EUFJE Conference: 30-31 October 2015, Bolzano

# UNITED KINGDOM

**Ian Dove**

*Question 1.*

Both natural and legal persons can be held liable, without precondition, for environmental crimes which are treated in a similar way to other crimes procedurally and substantively.
The provisions of our criminal law satisfy the requirements of Article 6.1 and 6.2. In relation to offences of strict liability (not requiring the proof of any mental element), generally speaking legal persons will be held criminally liable consistent with the purpose of the legislation. Where a mental element is included in the offence (for instance, where it is necessary to prove intention) the court will examine the purpose of the legislation and determine whether the relevant person acting on behalf of the legal person was, for the purpose of the legislation, its controlling mind and will. If so, then a conviction can follow.
Relevant elements of the law provide for the criminal liability of officers of a company if the offence occurs as a result of their consent, connivance or negligence: see, for example, regulation 44 of the Waste (England and Wales) Regulations 2011. Offences could include inciting, aiding and abetting in accordance with the general principles of our criminal law.

*Question 2.*

I am unaware of any gaps in the transposition of Art 3 of the Directive into UK law.

*Question 3.*

Offences are created in the individual Regulations or laws which deal with the relevant subject matter. There are exemptions written into laws which reflect the limitations set out in Art 3. For instance, under the Environmental Permitting (England and Wales) Regulations 2010 there are defined "exempt facilities" which in most cases are related to the scale of the operations, and fixed so that they are brought within the exclusions in Art 3.

*Question 4.*

Sanctions upon sentence include fines as well as imprisonment. The maximum levels vary depending on the type of offence, and in England and Wales the Sentencing Council has issued *Environmental Offences: Definitive Guideline* which judges must have regard to when sentencing and which is attached for information. I have also enclosed the judgment of the Court of Appeal in the first case where these *Guidelines* were considered and in which a fine of £250,000 was upheld (with the court observing that they would have upheld a "very substantially higher fine"): R v Thames Water Utilities Ltd [2015] EWCA Crim 960.

Whilst commission of the crime by an organized group is not specifically mentioned in the *Guidelines* it would no doubt be an aggravating feature. The criminal courts can order an offender to take steps to remedy the cause of the offence in certain cases under Regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010. Additional to removal of waste or closure of illegal facilities as part of the sentencing exercise, civil courts have the power to grant injunctions or mandatory orders to do so. Under the Proceeds of Crime Act 2002 the court has power to enquire into the profits of the criminal activity and confiscate them. The court has power under the Environmental Protections Act 1990 to order the forfeiture of a vehicle involved in the commission of the offence and in other cases there is power to order the offender to be deprived of property used to commit a crime.

*Question 5.*

Environmental offences are frequently brought to court by the relevant regulator, and can cover all aspects of environmental protection. Convictions are most frequently met with a fine rather than imprisonment. I am not aware (anecdotally or otherwise) of any particular difficulties in investigating or bringing cases of environmental crime to court. I suspect the development of a specialist court with jurisdiction to hear these cases could be beneficial. In relation to the point raised about the use of administrative sanctions, please see the answer below to question 7.

*Question 6.*

Prosecutions for environmental crime are brought by the relevant regulators: for example in England the Environment Agency bring prosecutions for instance in respect of amongst other matters water pollution, and Natural England bring prosecutions for harm to protected habitats and species. They have experts with relevant scientific knowledge and the expertise to undertake independent investigations and they employ trained in-house lawyers who lead the prosecutions (although external lawyers are on occasion brought in where the case demands). The cases are brought within the normal criminal courts: we do not have a court with a specialized jurisdiction in this respect.

*Question 7.*

Following independent Reports sponsored by the government (the Hampton and Macrory Reports), dealing with the need for regulation to be risk-based and proportionate, the Regulatory Enforcement and Sanctions Act 2008 was enacted. This authorized the introduction of civil sanctions to supplement the enforcement powers of regulators. There are four kinds of civil sanction: fixed monetary penalties; discretionary requirements; stop notices and enforcement undertakings. The Act authorizes the relevant Minister to issue an order providing a regulator with access to the sanctions. The Environment Agency and Natural England are authorized to use civil sanctions but they are not available in relation to all offences for which they have responsibility. Civil sanctions are an alternative to prosecution. Fixed monetary penalties are generally low level fines intended, for example, for low level non-compliance. Discretionary requirements can include the payment of a variable monetary penalty or the taking of steps to secure compliance and restore the position. Within the scheme of legislation for some areas of environmental regulation there are

provisions for taking administrative steps to seek to secure compliance with the law. These can take the form of the service of a notice specifying the problem and the steps that the person needs to take to solve it. For instance, an Enforcement Notice can be served by the regulator under the Environmental Permitting (England and Wales) Regulations 2010 or a Suspension Notice if it is believed that the operation of the regulated facility involves a risk of serious pollution. In some instances the service of a notice and a failure to comply with it can itself give rise to criminal liability, for example under the Waste (England and Wales) Regulations 2011.
Taking the Environment Agency and Natural England as examples, they publish detailed policies explaining how they will operate a proportionate enforcement regime and the criteria which will be used to determine their response, from a warning at one end of the scale to prosecution at the other. The details also include, for example, how the level of the penalty will be determined when administering a variable monetary penalty.

*Question 8.*

As noted in answer to 7 above, the use of administrative sanctions occurs within the operation of a proportionate and risk-based enforcement regime. Additionally, service of appropriate notices under the relevant legislation will often be regarded as a suitable action by the regulator, or will themselves be needed as the foundation for any subsequent criminal action.
The level of fine which may be incurred following conviction is indicated in the *Definitive Guidelines*: as noted above the judge is obliged to have regard to this document when sentencing and so it illustrates the likely level of sentencing in cases of this kind and the factors which the court will have in mind when fixing the fine. Attached to these answers is a recent case in the Court of Appeal, R(Natural England) v Day [2014] EWCA Crim 2683, which concerned domestic rather than EU law nature conservation issues, and in which the court upheld a fine of £450,000 in relation to damage caused to a Site of Special Scientific Interest which is, like the Thames Water case, illustrative of the court's approach. Remedial sanctions imposed by criminal courts are relatively rare but not unknown. As an illustration the *Annual Report on Natural England's enforcement activity 1 April 2013 to 31 March 2014* is attached. It shows examples of restoration or habitats being ordered following convictions. However, civil and administrative remedies are far more likely to be the source of rectification of the effects of harmful activity if it is continuing or has lasting effects.

Case No: 2013/03847/C1

Neutral Citation Number: [2014] EWCA Crim 2683
**IN THE COURT OF APPEAL (CRIMINAL DIVISION)**
**ON APPEAL FROM THE CROWN COURT AT CARLISLE**
**His Honour Judge Peter Hughes QC**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/12/2014

**Before :**

**LORD CHIEF JUSTICE OF ENGLAND AND WALES**
**MR JUSTICE OPENSHAW**
and
**MRS JUSTICE LANG**

- - - - - - - - - - - - - - - - - - - - -

**Between:**

| | |
|---|---|
| **Regina (Natural England)** | **Respondent** |
| **- and -** | |
| **Philip Edward Day** | **Appellant** |

- - - - - - - - - - - - - - - - - - - - -
- - - - - - - - - - - - - - - - - - - - -

**Richard Matthews QC** and **Jonas Milner** (who did not appear in the Crown Court) for the **Appellant**
**Rex Tedd QC** and **Bernard Thorogood** for the **Respondent**

Hearing date: 4 December 2014

- - - - - - - - - - - - - - - - - - - - -

# Judgment

**LORD THOMAS OF CWMGIEDD, CJ:**

1. In October 2010 the appellant, Philip Day, a man of enormous wealth and who employs 10,000 people through the companies controlled by him, acquired with his wife the Hayton Estate near Brampton, Carlisle, Cumbria. The estate comprises about 500 acres, mainly of woodland. Part of the estate is bounded by the River Gelt, which runs along the easterly borders of the estate in a north westerly direction and eventually flows into the River Eden. The Gelt at this point has carved a channel through the red sandstone to form a meandering gorge.

2. The environmental and ecological importance of an area in the gorge within the Hayton Estate was recognised in 1969 when it was designated as a Site of Special Scientific Interest (SSSI); that designation was intended to protect it.

3. In November 2010 operations were carried out within the area of the SSSI without the authorisation of Natural England, the body which, under the Wildlife and Countryside Act 1981 (the 1981 Act), has authority to allow such operations. The operations resulted in the felling of 43 trees, the construction of a track wide enough to take vehicles and the construction of bunds/banks to support the track. Large areas were stripped of trees and flora exposing large areas of soil and rock. The local residents, despite actions intended by the appellant to obstruct them, brought the matters to the attention of Natural England.

4. As a result, the appellant was charged with offences under s.28E(1) and s.28P(1) of the 1981 Act. It provides as follows:

> "28E(1) The owner or occupier of any land including in a Site of Special Scientific Interest shall not … carry out or cause or permit to be carried out, on that land any operation … unless
>
> (a) One of them has … given Natural England notice of a proposal to carry out the operation specifying its nature and the land on which it is proposed to carry it out."
>
> "S.28P(1) A person who, without reasonable excuse contravenes s.28E(1) is guilty of an offence …"
>
> (4) For the purpose of sub-sections (1), (2) and (3), it is a reasonable excuse in any event for a person to carry out an operation (or to fail to comply with a requirement to send a notice about it) if …
>
> (b) the operation in question was an emergency operation particulars of which (including details of the emergency) were notified to Natural England as soon as practicable after the commencement of the operation."

5. The appellant was summoned before the Magistrates' Court, but pleaded not guilty. He elected trial. He was committed for trial at the Crown Court at Carlisle on an

indictment containing three counts relating to the operations we have described, each charging an offence under s.28E and 28P of the 1981 Act.

6. The appellant sought a preliminary hearing. He then asked the judge to rule before any evidence was heard on a question of law. That hearing took place on 18 and 19 April 2013 before HH Judge Peter Hughes QC. The judge made a ruling which was challenged on this appeal.

