Low for both organisations and individuals?

3.9 During the road testing of the food offences for organisations guideline, specific issues were identified with the use of the word 'systemic' in the culpability factors. Sentencers appeared to regard 'systemic' as having a high threshold, and most did not identify failures as systemic in one of the example cases, contrary to expectations. As systemic failures are a factor in all but the low culpability categories, if a systemic failure is not identified this could result in a default assessment of low culpability.

3.10 Officials have considered providing a definition of the word 'systemic', but this proved difficult as any definition would need to relate to a 'system', and would not address situations where systems are not in place to fail, or where a failure in one establishment of a chain of food outlets is not regarded as systemic. It is recommended that the use of the word 'systemic' be reconsidered to address this. This applies to the culpability table for organisations at all levels other than low, and for individuals in low only. The amendments suggested are set out below, and are illustrated in **Annex C**.

For organisations;

- i) Amend the wording in the high culpability category '*Evidence of serious, systemic failings within the organisation to address risks to food safety*' to '*Evidence of serious **and/or** systemic failings within the organisation to address risks to food safety*'.
- ii) Amend the factor within medium culpability to remove any reference to a systemic failing. Amend from '*level of offender's systematic failure falls between descriptions in 'high' and 'low' culpability categories*' to '*systems were in place but these were not sufficiently adhered to or implemented*'.

For organisations and individuals;

iii) revise the low category factor of *'failings were minor and not systemic'* to *'evidence that failings were minor and/or occurred as an isolated incident'*.

Question 5: Does the Council agree to amend the culpability factors as suggested?

3.11 The Council will recall that at the last meeting it revised the low culpability factor of 'no prior event' in the health and safety guideline, as it was felt it would not be appropriate in high consequence cases to assess an incident as low culpability due to no prior event occurring, as this may have been purely fortuitous. It is recommended that this factor also be amended in the food offences guideline to ensure consistency across the guidelines. **Annex C** includes an illustration of this amendment.

Question 6: Does the Council agree to remove the words 'no prior event' from the low culpability indicator to read, 'there was no warning indicating food safety risks'?

Harm

3.12 A number of respondents disagreed with the approach to harm within the guideline, and in particular that the highest category of harm does not include a risk of harm. This was perceived to be a departure from the risk based approach to harm in the health and safety guideline. While in health and safety offences the offence itself is the creation of the risk of harm rather than causing actual harm, respondents highlighted that it is generally accepted that food safety offences also do not often result in actual harm, but offences can create varying levels of risk. It was felt that the guideline therefore facilitates a lower categorisation of harm where a regulator's intervention may have reduced or eliminated the harm actually caused, but nevertheless the offender's actions posed a serious risk of harm that he had not addressed. It was also felt by some respondents that a high risk of an adverse effect on human health which is categorised as a Category 2 harm would be more appropriately categorised as a Category 1 harm. We would recommend that this change is effected so that Category 1 addresses risk of harm as well as actual harm caused. Category 2 could then include a medium risk of harm, and category 3 a low risk of harm. In terms of levels of actual harm, category 1 could include serious harm, category 2 an adverse effect on human health not amounting to Category 1, and category 3 would address harm caused by the public being misled about specific food consumed. These proposed changes are set out in **Annex D**.

Question 7: Does the Council agree to amend the categorisation of harm for these offences to ensure risk of harm can fall within the highest harm category?

3.13 A further suggested amendment was to the wording of the current category 2 factor *'high risk of an adverse effect on human health – including where supply was to groups that are particularly vulnerable to health issues'*. It was suggested that the *'vulnerable groups'* element of the factor would be more appropriate as an aggravating factor than when assessing harm. However, Council may consider that this factor should appear in the highest category as shown in the amended harm factors in Annex D.

Question 8: Does the Council agree to amend the position of the vulnerable groups factor to the highest category of harm?

3.14 A further issue raised related to the description of Category 1 actual harm. Some respondents struggled with the terminology *'acute'* and *'chronic'*, and felt that this could be subject to incorrect interpretation of the harm intended to be captured by these terms. It is suggested that we remove the reference to *'acute and chronic condition'*, and replace these with the words *'requiring medical treatment and /or widespread'*. This amendment is also illustrated in **Annex D**.

Question 9: Does the Council agree to amend the wording relating to the description of actual harm in Category 1 as suggested?

3.15 A further harm factor which was suggested relates to situations where a consumer is misled regarding the content of food and it is consumed in contravention of religious beliefs. This issue was also raised in response to equality and diversity considerations of the guideline, which are considered at paragraph 3.16 of this paper. While category 3 includes a factor where the public is misled about the specific food consumed, it applies to situations where there is little or no risk of an actual adverse health effect. It is suggested that a greater level of harm may result if a person consumes food which is against their religious or personal beliefs, albeit it may be psychological rather than physical harm. Officials have considered wording for such a factor and suggest *'Consumer misled regarding food's compliance with religious or*

personal beliefs'. It is suggested that this would be included as a category 2 factor to adequately address the greater harm posed by the offence.

