

BSiF Brief

Health & Safety Sentencing Guidelines 2016





Site safety

-  All visitors and contractors must report to the office
-  No admittance to unauthorised personnel
-  Safety helmets must be worn
-  Protective footwear must be worn
-  High visibility vests must be worn in this area

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Introduction

On 1st February, the new Sentencing Guidelines on health and safety offences came into effect.

The new process applies from that date even if the offences were committed before then. In essence the guidelines create a new matrix into which the details of the offence, the circumstances and turnover of the offender are plotted, resulting in a sentence/fine or both.



The real change with these guidelines is that the offence is in creating a risk of harm. The seriousness of the harm risked, the likelihood of that harm arising and whether the offence exposed a number of workers/members of the public or resulted in significant cause of actual harm are all now part of the sentencing process. Serious financial repercussions for offending businesses can be expected and in some cases can even be unlimited. This will be explained further within this document.

The BSIF supports both the consistency that this approach will deliver and the fundamental proposition that neglecting Occupational Safety and Health will result in increased punishment levels.

One concern is the potential for prosecutions to take even longer due to the significant raising of fines and the evidencing of applicable turnover levels. This could create further delays for victims and reduce the public impact as it appears to be a situation that occurred years ago, with the assumption that things would surely have changed since then.

This leaflet is intended to be a summary of the sentencing guidelines. The Definitive Guidelines can be accessed via the link at the bottom of this page.

Alan Murray, CEO



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Applicability of guidelines

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issued the *Definitive Guideline* effective from 1st February 2016. The sentencing guidelines apply to all organisations and offenders aged 18 and older, who are sentenced on or after 1st February 2016, regardless of the date the offence occurred.

Structure, ranges and starting points

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 (culpability and harm). The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. Starting points have also been identified within each category to define where a court can start calculating the provisional sentence. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. A guilty plea is taken into consideration only after the appropriate sentence has been identified.



Health and Safety – Organisations

In the section ‘Health and Safety – Organisations’ there is a nine step breakdown of how fines are to be determined whether it be in relation to:

- Breach of duty of employer towards employees and non-employees
- Breach of duty of self-employed to others
- Breach of Health and Safety regulations

STEP ONE – Determining the offence category

The court should determine the offence category using only the culpability and harm factors in the tables included in the *Definitive Guideline*.

Culpability

In summary, culpability is split into four different categories: Very High, High, Medium and Low.

Very High	Deliberate breach of or flagrant disregard for the law
High	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 - 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 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: <ul style="list-style-type: none"> - Significant efforts were made to address the risk although they were inadequate on this occasion Failings were minor and occurred as an isolated incident

Harm

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

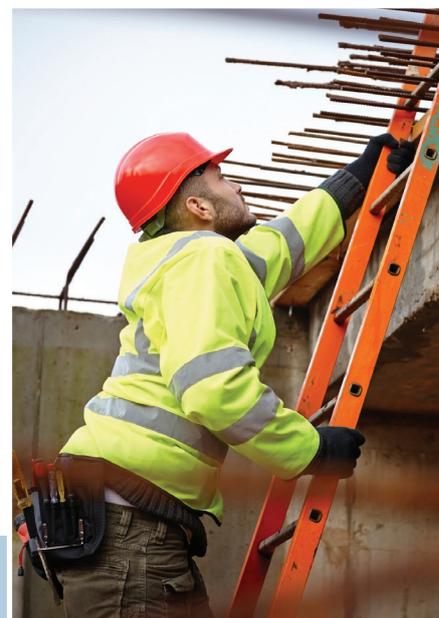
1. See the table below to identify an initial harm category based on the risk of harm created by the offence. The assessment of harm requires a consideration of both:
 - The seriousness of the harm risked (A,B or C) by the offender’s breach; and
 - The likelihood of that harm arising (high, medium or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

Seriousness of harm risked			
	Level A <ul style="list-style-type: none"> • Death • Lifelong dependency as a result of physical or mental impairment • Significant reduction in life expectancy 	Level B <ul style="list-style-type: none"> • Physical or mental impairment which has a substantial and long-term effect on the sufferer's ability to carry out day to day activities • A progressive, permanent or irreversible condition 	Level C <ul style="list-style-type: none"> • All other cases not failing within Level A or B
High likelihood of harm	Harm category 1	Harm category 2	Harm category 3
Medium likelihood of harm	Harm category 2	Harm category 3	Harm category 4
Low likelihood of harm	Harm category 3	Harm category 4	Harm category 4

2. Next, the court must consider if the following factors apply:

- (a) whether the offence exposed a number of workers or members of the public to the risk of harm
 - (b) whether the offence was a significant cause of actual harm.
- These two factors should be considered in the round in assigning the final harm category.

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. Full details are in the Health and Safety Offences Definitive Guideline.



STEP TWO – Starting point and category range

Having determined the offence category, the court should identify the relevant table provided in the *Definitive Guideline*. There are four tables for different sized organisations from: Large, Medium, Small and Micro. 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 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. The *Definitive Guideline* sets out how the court assesses the financial status of not only companies but also partnerships, local authorities, health trusts, charities and others.

The following abridged tables show a breakdown in different sized organisations, different starting points and category ranges. Full details are in the Health and Safety Offences Definitive Guideline.