7. After that ruling the appellant pleaded guilty to Counts 1 and 2. He submitted a document entitled, "Basis of plea and points for mitigation". Despite the prosecution pointing out in writing before the hearing that it did not accept that basis of plea, the appellant did not apply to vacate the plea.

8. The judge then held a Newton hearing, making his findings on 31 July 2013. In the result the judge fined the appellant £450,000 and costs in the sum of £457,317.74. A default sentence was fixed at four years. Count 3 was ordered to lie on the file on the usual terms. No part of the fine had been paid at the time of the hearing, but the fine and the costs were paid on 5 December 2014.

9. The appellant appeals by leave of the Single Judge against conviction and sentence. He was represented by Mr Richard Matthews QC who did not appear below. He conducted the appeal with his customary skill and learning.

## THE APPEAL AGAINST CONVICTION

### (a) The ruling made by the judge

10. As we have set out at paragraph 6 above the appellant through his then legal team raised a number of legal issues. On 18 and 19 April 2013 two of those points were heard, namely (1) whether the offences under s.28E and s.28P of the 1981 Act with which the appellant was charged were offences of strict liability and (2) whether the matters relied on by the prosecution could in law amount to the appellant causing the prohibited operations that resulted in the damage to the SSSI which we have described.

11. It is important to point out at the outset that it is not disputed on this appeal that the offences were ones of strict liability. However we could not understand why the point in relation to causation had been argued before the evidence was heard. Mr Richard Matthews QC could not help us with an explanation, save to say that the appellant had acted on the advice of his then legal advisers. It was submitted by Mr Tedd QC on behalf of the prosecution that the appellant's purpose had been to take every step, consistent with the conduct that he had engaged in with the local residents to which we refer at paragraph 32.ix) to 32.xii) below, of using his wealth to try and obstruct his prosecution.

12. The case of the prosecution on causation at that stage was relatively simple. As set out at paragraph 46 of the ruling of the judge, it was:

> "In this case the Prosecution has identified the act on which it relies as causing the prohibited operations in the following terms:-

(a) that he instructed or authorised his land agents to draw up and implement a scheme that involved substantial physical works on his land;

(b) that the works involved the hire and use of heavy equipment, the purchase of roadstone and pheasant pens, and stocking with game birds; and

(c) that he instructed or authorised entry on to the land to carry out the works."

13. It was argued on behalf of the appellant that the approach to causation set out in *Environment Agency v Empress Car Co (Abertillery) Ltd* [1992] AC 22 as applicable to the Water Resources Act 1991 should not apply to an offence under s.28E and 28P of the 1981 Act. It was contended that what the prosecution had to prove under the 1981 Act was that the appellant had done something that possessed a certain quality which might lead to or result in causing the prohibited operations; that what the prosecution was alleging was insufficient to meet that requirement.

14. After holding the offence was one of strict liability, which as we have stated is not challenged on this appeal, the judge held:

"44. The Prosecution must still identify what it is alleged the Defendant did that caused to be carried out the particular operation specified in the counts on the indictment, and prove that it did cause that operation to be carried out. This was considered by Lord Hoffmann in his five propositions in *Empress Car*.

45. Whether the act was capable of causing the operation, it appears to me is a question of law, but whether it did so cause it, is a question of fact for the jury on the whole of the evidence."

15. After setting out the prosecution case at paragraph 46 which we have set out at paragraph 12 above, the judge continued:

"47. It contends that the Defendant's intentions and the terms of his instructions are matters that are particularly within his own knowledge, and that – although it may allege that this was the true position – it does not have to prove that he deliberately caused the operations to take place within the SSSI or that he knew of the existence of the SSSI; only that he caused the prohibited operations.

48. It will be for the jury to decide whether the act alleged is proved and whether it caused the operation in question to be carried on. If the Defendant puts forward a "reasonable excuse" it will be for the jury to decide whether there was an excuse, and whether, if so, it was a reasonable one."

16. It was the submission of Mr Matthews QC to us that in the ruling made by the judge, the judge was applying the principles set out in *Empress Car* and should have applied the much narrower test which was subsequently set out by the Supreme Court in *R v Hughes* [2013] UKSC 56 where at paragraph 32 the Supreme Court said, in respect of offences of causing death by driving in circumstances defined in s.3ZB of the Road Traffic Act 1988, that:

> "It is not necessary for the Crown to prove careless or inconsiderate driving, but that there must be something open to a proper criticism of the driving of the defendant, beyond the mere presence of the vehicle on the road which contributed in some more than minimal way to the death."

It was submitted that for an offence under s.28E and s.28P of the 1981 Act it was necessary for the prosecution to prove that something the appellant had done was something that could properly be criticised.

17. At the point of time at which the ruling was sought the prosecution had called no evidence. As appears from the defence statement served on the appellant's behalf, it had been the appellant's case that the earthworks were carried out by a Mr Howard and the tree cutting works by a Mr Fearn on the direction of Marc Gardner; it was said that Marc Gardner was not an employee of the appellant but a self-employed gamekeeper who, "had agreed to carry out routine maintenance on the estate in return for the right to conduct occasional shooting parties on the estate but not otherwise for payment". Both Mr Howard and Mr Fearn had been called in by Mr Gardner. It was also the defence case that the appellant had not instructed Mr Gardner to carry out the works. Mr Gardner had decided of his own initiative that the work should be carried out in response to what he honestly and reasonably considered to be:

> "An emergency situation, namely the partial collapse and imminent further collapse of the banks of the river, potentially endangering those using the public footpath on the opposite side of the river. At the request of Mr Gardner on 15 November Mr Howard widened part of an existing track and created a new linking section; Mr Fearn had on 16 November at the request of Mr Gardner removed dead, dying or dangerous trees, including the limbs of trees that had been broken in the bank collapse."

18. It can thus be seen that, as the matter appeared at this very early stage of the proceedings at the Crown Court, it was the defence case that the appellant had played no part in giving any instructions for the work, that he ran several successful businesses and spent most of his time travelling and away from his home. He had not been consulted in relation to the work done on the estate and he denied he knew that the works would or might be done or there was any likelihood that the works would or might be done. He had therefore not caused the prohibited operations to be carried out

19. We were told by Mr Tedd QC on behalf of the prosecution that it was its case that Mr Gardner had a business card bearing his name and the coat of arms of the estate and describing him as the estate manager of the appellant. £5,000 had been paid for the

hire of the machinery which was used to make the tracks and bunds/banks; that sum had not been paid by Mr Gardner. It was to be the prosecution's case, as set out in paragraph 46 of the judge's judgment, that the appellant's instructions to his agent, Mr Gardner, had caused the prohibited operations to be carried out. There would be inferences that the prosecution would seek to draw as to the detail of the instructions given by the appellant when the evidence was called; all that the prosecution was doing at this stage was setting out its general case. It was self evident, it seems to us, that in the course of the evidence that was to be called by the prosecution there might be numerous points of criticism, on the basis of that case, of the conduct of the appellant and that the case might be developed to show the appellant's actions had the "quality" which it was argued by the appellant they had to have. On the other hand, the evidence might not have developed in this way.

20. However, at the time the ruling was made, no evidence had been called. There had been no development of the case and the nature and quality of the instructions had not been gone into. As the judge correctly held, the matters as broadly outlined in the prosecution's case were capable of causing the prohibited operations, but whether they had or not was for the jury to determine when the evidence had been heard.

21. No doubt, if a submission had been made at the conclusion of the evidence or when the directions to the jury were to be discussed, there could properly have been an argument either as to the sufficiency of the evidence on causation or as to the proper directions to the jury which would have raised in a more precise form what was required for causation. However at the time the point was taken that could not be done. The judge was entitled to rule as he did.

22. We cannot therefore see how any criticism can possibly attach to the ruling. As we set out below the appellant pleaded guilty, even though the prosecution pointed out what this entailed. It therefore became unnecessary for the judge to determine whether there was evidence that the actions of the appellant could in law amount to causing the operation on the SSSI or the proper directions to be given to the jury.

23. We cannot therefore, in this appeal, determine whether the contention made by Mr Matthews QC that something more than the five matters set out in the judgment in *Empress Car* is required and that what was decided in *Hughes* should by parity of reasoning be applied to offences under s.28E and 28P of the 1981 Act. We will express no view, save to say that we see strong arguments for following the approach in *Empress Car* in relation to the 1981 Act, if the issue ever arises on the facts of any properly developed case.

**(b) The basis of plea**

24. After the ruling had been handed down, the appellant changed his plea to a plea of guilty to Counts 1 and 2. As we have mentioned, he submitted a document dated 24 June 2013 entitled "basis of plea and points for mitigation". In it he stated that he entered a plea on the basis that to prove the appellant had caused the operations at the SSSI, "it was not necessary to prove that he had authorised them, expressly or impliedly or that he had any intention or particular state of mind". The document went on to say that the appellant had appointed Edwin Thompson, described as "a highly reputable firm of agents" to manage the day-to-day running of the estate and to advise him. He did not know of the intention of Marc Gardner, who was descried as a

self-employed gamekeeper on the estate, to carry out or cause Mr Fearn to chop down the trees or Mr Howard to construct the track. The operations were carried out by them in circumstances which ran directly contrary to the scheme which Edwin Thompson as the appellant's agents had planned. The basis of plea then set out the scheme which Edwin Thompson had planned and the steps that had been taken properly to implement that scheme. It then gave an account of the circumstances in which the track was constructed and the trees felled.

25. That basis of plea was not accepted by the prosecution. In a document entitled, "Prosecution response to the defendant's basis of plea" served shortly before the hearing before the judge on Friday, 28 June 2013 the prosecution made clear that it construed the appellant's basis of plea as an acceptance in respect of counts 1 and 2 in the indictment that he had caused the prohibited operations. It made clear that it had identified the elements of the offence which included a causal connection between the appellant's acts and the prohibited operations that were carried out. It then referred to paragraph 46 of the judgment in which the judge had set out the core elements of the prosecution's primary case. The document then continued:

> "It appears implicit in the Defendant's proposed pleas that:-
>
> (a) he accepts acting as set out at paragraph 2(ii)(a)-(c) above (although this appears not to be explicitly stated in the Basis of Plea); and
>
> (b) he accepts that there was a causal connection between those acts and the prohibited operations [OLDs] done on his land."