Question 10: Does the Council agree to include the additional harm factor suggested?

Starting Points and Ranges

Individuals

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

3.17 If the Council has agreed to the amendments suggested to harm, this may address the concerns as it is likely that offences would fall within a higher category and attract a higher penalty. The lowest fines would then be reserved for the very low harm and culpability offences.

Organisations

3.18 The point regarding fines being too low at the lower end of the scale was repeated for organisations. As with health and safety offences, responses highlighted the disproportionate level of fines for micro and small organisations compared to larger organisations. As discussed at the May meeting, officials are considering this issue in relation to health and safety fine levels. This consideration will be extended to fines for food offences, and further information will be provided at the Council's July meeting.

Aggravating and Mitigating Factors

3.19 As already noted in the discussion of harm, there was a suggestion that vulnerable groups being affected by offences should be an aggravating factor. It was also suggested that a failure to heed warnings or act upon regulator's advice should be included as an aggravating factor. A similar factor is already included at step one for organisations; *'ignoring concerns raised by employees or others'*. If the Council thinks it appropriate, this factor could be amended to specifically include regulators. This amendment is illustrated at **Annex C** for the Council's consideration.

Question 11: Does the Council wish to amend any of the aggravating factors?

3.20 There was some criticism of two particular mitigating factors. These were;

- Business closed voluntarily on discovery of problems in order to take remedial steps
- Effective food hygiene/safety procedures in place.

It was suggested that mitigation should not be available for voluntary closure, as this is a recognised procedure often invoked as part of enforcement proceedings, and it was highlighted that if a voluntary closure procedure was necessary it could actually aggravate an offence. Situations intended to be captured by a business closing voluntarily on discovery of problems in order to take remedial steps would be mitigated under '*evidence of steps taken to remedy the problem*'.

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

Question 12: Does the Council agree to remove the mitigating factors suggested?

Ancillary orders and compensation

3.21 There was broad agreement to the guidance provided on ancillary orders and compensation.

Totality

3.22 The guidance on totality included within the guideline was felt to be particularly useful given that there are often multiple charges of these offences. It was felt that given its importance in sentencing these offences it could be given more prominence within the guideline, as it currently appears at Step 8 of the Organisations guideline and Step 7 of Individuals. While we do not propose the sections be moved, to ensure full consideration is given to the step the Council may think it helpful if reference to it were included earlier within the guideline. If so, we would suggest a reference to considering the totality step of each guideline could be included at the description of Step 3 and 4. This section of the guideline currently reads as below, and the additional text suggested for inclusion is italicised in bold.

‘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 7’ (or 8 if organisations).***

Question 13: Does the Council wish to include a reference to totality within the Steps 3 and 4 summary to give greater prominence to the consideration of this point within the guideline?

Victims and Equality and Diversity – (the overall guideline)

3.23 This section of the consultation document included three questions regarding the guidelines impact upon victims and equality and diversity.

Victims

3.24 A number of respondents felt that the guidelines should give greater consideration to the impact upon victims of offences, either by specifically requiring consideration of victim personal statements or by including a direct apology to victims as a mitigating factor. The Council has taken the approach not to specifically include reference to victim personal statements in other guidelines, so a rationale for this could be provided in the consultation response document.

Equality and Diversity

3.25 The main issue raised in response to this question related to the religious issues with food offences, which is considered at paragraph 3.11. It was also highlighted that a significant proportion of those employed within the food industry may not speak English as a first language, or cultural issues can complicate enforcement activity, which may be a factor in offences being committed. This was an observation only and no particular action was recommended in relation to this.

Other Comments

3.26 Overall comments received generally repeated the strongest views of respondents in relation to a specific area. Notably, the use of turnover in assessing the size of an organisation, increased fines and the potential impact of increased fines on businesses. These were considered by the Council at the April meeting

when considering overarching aims of the guideline, and rationales will be provided in the consultation response document.

3.27 Other comments approved of the Council's approach to assessing risk of harm across the guidelines, and noted the value the guidelines will add in promoting consistency in sentencing often difficult and uncommon offences.

4 IMPACT

4.1 As with the Health and Safety guideline, the food offences guideline is likely to increase the level of fines significantly for large organisations. However the majority of prosecutions for these offences are of smaller independent traders and the effect on them will be dependant on the changes to harm and culpability addressed above. We do not have robust data on current sentencing levels to determine the extent of any effect.

