

Individuals

Breach of duty of employer towards their 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))

Triable either way

Maximum: when tried on indictment: unlimited fine and/or 2 years' custody
when tried summarily: £20,000 fine and/or 6 months' custody
(except for breaches of section 7: £5,000 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 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.

Deliberate

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

Reckless

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

Negligent

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 prior event or warning indicating a risk to health and safety
- failings were minor and not systemic

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.

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 likelihood of that harm arising (high, medium or remote).

		Seriousness of harm risked		
		Level A	Level B	Level C
Likelihood of harm		<ul style="list-style-type: none"> • Death • Physical or mental impairment resulting in lifelong dependency on third party care for basic needs • 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	Harm category 1	Harm category 2	Harm category 3
	Medium	Harm category 2	Harm category 3	Harm category 4
	Remote	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)

Second, the court should consider the following two factors.

1. **Whether the offence exposed a significant number of people to the risk of harm.**

If a significant 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.

2. **Whether the offence was a significant cause of actual harm.**

- Where the offender's breach was a **significant cause*** 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 highly unlikely to be considered contributory events. Offenders are required to protect workers or others who may be neglectful of their own safety in a way which should be anticipated.
- 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.

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.

STEP TWO

Starting point and category range

Having determined the category, the court should refer to the starting points on page 92 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 93.

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.

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?

* 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.

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, consider, if wishing to remove economic benefit derived through the commission of the offence, combining a fine with a community order.

	Starting point	Category range
Deliberate		
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
Reckless		
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
Negligent		
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
Low culpability		
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 93.

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>	
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	No previous convictions or no relevant/recent convictions
Offence committed whilst on bail	Evidence of steps taken 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	Good character and/or exemplary conduct
Poor health and safety record	Inappropriate degree of trust or responsibility
Falsification of documentation or licenses	Mental disorder or learning disability, where linked to the commission of the offence
Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities	Serious medical conditions requiring urgent, intensive or long-term treatment
	Age and/or lack of maturity where it affects the responsibility of the offender
	Sole or primary carer for dependent relatives

See page 94.

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 the court to 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.

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 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 for 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 etc. Act 1974, the court may impose a remedial order in addition to or instead of imposing any punishment on the offender.

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.

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.

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.