26. The prosecution document went on to state that it was implicit in the proposed appellant's plea that he did not seek to discharge the burden of proving the statutory defence, that therefore he had no reasonable excuse for his acts and that the operations concerned were not an emergency operation.

27. In our judgment there can be no doubt that the prosecution was putting the appellant fairly on notice that by his plea he was accepting that he had caused the operations to be carried out. As the judge had quite clearly only dealt with the elements of the prosecution case as had been broadly outlined, it would have been open to the appellant to ask the judge if he could withdraw his plea on the basis that there had been a misunderstanding. The matter could then have proceeded to trial and the arguments in relation to causation and the application of the test in *Empress Car* taken place at the proper time.

28. He did not do this but accepted that he had caused the operations. If he had chosen to vacate his plea then, after the evidence, it might theoretically have been possible for him at the end of the evidence to have raised the points that Mr Matthews QC has so elegantly sought to raise before us. As we will set out, the evidence which emerged at the Newton hearing precluded any possibility of such an argument being made. Under whatever test was applied, the appellant had on the evidence subsequently heard before the judge plainly caused the operations.

29. As the appellant maintained his plea of guilty in the circumstances we have described, he had accepted in clear and unequivocal terms that he had caused the operations that resulted the damage. The appeal against conviction therefore fails. We turn to consider the appeal against sentence.

## THE APPEAL AGAINST SENTENCE

30. The appeal against sentence was advanced on the basis of five core contentions:

    i) The judge was wrong to take into account the conduct of the appellant and those instructed by him after the operations to the SSSI had ceased. This issue primarily relates to the appellant's conduct towards those local residents who sought to bring him to justice.

    ii) The fine should have reflected the harm caused and the culpability of the appellant. It did not and was disproportionate.

    iii) The judge should have taken into account the fact that Natural England was prepared to have the matter tried summarily where the maximum fine would have been £20,000 on each count.

    iv) The judge had wrongly taken into account the appellant's wealth in a number of different respects.

    v) The judge should have considered the effect on the appellant of the opprobrium which the appellant had suffered as a result of his conviction.

31. A Newton hearing was necessary to determine the appellant's culpability, as the prosecution did not accept his case that his measure of responsibility was so low that the appropriate penalty might be an absolute or conditional discharge. It took place over four days and included a visit by the judge to the SSSI. Although Marc Gardner and Mr Holliday of Edwin Thompson were called to give evidence in support of the appellant's case, the appellant did not give evidence.

### (a) The Newton hearing

32. On 31 July 2013 the judge set out his findings:

    i) The appellant had decided to operate a commercial pheasant shoot on the estate. He had told the Hayton Parish Council on 15 September 2010 that economic pressures dictated that the woods must become commercially viable; shooting on a number of days in the year could achieve this. The judge was sure the appellant was alive to the concerns of the potential for serious ecological damage.

    ii) Marc Gardner's description of himself as an estate manager accorded with the appellant's own instructions. There was a close relationship between the appellant and Marc Gardner based on mutual trust. He acted as the estate manager as the appellant had intended. Marc Gardner had been appointed as the estate manager because the appellant wanted to set up a pheasant shooting estate but had neither the experience nor time to do so. Mr Gardner had the knowledge and experience and had been employed for that purpose. Mr

Gardner gave wholly unconvincing evidence; he was prepared to tailor his evidence to what he considered would suit his own purposes and those of the appellant.

iii) Mr Holliday of Edwin Thompson had a role which was primarily to prepare applications for felling licences and for a Woodland Improvement Grant; it was anticipated that the appellant would have obtained over £100,000 from public funds. By mid-October 2010 Mr Holliday had completed that exercise. He was naïve and unprofessional in relation to what occurred, particularly in his work directed at obtaining the grant.

iv) The appellant and Mr Gardner were working to a timetable to enable them to take advantage of the 2010/2011 shooting season on a commercial basis. Mr Holliday did not understand that timetable; the applications for felling licences and the Woodland Improvement Grant could not be completed within the timetable.

v) On 13 October 2011 at a meeting between Mr O'Neill (the Woodland Officer of the Forestry Commission) Mr Holliday, the appellant and Mr Gardner, the appellant indicated his intention to begin operating a shoot on the estate by sometime in November 2010. The existence of the SSSI was discussed; Mr O'Neill was given an assurance by Mr Holliday that felling of the trees would not take place in the SSSI.

vi) On 13 October 2010 Natural England was notified by a local resident of the need to investigate what works were taking place.

vii) It was clear from the evidence of the local residents that by the end of October/beginning of November extensive works were carried out within the SSSI involving the hiring of mechanical equipment, the felling of trees and the building of the wide tracks with banks/bunds.

viii) The judge totally rejected Marc Gardner's evidence that (1) the work that was carried out after 15 November 2010 and (2) it was done as a result of the collapse of a bank. He found that the building of the track and the felling of the trees were part of an ongoing operation which had started some days before 15 November 2010. It was clear that a track was deliberately cut along the line of an old path; that the trees were felled and pruned as part of a thinning operation and not to clear away fallen or diseased trees.

ix) These operations resulted in significant complaints by local residents to Natural England. On 17 November 2010 Natural England informed the appellant by e-mail of Natural England's concern and requested a meeting. That evening the appellant responded through Mr Dwyer of Cartmell Shepherd (Carlisle solicitors retained by the appellant) and through Mr Holliday, at a meeting of the Parish Council. Mr Dwyer read a statement on behalf of the appellant in which he said that the appellant would prosecute in the High Court in London all trespassers, would sue trespassers in damages. He would take legal action against any individual for the recovery of photographs taken on the appellant's property and for an injunction preventing individuals from entering the appellant's property.

x) On 22 November 2010 a meeting took place between the appellant, Mr Holliday, representatives of Natural England and Mr O'Neill. The judge found, as Mr O'Neill's statement set out, that Mr O'Neill was horrified when he saw the track which had been built. He concluded that there had been no land slip, that the trees had been deliberately felled and trees uprooted by mechanical means.

xi) On 24 November 2010 Cartmell Shepherd sent letters on the appellant's behalf to local residents. The letter to Dr Mather-Christensen (who with her husband, a specialist in forest ecology, had a keen interest in Gelt Woods) was in the following terms:

> "We act for Mr P E Day, the owner of the Woodlands specified above.
>
> We understand from our client you have repeatedly trespassed on Mr Day's private property and have repeatedly taken photographs and/or video or digital capture of images of Mr Day's private property.
>
> Our client requires that you write to us by close of business on Friday 26 November 2010 with your written apology for trespassing together with your written undertaking to refrain from trespassing on Mr Day's private property or capturing images of it in future. You must enclose with your letter all photographs and/or other images you have taken of Mr Day's private property.
>
> Failure to comply with the above direction may lead to proceedings being issued against you."

Another resident, Rebecca Mellor, a local artist who had posted comments on YouTube and Facebook called "Save Gelt Woods Now", was written to in the following terms by Cartmell Shepherd and the letter hand delivered.

> "The YouTube and Facebook sites contain defamatory statements about Mr Day as well as statements which are factually incorrect. Our client requires that you do the following by 5 p.m. on Friday 26 November 2010."

Six demands were set out including the removal of the material from the internet, an unequivocal apology and an undertaking not to photograph or video or otherwise capture images of the appellant's private property. The letter continued:

> "You have uploaded an image of Mr Day on the internet. Mr Day owns the intellectual property of that image. You have breached Mr Day's intellectual property rights by uploading the image to the internet.

> Mr Day charges £100,000 for the use of the image. You took the image from the Cumberland News, but Cumberland News had Mr Day's permission to use the image. You did not have Mr Day's permission to re-use it. When writing to us as directed above, please let us have your cheque for £100,000, made payable to Cartmell Shepherd, in payment for use of Mr Day's image. Mr Day will donate the £100,000 to a Carlisle children's charity.
>
> Failure to comply with the above requirements by close of business on Friday 26 November 2010 may result in proceedings being issued against you in the High Court.
>
> It has come to our attention that you have organised a "walking protest" to take place at Hayton Woods/Gelt Woods on Sunday 28 November 2010. We put you on notice that it is your responsibility to ensure anyone attending the protest keep to the official footpaths. Our client will hold you personally responsible, as organiser and instigator of this "walking protest", for all and any damage disturbance or nuisance caused or occasioned directly or indirectly from this event."

xii) In addition a notice was posted on a remaining tree on 16 November 2010 which read as follows:

> "Facts
>
> This side of the bank has always been private and has never been held in public hands.
>
> The emergency work that had to be carried out on the bank to prevent the path from collapsing due to high rainfall and water ingress has now been completed.
>
> The removal of fallen non-native tree species will allow recovery of the area to happen quickly, as the flora that was present in the area is quite vigorous. This also allows for native tree regeneration.
>
> No other part of the bank has been affected and Gelt Woods is not under any threat whatsoever."

xiii) The track was built and the trees were felled under the instructions of Marc Gardner.

33. The judge then went on to make findings, after taking into account his previous good character and his considerable achievements, in respect of the appellant's culpability:

i) The conveyancing solicitor knew of the SSSI. The natural and reasonable inference was that he would have explained to the appellant the obligations which that imposed on the landowner. That inference should be drawn as the appellant had not given evidence.

ii) The appellant had not been candid about his detailed knowledge of the SSSI. He had had to concede at the meeting of 13 October 2010 that he had been told and this predated the operations on the SSSI. The judge was sure on the criminal standard of proof that the appellant knew of the existence and the importance of the SSSI.

iii) It was inconceivable that the notice that was fixed to a tree on 16 November 2010 (as set out at paragraph 32.xii) above) was put there without the appellant's authorisation.

iv) The message that the appellant delivered through the solicitor at the meeting on 17 November 2010 could not have been blunter. His message to the residents was effectively, "Don't mess with me". He should have appreciated that the concern of the local residents was genuine. Rather than seeking to explain what had happened and allay their fears, he sought to take away from them photographic evidence in their possession.

v) He knew Marc Gardner was creating tracks through the estate under his authority. He took no steps to prevent him from doing so within the SSSI.

vi) Mr Gardner was acting independently of Mr Holliday and without reference to him in preparation for the start of the shooting season. He was acting in close consultation with the appellant. The appellant gave Mr Gardner a free hand and exercised little, if any, control over him.

vii) The prosecution had not invited the judge to conclude the appellant deliberately caused the operations in the SSSI to take place; the prosecution did not have to make that concession and the appellant was fortunate that they did so.

viii) The appellant's subsequent conduct after the unauthorised operations was deeply unattractive. He sought to minimise his responsibility for what had happened, using his solicitor to threaten the local community and hiding behind Mr Holliday and Mr Gardner.

ix) There was no scintilla of an apology or any meaningful acceptance of responsibility.

x) The appellant bore a very considerable degree of responsibility for what had happened.