5 RISK

5.1 It will be very important to ensure that fines for these offences act as a deterrent, and that the Council is seen to take a consistent approach to dealing with these offences. Particular consideration of the issues around the assessment of harm for these offences will therefore be important, as will the levels of fines imposed to ensure that the guidelines act as a suitable deterrent to offending.

5.2 Due to the increased fines for certain of these offences, criticism of the impact upon businesses is likely, and has been referred to in a significant number of consultation responses. It will be important that an appropriate rationale is provided in the consultation response document to address these concerns. There has been significant interest in the timescale for the publication of the definitive guideline, and media handling of the publication will be particularly important. We will need to ensure we are able to provide clear rationales for areas likely to attract criticism.

5.3 No impact upon prison or probation resources is anticipated as a result of the guideline.

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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.

Comment [C1]: Suggestion that this is amended to 'The seriousness of the offence is in the creation of the risk of harm'

First, the court should identify an initial harm category by assessing the risk of harm created by the offence. There are two dimensions to risk–

1) the seriousness of the harm risked (A, B or C) by the offender’s breach and

2) the REASONABLY FORSEEABLE likelihood of that harm arising (high, medium and low).

Comment [C2]: See para 3.4

Comment [C3]: Amended to a list format per para 3.2

Seriousness of harm risked					
Likelihood of harm		Level A	Level B	Level C	
		<ul style="list-style-type: none"> Fatality Physical or mental impairment resulting in lifelong dependency on third party care Health condition resulting in 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	Comment [C4]: Added to clarify subject of assessment
	Medium Likelihood of harm	Harm category 2	Harm category 3	Harm category 4	Comment [C5]: As C2
Low Likelihood of harm	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)	Comment [C6]: Changed from 'remote' Comment [C7]: As C2	

3) The court must next consider if the following factors apply which increase the seriousness of the harm. These two factors should be considered in the round in assigning the final harm category. If already in harm category 1 and wishing to move higher, move up within the category range at step two.

Deleted: Second, the court should consider the following two factors

i) Whether the offence exposed a number of people to the risk of harm.

If a number of workers or members of the public was exposed to the risk created by the offender’s breach, the court must consider either substantially moving up within the category range or moving up a harm category. The greater number of people, the greater the risk.

ii) Whether the offence was a significant cause of actual harm.

- Where the offender’s breach was a **significant cause**¹ of actual harm, the court must consider moving up within the category range or moving up a harm category, depending on 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 should be reasonably foreseeable.
- 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.

Comment [C8]: Suggested amendment to ‘where the offender is responsible for causing actual harm of the degree which was risked and was likely then upward adjustment should be made’.

Comment [C9]: As agreed at May meeting, removed as a separate bullet point and ‘sentencing purposes’ reference added to give greater clarity. ‘Reasonably foreseeable’ replaces ‘in a way which should be anticipated’.

Comment [C10]: Suggestion that this is rephrased to “If the actual harm caused was less severe than the harm risked the court should not move up a harm category”

Deleted: These two factors should be considered in the round in assigning the final harm category. If already in harm category 1 and wishing to move higher, move up within the category range at step two.¶

¹A 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.

Health and Safety Scenarios – FOR CONSIDERATION PRIOR TO MEETING
Scenario 1:

The former owner of a building firm has been prosecuted for carrying out illegal and dangerous gas work at two homes.

Mr A, was prosecuted by the Health and Safety Executive (HSE) after an investigation established that he carried out gas work on two separate occasions without being a member of the Gas Safe Register, as the law requires.

The court was told that he was registered with the Gas Safe Register between October 2009 and October 2010, but had subsequently allowed his registration to lapse. He knew a current registration was a legal requirement, but opted to undertake the gas work regardless.

Mr A, pleaded guilty to five breaches of the Gas Safety (Installation and Use) Regulations 1998 as an unregistered gas fitter:-

- two counts of Regulation 3(1),
- two counts of Regulation 3(3)
- and single count of Regulation (3(2).

Mr A stated that he had let his registration lapse when his business ran into financial difficulties and lost the tender of ongoing contacts.

Although he fully accepted that he had deliberately deceived the householders into thinking he was registered, he was very remorseful.

Scenario 2

The owner of a fish and chip shop has been taken to court for a serious breach of health and safety regulations on his premises following an investigation into working practices at the business last year.

The investigation revealed that a counter assistant had to seek medical attention for burns, having been struck by hot oil on her feet, left leg and back while her employer was emptying the fryer.

The court heard how during an inspection at the premises it was discovered that Mr B was in breach of both the Health and Safety at Work etc Act 1974 and the Personal Protective Equipment at Work Regulations 1992.

Under this legislation, Mr B was required to ensure that a safe system of work was in place when emptying oil from the fryer, and to provide employees with health and safety training. During the investigation, there was no documentation found to reflect these requirements.