Large		
Turnover or equivalent: £50 million and over		
	Starting point	Category range
Very high culpability Harm category 1	£4,000,000	£2,600,000-£10,000,000
High culpability Harm category 1	£2,400,000	£1,500,000 - £6,000,000
Medium culpability Harm category 1	£1,300,000	£800,000 - £3,250,000
Low culpability Harm category 1	£300,000	£180,000 - £700,000

Medium		
Turnover or equivalent: £10 million and £50 million		
	Starting point	Category range
Very high culpability Harm category 1	£1,600,000	£1,000,000 - £ 4,000,000
High culpability Harm category 1	£950,000	£600,000 - £2,500,000
Medium culpability Harm category 1	£540,000	£300,000 - £1,300,000
Low culpability Harm category 1	£130,000	£75,000 – £300,000

Small		
Turnover or equivalent: between £2 million and £10 million		
	Starting point	Category range
Very high culpability Harm category 1	£450,000	£300,000 - £1,600,000
High culpability Harm category 1	£250,000	£170,000 - £1,000,000
Medium culpability Harm category 1	£160,000	£100,000 - £600,000
Low culpability Harm category 1	£45,000	£25,000 - £130,000

Micro		
Turnover or equivalent: not more than £2 million		
	Starting point	Category range
Very high culpability Harm category 1	£250,000	£150,000 - £450,000
High culpability Harm category 1	£160,000	£100,000 - £250,000
Medium culpability Harm category 1	£100,000	£60,000 - £160,000
Low culpability Harm category 1	£30,000	£18,000 - £60,000

In determining an appropriate fine, the court is also asked to consider a non-exhaustive list of factual elements providing the context of the offence and the factors relating to the offender. In particular, relevant recent convictions are likely to result in a substantial upward adjustment. The non-exhaustive list is provided on page 9 of the *Definitive Guideline*.

STEPS THREE AND FOUR – check fine is proportionate to turnover or may warrant an adjustment

The court should ‘step back’ to review and, if necessary, adjust the initial fine based on the turnover to ensure that it fulfils the objectives of sentencing for these offences.

In STEP THREE, the court should check whether the proposed fine based on turnover is proportionate to the overall means of the offender. 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.



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.

In STEP FOUR, the court should consider other factors that may warrant adjustment of the proposed fine. Examples of possible wider impacts of the fine are included on p 11 of the *Definitive Guideline*.

STEPS FIVE AND SIX – Consider any factors which indicate a reduction

The court should consider any factors which indicate a reduction, such as assistance to the prosecution and reduction for guilty pleas.

STEP SEVEN - Compensation and ancillary orders

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

- Remediation
- Forfeiture
- Compensation

A full description of these orders can be found on p 12.

STEP EIGHT – Totality principle

Totality principle

If sentencing an offender for more than one offence, the court must consider whether the total sentence is just and proportionate to the offending behaviour.

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.



Health and Safety – Individuals

When sentencing individuals, the court also follows the nine step process as outlined for organisations.

More details on the steps, can be found on pages 13 -21 in the *Definitive Guide*.

Corporate manslaughter

Sentencing guidelines relate to the Corporate Manslaughter and Corporate Homicide Act 2007 (section 1). There are nine steps in determining the sentencing of the offender:

STEP ONE – Determining the seriousness of the offence

By definition, the harm and culpability involved in corporate manslaughter will be very serious. Every case will involve death and corporate fault at a high level. The court should consider;

- (a) How foreseeable was serious injury?
- (b) How far short of the appropriate standard did the offender fall?
- (c) How common is this kind of breach in this organisation?
- (d) Was there more than one death, or a high risk of further deaths, or serious personal injury in addition to death?

STEP TWO – Starting point and category range

Having determined the offence category, the court should identify the relevant table for the offender depending on the size of the organisation.

Large organisation <i>Turnover more than £50 million</i>		
Offence category	Starting point	Category range
A	£7,500,000	£4,800,000 - £20,000,000
B	£5,000,000	£3,000,000 - £12,500,000

Medium organisation <i>Turnover more than £50 million</i>		
Offence category	Starting point	Category range
A	£3,000,000	£1,800,000 - £7,500,000
B	£2,000,000	£1,200,000 - £5,000,000

Small organisation <i>Turnover £2 million to £10 million</i>		
Offence category	Starting point	Category range
A	£800,000	£540,000 - £2,800,000
B	£540,000	£350,000 - £2,000,000

Micro organisation <i>Turnover up to £2 million</i>		
Offence category	Starting point	Category range
A	£450,000	£270,000 - £800,000
B	£300,000	£180,000 - £540,000

The next seven steps follow the same process as those for organisations. Full details are in the Health and Safety Offences Definitive Guideline.

Conclusion

When you consider that annually over 600,000 workers are injured in workplace accidents, the new guidelines have the potential to prove very costly for businesses. As a consequence, businesses will be further motivated to work to ensure their risk assessments are complete and their safety and health programmes are active and fit for purpose.

In summary, the new guidelines create a matrix into which the details of the offence, the circumstances and turnover of the offender are plotted, resulting in a sentence/fine or both.

It will take time to understand the full implications of the new guidelines and whether or not this will get health and safety professionals a more attentive hearing from senior executives in organisations.

The British Safety Industry Federation (BSiF) is the voice of the UK's occupational health and safety industry. The Federation represents manufacturers and distributors of safety, health and environmental products, training companies, environmental safety consultancies and ensures the industry is 'working together in safety' with the support of accreditation and inspection houses, publishers and risk management consultancies.







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