**(b) The reasons given by the judge for the sentence imposed**

34. Having set out the facts as determined by the judge from which Mr Richard Matthews QC rightly accepts there can be no challenge. The judge heard the evidence over a number of days and reached a decision which was open to him on that evidence.

35. We turn to set out the judge's reasoning for imposing the sentences he did.

i) There were no sentencing guidelines. He was guided by the provisions of the Criminal Justice Act 2003, particularly s.143 and s.164.

ii) It was accepted that the area affected in the SSSI was relatively small and the vegetation should regenerate naturally. It was nonetheless a particularly sensitive point in the river Gelt and made more conspicuous by the felling of trees. Although the harsh appearance should mellow over time, the line carved out to make the track would not disappear. The contours of the hillside had been permanently changed. It was not possible to calculate how the natural flora and fauna had been affected, as after the event it was too late to assess the habitats that had been lost. One was a site where the rare Killarney Fern had thrived in the past.

iii) The fine imposed should reflect the means of the individual or company. In the case of a large company the fine should be substantial, enough to have a real economic impact which, together with the attendant bad publicity resulting from prosecution, would create sufficient pressure on management and shareholders to tighten regulatory compliance and change company policy.

iv) Similar considerations should apply in the case of wealthy individuals. The appellant had chosen not to provide information as to his means but the prosecution had provided evidence to show that he was one of the wealthiest men in the United Kingdom with a personal fortune estimated of around £300 million.

v) Account had to be taken of the growing public concern for the preservation of the countryside and the much greater awareness of the harm that could be done to the fragile environment and ecology by ill-considered and uncontrolled activities.

vi) The appellant had not pleaded guilty at the first opportunity. Although he had pleaded after the ruling, credit for that plea had been dissipated by the appellant's subsequent conduct of the proceedings and his unsuccessful attempts to avoid all but technical responsibility. A reduction of 10% would be made for his guilty plea.

vii) The appellant's account that he was unaware that the site was one of SSSI was not accepted. The appellant had given Marc Gardner *carte blanche* to get on and prepare the estate for shooting as he did not wish to miss the 2010/11 season. He exercised no effective control or supervision over Marc Gardner's work which was to an agenda which had been set in consultation with the appellant. Since then the appellant had joined with him in pretending in the teeth of the evidence that he was not the appointed estate manager but merely a gamekeeper.

viii) The appellant did not deliberately set out to flout the terms of the SSSI but had been grossly negligent. What had compounded his offence and seriously aggravated it were the tactics that he had employed after the commission of the

offences with the objective of evading his share of the blame and to cast it on others. He had sought to use the power of his wealth to avoid personal responsibility for what had happened.

ix) The fine had to mark the seriousness of the offence and the importance that the general public attached to the preservation of rare and sensitive SSSIs. It also had to act as a deterrent. The fine had to be sufficient to bring home the serious view the court took of his behaviour.

x) If the sentence had to be passed on the basis that the offences were committed in deliberate violation of the protection afforded by the SSSI the fine would have been in the order of £1 million. Although his actions were not deliberate, he was seriously at fault in failing to exercise control and supervision over Marc Gardner. He had been grossly negligent. The fine overall would be £450,000 based on £500,000 less 10%.

**(c) Our conclusion on the submissions made by the appellant**

36. We have set out at paragraph 30 the core contentions that were made to us. We deal with each in turn.

37. The first contention was that the judge had been wrong to take into account the conduct of the appellant after the operations had ceased. In the Sentencing Council's Definitive Guideline in respect of Environmental Offences which, though not applicable, are relevant, a non-exhaustive list of factors of increasing or decreasing seriousness is set out at page 11. The aggravating factors include the location of the offence (for example environmentally sensitive sites), ignoring risks identified by employees or others, established evidence of a wider community impact, committing the offence for financial gain and obstruction of justice. Mitigating factors include evidence of steps taken to remedy the problem and remorse.

38. It is clear from the findings made by the judge that what the appellant did after the operations had been carried out (as we have set out in paragraphs 32.ix) to 32.xii), 33.iii), 33.iv) and 33.viii) above) was intended by the appellant to try and obstruct the bringing of the appellant to justice for what had been done. He set out, as the judge found, to use the power of his wealth to intimidate the local community. Attempts by an individual to prevent criminal proceedings being brought by conduct of this kind must be regarded by the courts as seriously aggravating the offence.

39. As to the second contention we accept that the fine should reflect the harm caused and the culpability of the appellant. In our judgment the judge correctly identified the harm caused and his culpability. We consider the issue of proportionality at paragraph 46 below.

40. As to the relevance of the position of Natural England that it had been prepared to have the matter tried summarily, we were told that that was a decision taken by a junior solicitor. Although Natural England could not have resiled from that decision, if the appellant had accepted summary jurisdiction, once he had decided to elect to take the proceedings to the Crown Court, the judge was plainly bound to approach the case on the evidence as it appeared before him and not be influenced in any way by an earlier decision of Natural England.

41. As to the fourth contention, the judge was plainly entitled to take into account the means of the appellant. In paragraph 3 of the judgment in *R v Sellafield, R v Network Rail* [2014] EWCA Crim 49, this court set out the principles applicable to all offenders, including companies. The court examined the factors set out in the Criminal Justice Act 2003, including punishment, the reduction in crime by deterrence and the protection of the public. In fixing a fine, this court made clear a court had not only to take into account those purposes but also had to take into account the criteria set out in s.164 of the Criminal Justice Act 2003 which provided:

> "(1) Before fixing the amount of any fine to be imposed on an offender who is an individual a court must inquire into his financial circumstances.
>
> (2) The amount of any fine fixed by a court must be such as, in the opinion of the court, reflects the seriousness of the offence.
>
> (3) In fixing the amount of any fine to be imposed on an offender (whether an individual or other person), a court must take into account the circumstances of the case including, among other things, the financial circumstances of the offender so far as they are known, or appear, to the court.
>
> (4) Subsection (3) applies whether taking into account the financial circumstances of the offender has the effect of increasing or reducing the amount of the fine."

42. There can be no doubt, in our view, that the appellant was a man of very substantial wealth. The prosecution had put forward the best information that it had, namely that estimates of his wealth were £300 million. The appellant chose not to dispute that. The judge was entitled to proceed on the basis that his wealth was £300 million.

43. It was the judge's duty to impose a fine that would not only punish the appellant for what he had done for commercial gain but which would also deter others and protect the public. As the judge rightly identified, the protection of the environment and particularly protection of SSSIs are of great importance. SSSIs represent the common heritage of mankind; they are not subject to the commercial interests of a person who holds the land for the time being. It is also important to take account of the obvious fact that Natural England has significant difficulties in monitoring SSSIs; deterrence is of considerable importance. The fine therefore had to be of such a size that it would achieve each of these objectives.

44. It was urged upon us that a man in the appellant's position and possessing very substantial wealth would suffer a very considerable loss of reputation and have recorded against him a conviction for a crime. We were told that as a result of the proceedings, not only had the appellant lost his good character but he and his family had had to move from the area.

45. We accept that on the judge's findings, particularly the rejection of the veracity of the appellant's explanation, the finding of gross negligence and the condemnation of the

tactics adopted to obstruct justice, the appellant should have suffered a considerable loss of reputation and be held in opprobrium by the public. But apart from the evidence of his family moving, no material was put before the judge or before us as to the actual effect on his business, livelihood or reputation. Although we will have regard to the opprobrium in which the appellant should after his conviction be held and take it into account as a factor, it is not a factor for the reasons we have given to which we can attach very great weight.

46. The sentence imposed by the judge was imposed before the decision of this court in *R v Sellafield* which gave guidance as to the approach to fines to be imposed on companies of very significant size. Applying that same approach to individuals possessing the scale of wealth of the appellant, a fine significantly greater than that imposed by the judge would have been amply justified for his grossly negligent conduct in pursuit of commercial gain, particularly when so seriously aggravated by his conduct in obstructing justice. A fine in seven figures should not therefore be regarded as inappropriate in cases where such a fine was necessary (1) to bring home to a man of enormous wealth the seriousness of his criminality in cases such as this where there was gross negligence in pursuit of commercial gain, (2) to protect the public interest in SSSIs and (3) to deter others. In the case of deliberate conduct in similar circumstances, a fine in relation to a man of similar wealth should be significantly greater, as that would be necessary to reflect the greater culpability. The fine of £450,000 imposed on this appellant cannot therefore be viewed as disproportionate.

47. There was no reason why the appellant should not in the circumstances we have set out have been ordered to pay the costs of the prosecution in full; the amount of those costs, vast though they were, were not challenged. Imposing such an order for costs was not in the circumstances of this case a factor to be taken into account in setting the level of fine.

48. The judge gave, in our view, proper weight to the aggravating and mitigating factors, including the partial restoration and plea. In our judgment there can be no possible grounds for criticising the fine imposed by the judge. Given the objectives of sentencing as set out in the Criminal Justice Act 2003, it was entirely proportionate to the culpability and the harm caused. The appeal is dismissed.

49. We must add three footnotes.

*(a) Power under s.162 of the Criminal Justice Act 2003*

50. S.162 of the Criminal Justice Act 2003 enables the court to make a financial circumstances order requiring a person who is convicted of an offence to make a statement of his financial circumstances. In the present case the court proceeded on the assumption that the appellant had assets of £300m. He did not seek to challenge this. His wealth may have been substantially greater. For the future the courts should in the case of wealthy individuals consider making an order requiring a detailed statement of their assets and their income. It would ordinarily be desirable to require the information to cover a five year period so that the court was able to take an informed view of the actuality of the offender's assets and income.

