



The new sentencing guideline for health and safety offences

Effective from 1 February 2016

In November 2014, the Sentencing Council began consulting on a draft guideline for health and safety offences, corporate manslaughter, and breach of food safety and hygiene regulations. The consultation was closed in February 2015 and on 3 November the Council published a definitive version of the guideline due to come into force on 1 February 2016.

No changes from draft guidelines on level of fines

For the most part this final guideline mirrors the draft version as consulted on. In particular there have been no changes to the tables used to calculate the appropriate level of fine. For health and safety offences committed by organisations, the starting point and applicable range are calculated according to category of culpability, harm, and level of offender turnover. Large organisations with a turnover of more than £50m could face fines of up to £10m, whilst medium sized enterprises with a turnover of between £10m and £50m could face fines of up to £4m. Small companies (those with a turnover of between £2m and £10m) could receive fines of up to £1.6m for breach of health and safety, and micro enterprises with a turnover of less than £2m could be fined up to £450,000.

The penalties for corporate manslaughter follow a similar structure, but are much higher. The maximum for a large organisation, for example, would be £20m. For organisations turning over greatly in excess of £50m the guidelines state ominously: "It may be

necessary to move outside the suggested range to achieve a proportionate sentence."

Aside from the tables used to determine the appropriate level of fine, there have been a number of changes to the wording of the guideline since the draft as set out briefly below.

Health and safety offences

Offender culpability

For health and safety offences committed by individuals the headings to the categories of offender culpability have been amended to match those that apply in cases of offences committed by organisations. In the final version of the guideline the category headings appear as 'very high', 'high', 'medium' and 'low' as opposed to 'deliberate', 'reckless', 'negligent' and 'low'.

Inference of ability to pay the fine

In relation to offences committed by individuals the definitive version of the guideline contains renewed emphasis on the court's power to infer that an offender is able to pay any fine imposed unless it has supplied sufficient financial information to the contrary.

Any comments or queries?

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Aggravating factors

The definitive version of the guideline now contains an additional aggravating factor in the form of 'targeting vulnerable victims'. The presence of this factor in any given case may result in an upwards adjustment to the fine as determined by offender culpability, category of harm, and, in the case of organisations, the extent of the offender's turnover.

Power to draw on information

When reviewing the proposed level of fine to ensure that it properly reflects the seriousness of the offence and the extent to which the offender fell below the required standard, the court is ordinarily encouraged to add on any quantifiable economic benefit that the offender derived from the offence. This may include costs avoided or savings achieved as a result of breaches in health and safety procedures. The definitive version of the guideline now states that where information as to such benefits is not readily available, the court may draw on information from enforcing authorities and others about the costs of operating within the law.

Remediation orders

The definitive guideline contains additional provisions in respect of remedial orders, which the court may impose in addition to or instead of any punishment on the offender. The guideline now states that an offender ought to have remedied any specific failings by the time of sentencing and, if it has not, will be deprived of significant mitigation. The guideline goes on to say that the cost of compliance with any such order should not ordinarily be taken into account in fixing the level of fine as the order only requires what should already have been done.

Food safety and hygiene offences

Offender culpability and categories of harm

As in relation to health and safety breaches, the headings for the categories of culpability in offences committed by individuals have been amended to match those that apply to offences committed by organisations.

Again these now appear as 'very high', 'high', 'medium' and 'low' as opposed to 'deliberate', 'reckless', 'negligent' and 'low'. There have also been some changes to the categories of harm used to determine an appropriate starting point and applicable range for the level of fine. These amendments mainly relate to the level of risk of an adverse effect on individuals resulting from the breach.

Factors reducing seriousness

In the definitive guideline the list of factors reducing seriousness or reflecting personal mitigation is now shorter than before. Consequently the fact that an offender had effective food safety or hygiene procedures in place will no longer justify a downward adjustment in the level of fine. Evidence of steps taken to remedy the problem and the voluntary closure of the business have been collated into a single factor comprising steps taken voluntarily to remedy the problem.

Community orders

There have been some alterations to the table setting out what may be appropriate to impose for each level of community sentence, including an increase in the suggested duration of a curfew requirement from up to 12 to 16 hours per day. There are now two alternative suggestions applying to low level orders in the form of an exclusion requirement and an attendance centre requirement. In relation to medium level orders, the suggested activity requirement in the middle range has been replaced by an exclusion requirement lasting in the region of 6 months.

[Link to guidelines](#)