The court also heard how Mr B was required by law to provide personal protective equipment in the form of safety footwear to employees. During the investigation, he confirmed that the need to wear safety footwear had been identified due to slippery floors at the premises – but there was still none provided.

In mitigation Mr B said that he had never had any accidents previously as he usually emptied the fryer after the shop was closed and the staff had gone home and that he had advised staff to wear trainers to work

Mr B pleaded guilty to all three charges against him: two relating to his general duty to his employee and one relating to a breach in health and safety regulations.

Scenario 3

A plumber was prosecuted by the Health and Safety Executive (HSE) after it was found that he had installed an oil fired boiler at a property that had the potential to cause death from CO poisoning.

Mr C pleaded guilty to breaching Section 3 (2) of the Health and Safety at Work etc Act after it was heard the boiler was installed in a compartment with inadequate ventilation and an unsuitable material, flue liner, linking the boiler into the chimney.

No problems were noticed for around six months until the householder came home to find the house full of smoke and fumes. The flexible flue liner had dipped to form a moisture trap. This had become full of water which had fully or partially blocked the flue. These conditions led to incomplete combustion and the spillage of products of combustion including carbon monoxide.

Mr C was horrified to learn that his work was defective and was very remorseful.

Scenario 4:

A father of 3 was killed when his lorry clipped an overhead power line at a Farm.

Mr D, the farm owner, admitted breaching the Health and Safety at Work Act.

The victim was delivering cattle feed to the farm when his lorry's tipper hit the overhead power and died instantly by electrocution

The HSE said its investigation found Mr D had made no attempt to remove or reduce the serious risk associated with the power line.

After sentencing, the HSE inspector said: "Had Mr D had the power lines diverted, as he did after the incident, or even put in place measures to make people aware of the power lines, this terrible incident would not have happened and the driver would likely still be here today."

Breach of food hygiene and food safety regulations

Culpability Categories:

Organisations:

Very high	<ul style="list-style-type: none"> Deliberate breach of or flagrant disregard for the law
High	<ul style="list-style-type: none"> Offender fell far short of the appropriate standard; for example, by <ul style="list-style-type: none"> ○ failing to put in place measures that are recognised standards in the industry ○ ignoring concerns raised by regulator, employees or others ○ allowing breaches to subsist over a long period of time Evidence of serious, and/or systemic failings within the organisation to address risks to food safety
Medium	<ul style="list-style-type: none"> Offender fell short of the appropriate standard in a manner that falls between the descriptions in “high” and “low” culpability categories Level of offender’s systemic failure falls between descriptions in ‘high’ and ‘low’ culpability categories. Systems were in place but these were not sufficiently adhered to or implemented.
Low	<ul style="list-style-type: none"> Offender did not fall far short of the appropriate standard; for example, because <ul style="list-style-type: none"> ○ significant efforts were made to secure food safety although they were inadequate on this occasion ○ there was no warning indicating food safety risks Evidence that failings were minor and/or occurred as an isolated incident

Comment [C1]: See para 3.15

Comment [C2]: See para 3.6i

Comment [C3]: Replaces ‘Level of offender’s systemic failure falls between descriptions in ‘high’ and ‘low’ culpability categories.’ (para 3.6ii)

Comment [C4]: ‘No prior event’ deleted (para 3.7 Q4)

Comment [C5]: Replaces ‘and not systemic’ (para 3.6 iii)

Individuals:

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

Comment [C6]: Amend to Very High (para 3.3 Q.2)

Comment [C7]: Amend to High (para 3.3 Q2)

Comment [C8]: Amend to Medium (para 3.3 Q2)

Comment [C9]: As comment C3

Comment [C10]: As comment C4

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Food Offences - Harm Categories:**Organisations and individuals:**

Category 1	<ul style="list-style-type: none"> • Serious adverse effect(s) on human health requiring medical treatment and/or having a widespread impact • High risk* of a serious adverse effect on human health 	Comment [C1]: Para 3.8, Q6
Category 2	<ul style="list-style-type: none"> • Adverse effect on human health (not amounting to Category 1) • Medium risk* of adverse effect on human health • Regulator and / or legitimate industry substantially undermined by offender's activities • Relevant authorities unable to trace products in order to investigate risks to health, or are otherwise inhibited in identifying or addressing risks to health • Consumer misled regarding food's compliance with religious or personal beliefs 	Comment [C2]: Additional factor, para 3.8
Category 3	<ul style="list-style-type: none"> • low risk* of an adverse effect on human health • Public misled about the specific food consumed, but little or no risk of adverse effect on human health 	Comment [C3]: Move medium risk to Category 2 per para 3.6

* The level of risk should be assessed with reference to the potential number of consumers exposed, the type of consumer exposed and the nature of the offence.