*(b) Time to pay*

51. In *R v B&Q plc*, [2005] EWCA Crim 2297 this Court made clear at paragraphs 47-8 that in the case of a large company a fine should as a matter of course be paid either immediately or in a period to be measured in single figure days, unless cogent evidence was provided that more time was required; such a requirement would bring home to the offender the seriousness of the offending and the impact of the penalty. The same principles are applicable to individuals of enormous wealth.

*(c) Compliance with orders pending appeal*

52. The judge accorded the appellant 56 days to pay the prosecution costs and a further 56 days to pay the fine. The judge set a term of four years imprisonment in default of payment of the fine.

53. It was clear from the transcript that the prosecution objected to the request for a moratorium on payment and made it clear an application should be made to this court. We inquired as to the position at the hearing and were told no part of the fine or costs had been paid. We were told that the appellant had understood that the Magistrates' Court had suspended the fine. We made it clear that it was for the appellant to be satisfied that the Magistrates' Court had power to do so. The fine and the costs were paid on 5 December 2014, the day following the hearing.

54. It appears from a helpful note provided to us by Mr Matthews QC on 11 December 2014 that on the application for leave to appeal a request was made to the single judge to suspend the period for the payment of the costs and fine. On an inquiry of the office of this court, the then solicitors of the appellant were told on 28 August 2013 that this court had no power to make such an order; and that any application should be made to the Magistrates' Court who would enforce the fine. The prosecution were told of the position and expressed the view that the costs should be paid as swiftly as possible. The appellant's then solicitors then contacted the Carlisle Magistrates' Court and were informed that the enforcement had been passed to the Kendal Payments Processing Centre who would make a decision. On 4 September 2013, an official at the Kendal Processing Centre, without any apparent reference to the Crown Court or the prosecution, informed the then solicitors that the appellant's account was suspended pending the outcome of the appeal and no payments were required. On further inquiry on 18 September 2013, the same official at the Kendal Processing Centre stated that the Crown Court did not enforce fines and costs collections and that the whole of the account was suspended pending the outcome of the appeal. In the circumstances, no criticism should attach to the appellant for non-payment of the fine and costs within the time specified by the judge.

55. However, for the future, no such explanation will be acceptable. It is clear that the fact an appeal is pending does not operate to suspend the operation of any sentence or order of the Crown Court, whether it be imprisonment, payment of a fine or a confiscation order. Once made, the order is enforceable in accordance with its terms in the absence of the exercise by a court of any power to the contrary. It is for that reason that an applicant sentenced to imprisonment and who seeks leave to appeal goes at once into custody and has to apply for bail under the statutory powers given to this court and the Crown Court. Similarly an appellant given community service has to carry it out: see *R v May* [2005] EWCA Crim 367, *West Midlands Probation Board v Sutton Coldfield Magistrates' Court* [2008] EWHC 15 (Admin)

56. There is no statutory or other power given to any court to suspend payment of a fine or costs. Once ordered by a court to pay a fine or costs, that order must be obeyed and the fine paid. If there had been a statutory power, no doubt Parliament would have made provision for matters such as the provision of security for payment and the payment of interest (as would be the case in a judgment of a civil court where a stay of execution can be granted by a court pending appeal). In the present case, no issue of security for the payment would have arisen, but the delay in the payment of the fine after the time allowed by the judge has resulted in HM Treasury not having the benefit of the receipt for about 13 months and for which it will receive no compensation by way of interest as there is no power to order any.

57. It is clear that the Payment Processing Centre at Kendal had no power to suspend the order of the court. There may be occasions for specified reasons applicable to the particular circumstances of a given case or type of case where the Executive Branch of the State may decide not to enforce a fine pending an appeal. However, that decision cannot and does not suspend the order of the court. The decision does not in any way discharge the offender from the obligation to obey the order of the court and pay the fine or costs within the time specified by the court or be at risk of the penalty in default of payment.

58. There are good reasons for strict observance of the obligation to pay a fine notwithstanding the bringing of an appeal. Any suspension of the obligation is generally not in the interests of justice, as it benefits the offender as there is no power to award interest on a fine and as in many cases delay will make it more difficult to enforce the payment.

Sentencing Council

DEFINITIVE GUIDELINE

# Environmental Offences

## Definitive Guideline

# Contents






Effective from 1 July 2014

# Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all individual offenders aged 18 and older and organisations that are sentenced on or after 1 July 2014, regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

"Every court –

(a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so."

This guideline applies only to individual offenders aged 18 and older or organisations. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council's definitive guideline, *Overarching Principles – Sentencing Youths*.

## Structure, ranges and starting points

For the purposes of section 125(3)–(4) of the Coroners and Justice Act 2009, 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. The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. The court should consider further features of the offence or the offender that warrant adjustment of the sentence within the range, including the aggravating and mitigating factors set out at step four. In this guideline, if the proposed sentence is a fine, having identified a provisional sentence within the range at step four the court is required to consider a further set of factors that may require a final adjustment to the sentence. Starting points and ranges apply to all offenders, whether they have pleaded guilty or been convicted after trial. Credit for a guilty plea is taken into consideration only after the appropriate sentence has been identified.[1]

Information on community orders and fine bands is set out in the annex at page 24.

1 In the guideline for organisations, guilty pleas are considered at step nine; in the guideline for individuals, guilty pleas are considered at step eight

# Organisations

## Unauthorised or harmful deposit, treatment or disposal etc of waste

## Illegal discharges to air, land and water

### Environmental Protection Act 1990 (section 33)

### Environmental Permitting (England and Wales) Regulations 2010 (regulations 12 and 38(1), (2) and (3))

### Also relevant, with adjustments, to certain related offences (see page 14)

---

**Triable either way**

**Maximum: when tried on indictment: unlimited fine**
**when tried summarily: £50,000 fine**

**Offence range: £100 fine – £3 million fine**

**Use this guideline when the offender is an organisation. If the offender is an individual, please refer to the guideline for individuals.**

**Confiscation**

**Committal to the Crown Court for sentence is mandatory if confiscation (see step two) is to be considered: Proceeds of Crime Act 2002 section 70. In such cases magistrates should state whether they would otherwise have committed for sentence.**

**Financial orders must be considered in this order: (1) compensation, (2) confiscation, and (3) fine (see Proceeds of Crime Act 2002 section 13).**

## STEP ONE
**Compensation**

The court must consider making a compensation order requiring the offender to pay compensation for any personal injury, loss or damage resulting from the offence in such an amount as the court considers appropriate, having regard to the evidence and to the means of the offender.

Where the means of the offender are limited, priority should be given to the payment of compensation over payment of any other financial penalty.

Reasons should be given if a compensation order is not made.

(See section 130 Powers of Criminal Courts (Sentencing) Act 2000)

## STEP TWO
**Confiscation (Crown Court only)**

Confiscation must be considered if either the Crown asks for it or the court thinks that it may be appropriate. Confiscation must be dealt with before any other fine or financial order (except compensation).

(See sections 6 and 13 Proceeds of Crime Act 2002)

**See page 5.**

## STEP THREE
### Determining the offence category

The court should determine the offence category using only the culpability and harm factors in the tables below. The culpability and harm categories are on a sliding scale; there is inevitable overlap between the factors described in adjacent categories. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

| Culpability |
|---|
| **Deliberate**<br>Intentional breach of or flagrant disregard for the law by person(s) whose position of responsibility in the organisation is such that their acts/omissions can properly be attributed to the organisation;<br>**OR**<br>deliberate failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence. |
| **Reckless**<br>Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken by person(s) whose position of responsibility in the organisation is such that their acts/omissions can properly be attributed to the organisation;<br>**OR**<br>reckless failure by organisation to put in place and to enforce such systems as could reasonably be expected in all the circumstances to avoid commission of the offence. |
| **Negligent**<br>Failure by the organisation as a whole to take reasonable care to put in place and enforce proper systems for avoiding commission of the offence. |
| **Low or no culpability**<br>Offence committed with little or no fault on the part of the organisation as a whole, for example by accident or the act of a rogue employee and despite the presence and due enforcement of all reasonably required preventive measures, or where such proper preventive measures were unforeseeably overcome by exceptional events. |

| Harm | |
|---|---|
| Category 1 | • Polluting material of a dangerous nature, for example, hazardous chemicals or sharp objects<br>• Major adverse effect or damage to air or water quality, amenity value, or property<br>• Polluting material was noxious, widespread or pervasive with long-lasting effects on human health or quality of life, animal health or flora<br>• Major costs incurred through clean-up, site restoration or animal rehabilitation<br>• Major interference with, prevention or undermining of other lawful activities or regulatory regime due to offence |
| Category 2 | • Significant adverse effect or damage to air or water quality, amenity value, or property<br>• Significant adverse effect on human health or quality of life, animal health or flora<br>• Significant costs incurred through clean-up, site restoration or animal rehabilitation<br>• Significant interference with or undermining of other lawful activities or regulatory regime due to offence<br>• Risk of category 1 harm |
| Category 3 | • Minor, localised adverse effect or damage to air or water quality, amenity value, or property<br>• Minor adverse effect on human health or quality of life, animal health or flora<br>• Low costs incurred through clean-up, site restoration or animal rehabilitation<br>• Limited interference with or undermining of other lawful activities or regulatory regime due to offence<br>• Risk of category 2 harm |
| Category 4 | • Risk of category 3 harm |

## STEP FOUR
**Starting point and category range**

Having determined the category, the court should refer to the tables on pages 7 to 10. There are four tables of starting points and ranges: one for large organisations, one for medium organisations, one for small organisations and one for micro-organisations. The court should refer to the table that relates to the size of the offending organisation.

The court should use the corresponding starting point 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 11.

## General principles to follow in setting a fine

The court should determine 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.

## Obtaining financial information

Offenders which are companies, partnerships or bodies delivering a public or charitable service, are expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. 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.

