

BIRMINGHAM CITY COUNCIL

**REPORT OF THE INTERIM ASSISTANT DIRECTOR OF
REGULATION AND ENFORCEMENT
TO THE LICENSING AND PUBLIC PROTECTION COMMITTEE**

15 JANUARY 2020
ALL WARDS

**SENTENCING GUIDELINES FOR FOOD SAFETY, FOOD HYGIENE AND HEALTH &
SAFETY OFFENCES**

1. Summary

- 1.1 This report provides Committee with an update as to why some prosecutions undertaken by Environmental Health are attracting significantly larger fines than previously.

2. Recommendations

- 2.1 That the report is noted.

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3. Background

- 3.1 Where offences under Food Safety legislation or Health and Safety legislation were prosecuted for many years it was very difficult to predict the level of fines that would be handed down at sentencing. This led to significant variations in local courts as well as regional and national variations that often called into question the fairness of sentencing.
- 3.2 In 2014 there was a review of sentencing guidelines and a consultation document was issued in 2015 proposing an overhaul in the way the judiciary would consider such offences. There would be a defined process for the magistrate or judge to follow and in so doing all magistrates/judges would apply roughly the same fine nationally with variations within bands dependent on consideration of mitigating factors or compounding factors.
- 3.3 Following the consultation the new sentencing guidelines came into force on the 1st February 2016, regardless of when the offence was committed. The guidelines apply equally to technical offences such as mis-labelling as they do to hygiene offences such as failing to clean or a fatal health and safety accident as they do to failing to comply with a notice requiring a safety guard to be reinstated on a machine.

4. Guidelines

- 4.1 The guidance introduces a 9-step process and slight differences in the process between individuals or a company that commits the offence.

Breach of Food or Health and Safety - Organisations	Breach of Food or Health and Safety – Individuals
<ul style="list-style-type: none">1. Determining the offence category2. Starting point and category range3. Check whether the proposed fine, based on turnover, is proportionate to the overall means of the offender4. Consider other factors that may warrant adjustments of the proposed fine5. Consider any factors which indicate a reduction, such as assistance to the prosecution6. Reduction for guilty pleas7. Compensation and ancillary orders8. Totality principle9. Reasons	<ul style="list-style-type: none">1. Determining the offence category2. Starting point and category range3. Review any financial element of the sentence4. Consider any factors which indicate a reduction, such as assistance to the prosecution5. Reduction for guilty pleas6. Compensation and ancillary orders7. Totality principle8. Reasons9. Consideration of the time spent on bail

- 4.2 The offence category is determined by two factors, culpability and harm. Culpability looks at a spectrum between deliberate/flagrant disregard for the law (very high culpability) to the offence was not far short of the required standard (low culpability). The second element refers to the actual harm caused or likelihood of that harm occurring, and this is given 3 categories. Category 1 being high risk and category 3 being low risk
- 4.3 Within the sentencing guidelines there are then tables to define the starting point for the fine. This is based on company turnover and then the offence category. The

Health and Safety offences attract a higher tariff than Food offences, appendix 1. For a Health and Safety offence for a large company (turnover >£50m) with Very high culpability and category 1 harm then the starting point is £4m fine. The court will then work through other mitigating or compounding considerations as to why the offence occurred and the penalty will be in the range of £2.6m and £10m. The fine for the same large company with very high culpability and cat 1 harm offences starts at £1.2m and ranges between £0.5m and £3m.

- 4.4 It is these defined ranges that have done much to reduce the variation in fines across the country for similar offences as well as concentrating the mind of those in control as to their health and safety duties or need to be compliant with food safety standards. An element of publishing the guidelines is to give certainty and the ability to assess risks of non-compliance.
- 4.5 The remaining six steps are to ensure that everything is considered and given due value if it mitigates or exacerbates the offence. The court also must explain its rationale in coming to its conclusion and this must be proportionate to the original offence. Positive steps include first offences, good track record of compliance or voluntary steps taken to address problems. Exacerbating factors include obstruction, offence led to significant financial gain and breach of a court order.

5. The effect

- 5.1 In some of the Environmental Health prosecutions we have seen a substantial up-lift in the fines particularly for larger companies. This has in-turn led to those companies becoming more engaged in trying to prevent recurring offending. There has not been a noticeable change in fines for individuals, however for many years prior to these changes courts have been taking into account offenders ability to pay fines and therefore this may not be that surprising.

6. Consultation

- 6.1 The report is for information and, therefore, no consultation has been undertaken.

7. Implications for Resources

- 7.1 There is no implication on resources. Currently all fines are collected by the courts and are monies for government not local government.

8. Implications for Policy Priorities

- 8.1 This work supports the Regulation and Enforcement Division's mission statement to provide 'locally accountable and responsive fair regulation for all - achieving a safe, healthy, clean, green and fair trading city for residents, business and visitors'.

9. Public Sector Equality Duty

9.1 None identified outside those that are covered in the divisions enforcement policy

INTERIM ASSISTANT DIRECTOR OF REGULATION AND ENFORCEMENT

Background Papers:

<https://www.sentencingcouncil.org.uk/wp-content/uploads/Health-and-Safety-Corporate-Manslaughter-Food-Safety-and-Hygiene-definitive-guideline-Web.pdf>

Example of a table to determine starting point of fines for varying sizes of food business, from the Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Guidance. The final column provides the range for the fine following dispensations for positive action to prevent the commissioning of the offence or increased fine for actions that promoted or made more likely the offending.

Large			
Turnover or equivalent: £50 million and over			
	Starting point	Range	
Very high culpability			
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
High culpability			
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
Medium culpability			
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
Low culpability			
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	
Very high culpability			
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
High culpability			
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
Medium culpability			
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
Low culpability			
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