Normally, only information relating to the organisation before the court will be relevant, unless it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

1. *For companies*: annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. **Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.**

2. *For partnerships*: annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited Liability Partnerships (LLPs) may be required to file audited accounts with Companies House. **If adequate accounts are not produced on request, see paragraph 1.**

3. *For local authorities, fire authorities and similar public bodies*: the Annual Revenue Budget ("ARB") is the equivalent of turnover and the best indication of the size of the defendant organisation. It is unlikely to be necessary to analyse specific expenditure or reserves (where relevant) unless inappropriate expenditure is suggested.

4. *For health trusts*: the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via **www.monitor-nhsft.gov.uk**. Detailed analysis of expenditure or reserves is unlikely to be called for.

5. *For charities*: it will be appropriate to inspect annual audited accounts. Detailed analysis of expenditure or reserves is unlikely to be called for unless there is a suggestion of unusual or unnecessary expenditure.

At step four, the court will be required to focus on the organisation's annual turnover or equivalent to reach a starting point for a fine. At step six, the court may be required to refer to the other financial factors listed above to ensure that the proposed fine is proportionate.

**Very large organisations**

Where a defendant company's turnover or equivalent very greatly exceeds the threshold for large companies, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

### Large

Turnover or equivalent: £50 million and over.

| Large | Starting Point | Range |
|---|---|---|
| **Deliberate** | | |
| Category 1 | £1,000,000 | £450,000 – £3,000,000 |
| Category 2 | £500,000 | £180,000 – £1,250,000 |
| Category 3 | £180,000 | £100,000 – £450,000 |
| Category 4 | £100,000 | £55,000 – £250,000 |
| **Reckless** | | |
| Category 1 | £550,000 | £250,000 – £1,500,000 |
| Category 2 | £250,000 | £100,000 – £650,000 |
| Category 3 | £100,000 | £60,000 – £250,000 |
| Category 4 | £60,000 | £35,000 – £160,000 |
| **Negligent** | | |
| Category 1 | £300,000 | £140,000 – £750,000 |
| Category 2 | £140,000 | £60,000 – £350,000 |
| Category 3 | £60,000 | £35,000 – £150,000 |
| Category 4 | £35,000 | £22,000 – £100,000 |
| **Low / No culpability** | | |
| Category 1 | £50,000 | £25,000 – £130,000 |
| Category 2 | £25,000 | £14,000 – £70,000 |
| Category 3 | £14,000 | £10,000 – £40,000 |
| Category 4 | £10,000 | £7,000 – £25,000 |

## Medium

Turnover or equivalent: between £10 million and £50 million.

| Medium | Starting Point | Range |
|---|---|---|
| **Deliberate** | | |
| Category 1 | £400,000 | £170,000 – £1,000,000 |
| Category 2 | £170,000 | £70,000 – £450,000 |
| Category 3 | £70,000 | £40,000 – £180,000 |
| Category 4 | £40,000 | £22,000 – £100,000 |
| **Reckless** | | |
| Category 1 | £220,000 | £100,000 – £500,000 |
| Category 2 | £100,000 | £40,000 – £250,000 |
| Category 3 | £40,000 | £24,000 – £100,000 |
| Category 4 | £24,000 | £14,000 – £60,000 |
| **Negligent** | | |
| Category 1 | £120,000 | £55,000 – £300,000 |
| Category 2 | £55,000 | £25,000 – £140,000 |
| Category 3 | £25,000 | £14,000 – £60,000 |
| Category 4 | £14,000 | £8,000 – £35,000 |
| **Low / No culpability** | | |
| Category 1 | £20,000 | £10,000 – £50,000 |
| Category 2 | £10,000 | £5,500 – £25,000 |
| Category 3 | £5,000 | £3,500 – £14,000 |
| Category 4 | £3,000 | £2,500 – £10,000 |

**See page 9.**

## Small

Turnover or equivalent: between £2 million and £10 million.

| Small | Starting Point | Range |
|---|---|---|
| **Deliberate** | | |
| Category 1 | £100,000 | £45,000 – £400,000 |
| Category 2 | £45,000 | £17,000 – £170,000 |
| Category 3 | £17,000 | £10,000 – £70,000 |
| Category 4 | £10,000 | £5,000 – £40,000 |
| **Reckless** | | |
| Category 1 | £55,000 | £24,000 – £220,000 |
| Category 2 | £24,000 | £10,000 – £100,000 |
| Category 3 | £10,000 | £5,000 – £40,000 |
| Category 4 | £5,000 | £3,000 – £24,000 |
| **Negligent** | | |
| Category 1 | £30,000 | £13,000 – £120,000 |
| Category 2 | £13,000 | £6,000 – £55,000 |
| Category 3 | £6,000 | £3,000 – £23,000 |
| Category 4 | £3,000 | £1,500 – £14,000 |
| **Low / No culpability** | | |
| Category 1 | £5,000 | £2,500 – £20,000 |
| Category 2 | £2,500 | £1,000 – £10,000 |
| Category 3 | £1,000 | £700 – £5,000 |
| Category 4 | £700 | £400 – £3,500 |

**See page 10.**

### Micro

Turnover or equivalent: not more than £2 million.

| Micro | Starting Point | Range |
|---|---|---|
| **Deliberate** | | |
| Category 1 | £50,000 | £9,000 – £95,000 |
| Category 2 | £22,000 | £3,000 – £45,000 |
| Category 3 | £9,000 | £2,000 – £17,000 |
| Category 4 | £5,000 | £1,000 – £10,000 |
| **Reckless** | | |
| Category 1 | £30,000 | £3,000 – £55,000 |
| Category 2 | £12,000 | £1,500 – £24,000 |
| Category 3 | £5,000 | £1,000 – £10,000 |
| Category 4 | £3,000 | £500 – £5,500 |
| **Negligent** | | |
| Category 1 | £15,000 | £1,500 – £30,000 |
| Category 2 | £6,500 | £1,000 – £13,000 |
| Category 3 | £2,500 | £500 – £5,500 |
| Category 4 | £1,400 | £350 – £3,000 |
| **Low / No culpability** | | |
| Category 1 | £2,500 | £500 – £5,000 |
| Category 2 | £1,000 | £350 – £2,400 |
| Category 3 | £400 | £175 – £1,000 |
| Category 4 | £200 | £100 – £700 |

**See page 11.**

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 and/or a history of non-compliance 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 |
|---|
| *Statutory aggravating factors:* |
| 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 |
| *Other aggravating factors include:* |
| History of non-compliance with warnings by regulator |
| Location of the offence, for example, near housing, schools, livestock or environmentally sensitive sites |
| Repeated incidents of offending or offending over an extended period of time, where not charged separately |
| Deliberate concealment of illegal nature of activity |
| Ignoring risks identified by employees or others |
| Established evidence of wider/community impact |
| Breach of any order |
| Offence committed for financial gain |
| Obstruction of justice |

| Factors reducing seriousness or reflecting mitigation |
|---|
| No previous convictions **or** no relevant/recent convictions |
| Evidence of steps taken to remedy problem |
| Remorse |
| Compensation paid voluntarily to remedy harm caused |
| One-off event not commercially motivated |
| Little or no financial gain |
| Effective compliance and ethics programme |
| Self-reporting, co-operation and acceptance of responsibility |
| Good character and/or exemplary conduct |

**See page 12.**

## STEPS FIVE TO SEVEN

The court should now 'step back' and, using the factors set out in steps five, six and seven, **review whether the sentence as a whole meets, in a fair way, the objectives of punishment, deterrence and removal of gain derived through the commission of the offence**. At steps five to seven, the court may increase or reduce the proposed fine reached at step four, if necessary moving outside the range.

### STEP FIVE

**Ensure that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit derived from the offending**

The court should remove any economic benefit the offender has derived through the commission of the offence including:

- avoided costs;
- operating savings;
- any gain made as a direct result of the offence.

Where the offender is fined, the amount of economic benefit derived from the offence should normally be added to the fine arrived at in step four. If a confiscation order is made, in considering economic benefit, the court should avoid double recovery.

Economic benefit will not always be an identifiable feature of a case. For example, in some water pollution cases there may be strict liability but very little obvious gain. However, even in these cases there may be some avoidance of cost, for example alarms not installed and maintained, inadequate bunding or security measures not installed. Any costs avoided will be considered as economic benefit.

Where it is not possible to calculate or estimate the economic benefit, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

### STEP SIX

**Check whether the proposed fine based on turnover is proportionate to the means of the offender**

**The combination of financial orders must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to improve regulatory compliance. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.**

It will be necessary to examine the financial circumstances of the organisation in the round. If an organisation has a small profit margin relative to its turnover, downward adjustment may be needed. If it has a large profit margin, upward adjustment may be needed.

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**.

## STEP SEVEN

**Consider other factors that may warrant adjustment of the proposed fine**

The court should consider any further factors that are relevant to ensuring that the proposed fine is proportionate having regard to the means of the offender and the seriousness of the offence.

**Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of their services.**

The **non-exhaustive** list below contains additional factual elements the court should consider in deciding whether an increase or reduction to the proposed fine is required:

- fine impairs offender's ability to make restitution to victims;
- impact of fine on offender's ability to improve conditions in the organisation to comply with the law;
- impact of fine on employment of staff, service users, customers and local economy.

## STEP EIGHT

**Consider any factors which indicate a reduction, such as 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 NINE

**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 TEN

**Ancillary orders**

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

***Forfeiture of vehicle***

The court may order the forfeiture of a vehicle used in or for the purposes of the commission of the offence in accordance with section 33C of the Environmental Protection Act 1990.

***Deprivation of property***

Where section 33C of the Environmental Protection Act 1990 does not apply, the court may order the offender be deprived of property used to commit crime or intended for that purpose in accordance with section 143 of the Powers of Criminal Courts (Sentencing) Act 2000. In considering whether to make an order under section 143, the court must have regard to the value of the property and the likely effects on the offender of making the order taken together with any other order the court makes.

***Remediation***

Where an offender is convicted of an offence under regulation 38(1), (2) or (3) of the Environmental Permitting (England and Wales) Regulations 2010, a court may order the offender to take steps to remedy the cause of the offence within a specified period in accordance with regulation 44 of the Environmental Permitting (England and Wales) Regulations 2010.

## STEP ELEVEN

**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 TWELVE

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

## Other environmental offences

In sentencing other relevant and analogous environmental offences, the court should refer to the sentencing approach in steps one to three and five to seven of the guideline, **adjusting the starting points and ranges bearing in mind the statutory maxima** for those offences. An indicative list of such offences is set out below.

| Offence | Mode of trial | Statutory maxima |
|---|---|---|
| Section 1 Control of Pollution (Amendment) Act 1989 – transporting controlled waste without registering | Triable summarily only | • level 5 fine |
| Section 34 Environmental Protection Act 1990 – breach of duty of care | Triable either way | • when tried on indictment: unlimited fine<br>• when tried summarily: level 5 fine |
| Section 80 Environmental Protection Act 1990 – breach of an abatement notice | Triable summarily only | • where the offence is committed on industrial, trade or business premises: £20,000 fine<br>• where the offence is committed on non-industrial etc premises: level 5 fine with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction |
| Section 111 Water Industry Act 1991 – restrictions on use of public sewers | Triable either way | • when tried on indictment: imprisonment for a term not exceeding two years or a fine or both<br>• when tried summarily: a fine not exceeding the statutory maximum and a further fine not exceeding £50 for each day on which the offence continues after conviction |
| Offences under the Transfrontier Shipment of Waste Regulations 2007 | Triable either way | • when tried on indictment: a fine or two years imprisonment or both<br>• when tried summarily: a fine not exceeding the statutory maximum or three months' imprisonment or both |

# Individuals

## Unauthorised or harmful deposit, treatment or disposal etc of waste

## Illegal discharges to air, land and water

### Environmental Protection Act 1990 (section 33)

### Environmental Permitting (England and Wales) Regulations 2010 (regulations 12 and 38(1), (2) and (3))

### Also relevant, with adjustments, to certain related offences (see page 23)

---

**Triable either way**

**Maximum: when tried on indictment: unlimited fine and/or 5 years' custody**
**when tried summarily: £50,000 fine and/or 6 months' custody**

**Offence range: conditional discharge – 3 years' custody**

**Use this guideline when the offender is an individual. If the offender is an organisation, please refer to the guideline for organisations.**

**Confiscation**

**Committal to the Crown Court for sentence is mandatory if confiscation (see step two) is to be considered: Proceeds of Crime Act 2002 section 70. In such cases magistrates should state whether they would otherwise have committed for sentence.**

**If a fine is imposed, the financial orders must be considered in this order: (1) compensation, (2) confiscation, and (3) fine (see Proceeds of Crime Act 2002 section 13).**

## STEP ONE
**Compensation**

The court must consider making a compensation order requiring the offender to pay compensation for any personal injury, loss or damage resulting from the offence in such an amount as the court considers appropriate, having regard to the evidence and to the means of the offender.

Where the means of the offender are limited, priority should be given to the payment of compensation over payment of any other financial penalty.

Reasons should be given if a compensation order is not made.

(See section 130 Powers of Criminal Courts (Sentencing) Act 2000)

## STEP TWO
**Confiscation (Crown Court only)**

Confiscation must be considered if either the Crown asks for it or the court thinks that it may be appropriate. Confiscation must be dealt with before any other fine or financial order (except compensation).

(See sections 6 and 13 Proceeds of Crime Act 2002)

**See page 17.**

## STEP THREE
### Determining the offence category

The court should determine the offence category using only the culpability and harm factors in the tables below. The culpability and harm categories are on a sliding scale; there is inevitable overlap between the factors described in adjacent categories. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Dealing with a **risk of harm** involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

| Culpability |
|---|
| **Deliberate**<br>Where the offender intentionally breached, or flagrantly disregarded, the law |
| **Reckless**<br>Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken |
| **Negligent**<br>Offence committed through act or omission which a person exercising reasonable care would not commit |
| **Low or no culpability**<br>Offence committed with little or no fault, for example by genuine accident despite the presence of proper preventive measures, or where such proper preventive measures were unforeseeably overcome by exceptional events |

| Harm | |
|---|---|
| Category 1 | • Polluting material of a dangerous nature, for example, hazardous chemicals or sharp objects<br>• Major adverse effect or damage to air or water quality, amenity value, or property<br>• Polluting material was noxious, widespread or pervasive with long-lasting effects on human health or quality of life, animal health, or flora<br>• Major costs incurred through clean-up, site restoration or animal rehabilitation<br>• Major interference with, prevention or undermining of other lawful activities or regulatory regime due to offence |
| Category 2 | • Significant adverse effect or damage to air or water quality, amenity value, or property<br>• Significant adverse effect on human health or quality of life, animal health or flora<br>• Significant costs incurred through clean-up, site restoration or animal rehabilitation<br>• Significant interference with or undermining of other lawful activities or regulatory regime due to offence<br>• Risk of category 1 harm |
| Category 3 | • Minor, localised adverse effect or damage to air or water quality, amenity value, or property<br>• Minor adverse effect on human health or quality of life, animal health or flora<br>• Low costs incurred through clean-up, site restoration or animal rehabilitation<br>• Limited interference with or undermining of other lawful activities or regulatory regime due to offence<br>• Risk of category 2 harm |
| Category 4 | • Risk of category 3 harm |

## STEP FOUR
**Starting point and category range**

Having determined the category, the court should refer to the starting points on page 19 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 20.

### General principles to follow in setting a fine
The court should determine 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.

### 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 their financial position as will enable it to assess what they 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.**

**See page 19.**

## 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?

**However, even where the community order threshold has been passed, a fine will normally be the most appropriate disposal.** Where confiscation is not applied for, consider, if wishing to remove any economic benefit derived through the commission of the offence, combining a fine with a community order.

| Offence category | Starting Point | Range |
|---|---|---|
| **Deliberate** | | |
| Category 1 | 18 months' custody | 1 – 3 years' custody |
| Category 2 | 1 year's custody | 26 weeks' – 18 months' custody |
| Category 3 | Band F fine | Band E fine or medium level community order – 26 weeks' custody |
| Category 4 | Band E fine | Band D fine or low level community order– Band E fine |
| **Reckless** | | |
| Category 1 | 26 weeks' custody | Band F fine or high level community order – 12 months' custody |
| Category 2 | Band F fine | Band E fine or medium level community order – 26 weeks' custody |
| Category 3 | Band E fine | Band D fine or low level community order – Band E fine |
| Category 4 | Band D fine | Band C fine – Band D fine |
| **Negligent** | | |
| Category 1 | Band F fine | Band E fine or medium level community order – 26 weeks' custody |
| Category 2 | Band E fine | Band D fine or low level community order – Band E fine |
| Category 3 | Band D fine | Band C fine – Band D fine |
| Category 4 | Band C fine | Band B fine – Band C fine |
| **Low / No culpability** | | |
| Category 1 | Band D fine | Band C fine – Band D fine |
| Category 2 | Band C fine | Band B fine – Band C fine |
| Category 3 | Band B fine | Band A fine – Band B fine |
| Category 4 | Band A fine | Conditional discharge – Band A fine |

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 and/or a history of non-compliance 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 |
|---|
| *Statutory aggravating factors:* |
| 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 |
| Offence committed whilst on bail |
| *Other aggravating factors include:* |
| History of non-compliance with warnings by regulator |
| Location of the offence, for example, near housing, schools, livestock or environmentally sensitive sites |
| Repeated incidents of offending or offending over an extended period of time, where not charged separately |
| Deliberate concealment of illegal nature of activity |
| Ignoring risks identified by employees or others |
| Established evidence of wider/community impact |
| Breach of any order |
| Offence committed for financial gain |
| Obstruction of justice |
| Offence committed whilst on licence |

| Factors reducing seriousness or reflecting personal mitigation |
|---|
| No previous convictions **or** no relevant/recent convictions |
| Remorse |
| Compensation paid voluntarily to remedy harm caused |
| Evidence of steps taken to remedy problem |
| One-off event not commercially motivated |
| Little or no financial gain |
| Self-reporting, co-operation and acceptance of responsibility |
| Good character and/or exemplary conduct |
| Mental disorder or learning disability, where linked to the commission of the offence |
| 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 21.**

## STEPS FIVE AND SIX

Where the sentence is or includes a fine, the court should 'step back' and, using the factors set out in steps five and six, **review whether the sentence as a whole meets, in a fair way, the objectives of punishment, deterrence and removal of gain derived through the commission of the offence**. At steps five and six, the court may increase or reduce the proposed fine reached at step four, if necessary moving outside the range.

### STEP FIVE

**Ensure that the combination of financial orders (compensation, confiscation if appropriate, and fine) removes any economic benefit derived from the offending**

The court should remove any economic benefit the offender has derived through the commission of the offence including:

- avoided costs;
- operating savings;
- any gain made as a direct result of the offence.

Where the offender is fined, the amount of economic benefit derived from the offence should normally be added to the fine arrived at in step four. If a confiscation order is made, in considering economic benefit, the court should avoid double recovery.

Economic benefit will not always be an identifiable feature of a case. For example, in some water pollution cases there may be strict liability but very little obvious gain. However, even in these cases there may be some avoidance of cost, for example alarms not installed and maintained, inadequate bunding or security measures not installed. Any costs avoided will be considered as economic benefit.

Where it is not possible to calculate or estimate the economic benefit derived from the offence, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.

### STEP SIX

**Consider other factors that may warrant adjustment of the proposed fine**

The court should consider any further factors that are relevant to ensuring that the proposed fine is proportionate having regard to the means of the offender and the seriousness of the offence.

The **non-exhaustive** list below contains additional factual elements the court should consider in deciding whether an increase or reduction to the proposed fine is required:

- fine impairs offender's ability to make restitution to victims;
- impact of fine on offender's ability to improve conditions to comply with the law;
- impact of fine on employment of staff, service users, customers and local economy.

## STEP SEVEN

**Consider any factors which indicate a reduction, such as 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 EIGHT

**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 NINE

**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).

***Disqualification from driving***

The court may order disqualification from driving where a vehicle has been used in connection with the commission of the offence (section 147 of the Powers of Criminal Courts (Sentencing) Act 2000).

The court may disqualify an offender from driving on conviction for any offence either in addition to any other sentence or instead of any other sentence (section 146 of the Powers of Criminal Courts (Sentencing) Act 2000).

The court should inform the offender of its intention to disqualify and hear representations.

***Forfeiture of vehicle***

The court may order the forfeiture of a vehicle used in or for the purposes of the commission of the offence in accordance with section 33C of the Environmental Protection Act 1990.

***Deprivation of property***

Where section 33C of the Environmental Protection Act 1990 does not apply, the court may order the offender to be deprived of property used to commit crime or intended for that purpose in accordance with section 143 of the Powers of Criminal Courts (Sentencing) Act 2000. In considering whether to make an order under section 143, the court must have regard to the value of the property and the likely effects on the offender of making the order taken together with any other order the court makes.

***Remediation***

Where an offender is convicted of an offence under regulation 38(1), (2) or (3) of the Environmental Permitting (England and Wales) Regulations 2010, a court may order the offender to take steps to remedy the cause of the offence within a specified period in accordance with regulation 44 of the Environmental Permitting (England and Wales) Regulations 2010.

## STEP TEN

**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 ELEVEN

**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

## STEP TWELVE

**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.

## Other environmental offences

In sentencing other relevant and analogous environmental offences, the court should refer to the sentencing approach in steps one to three and five and six of the guideline, **adjusting the starting points and ranges bearing in mind the statutory maxima** for those offences. An indicative list of such offences is set out below.

| Offence | Mode of trial | Statutory maxima |
|---|---|---|
| Section 1 Control of Pollution (Amendment) Act 1989 – transporting controlled waste without registering | Triable summarily only | • level 5 fine |
| Section 34 Environmental Protection Act 1990 – breach of duty of care | Triable either way | • when tried on indictment: unlimited fine<br>• when tried summarily: level 5 fine |
| Section 80 Environmental Protection Act 1990 – breach of an abatement notice | Triable summarily only | • where the offence is committed on industrial, trade or business premises: £20,000 fine<br>• where the offence is committed on non-industrial etc premises: level 5 fine with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction |
| Section 111 Water Industry Act 1991 – restrictions on use of public sewers | Triable either way | • when tried on indictment: imprisonment for a term not exceeding two years or a fine or both<br>• when tried summarily: a fine not exceeding the statutory maximum and a further fine not exceeding £50 for each day on which the offence continues after conviction |
| Offences under the Transfrontier Shipment of Waste Regulations 2007 | Triable either way | • when tried on indictment: a fine or two years imprisonment or both<br>• when tried summarily: a fine not exceeding the statutory maximum or three months' imprisonment or both |

# Annex: Fine bands and community orders

## FINE BANDS

In this guideline, fines are expressed as one of six fine bands (A, B, C, D, E or F).

| Fine Band | **Starting point** *(applicable to all offenders)* | **Category range** *(applicable to all offenders)* |
|---|---|---|
| Band A | 50% of relevant weekly income | 25–75% of relevant weekly income |
| Band B | 100% of relevant weekly income | 75–125% of relevant weekly income |
| Band C | 150% of relevant weekly income | 125–175% of relevant weekly income |
| Band D | 250% of relevant weekly income | 200–300% of relevant weekly income |
| Band E | 400% of relevant weekly income | 300–500% of relevant weekly income |
| Band F | 600% of relevant weekly income | 500–700% of relevant weekly income |

Band F is provided as an alternative to a community order or custody in the context of this guideline.

## COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium or high). An illustrative description of examples of requirements that might be appropriate for each level is provided below.

Where two or more requirements are ordered, they must be compatible with each other. Save in exceptional circumstances, the court must impose at least one requirement for the purpose of punishment, or combine the community order with a fine, or both (see section 177 Criminal Justice Act 2003).

| LOW | MEDIUM | HIGH |
|---|---|---|
| In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary | | More intensive sentences which combine two or more requirements may be appropriate |
| Suitable requirements might include one or more of:<br>• 40–80 hours unpaid work;<br>• prohibited activity requirement;<br>• curfew requirement within the lowest range (for example, up to 12 hours per day for a few weeks). | Suitable requirements might include one or more of:<br>• greater number of hours of unpaid work (for example, 80–150 hours);<br>• prohibited activity requirement.<br>• an activity requirement in the middle range (20–30 days);<br>• curfew requirement within the middle range (for example, up to 12 hours for 2–3 months). | Suitable requirements might include one or more of:<br>• 150–300 hours unpaid work;<br>• activity requirement up to the maximum of 60 days;<br>• curfew requirement up to 12 hours per day for 4–6 months;<br>• exclusion order lasting in the region of 12 months. |

The *Magistrates' Court Sentencing Guidelines* includes further guidance on fines and community orders.

DEFINITIVE GUIDELINE

# Annual report on Natural England's enforcement activity 1 April 2013 to 31 March 2014

## 1. Sites of Special Scientific Interest (SSSIs)

There was a large rise in the total number of offences committed on SSSIs in 2012-13 (Figure 1.1). However, the vast majority of incidents remain minored and were sanctioned through warning letters. We brought 3 prosecutions and administered 1 caution and 1 civil sanction (see section 5).

In recent years, the number of offences committed by those who own or occupy sites (e.g. farmers and land managers) compared to those who have no connection with the land (e.g. recreational off-roaders) has been very similar (Figure 1.2). The number of offences committed by public bodies has been much lower.

Offences continue to be concentrated in the south of England compared to the midlands and north (Figure 1.3). Coastal and lowland grassland habitats are most frequently damaged (Figure 1.4). The variety of illegal activities continues to be wide, but dominated by vehicle use and the direct loss of habitat through construction activities (Figure 1.5).

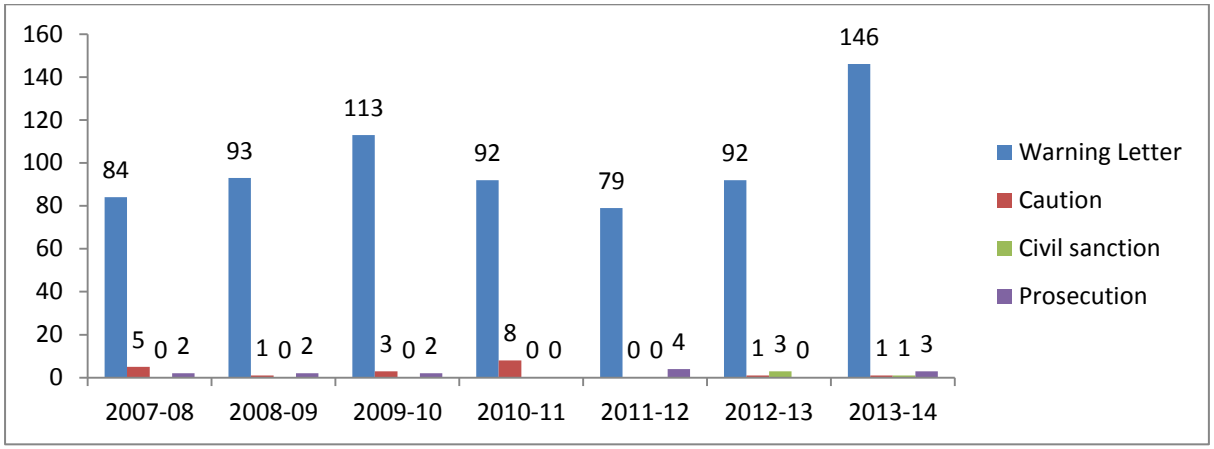


**Figure 1.1.** Criminal activity on SSSIs by financial year and sanction.

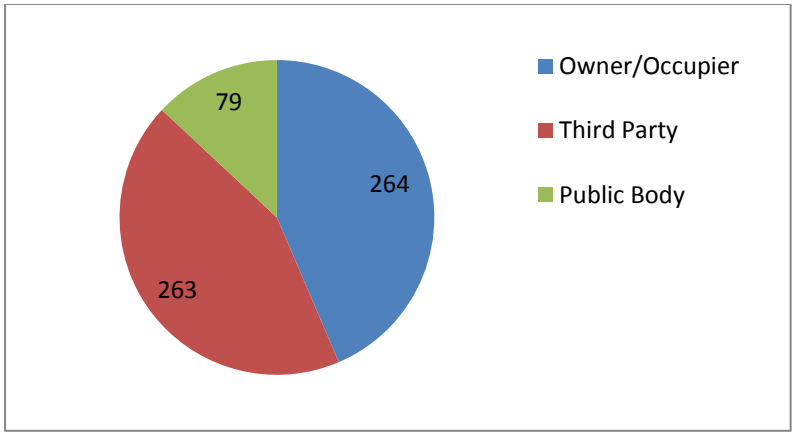


**Figure 1.2.** Criminal activity on SSSIs by responsible party. Data from 1 April 2008 - 31 March 2014.

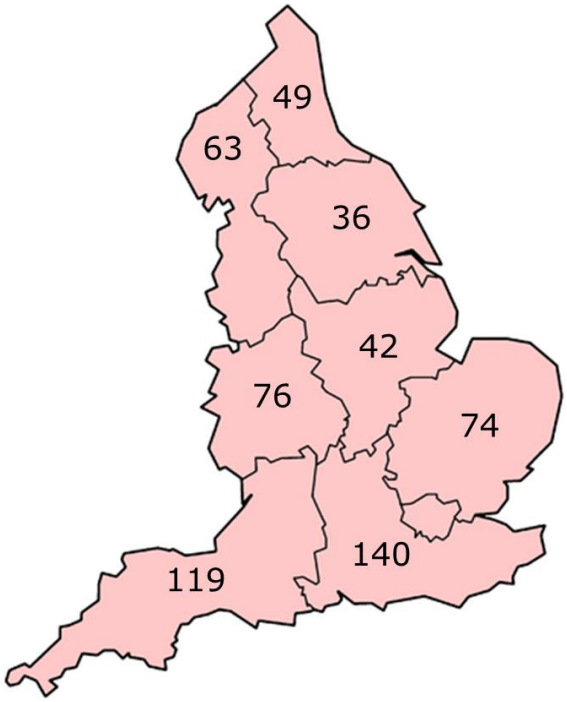


**Figure 1.3.** Spatial variability in criminal activity on SSSIs. Data from 1 April 2008 – 31 March 2014.

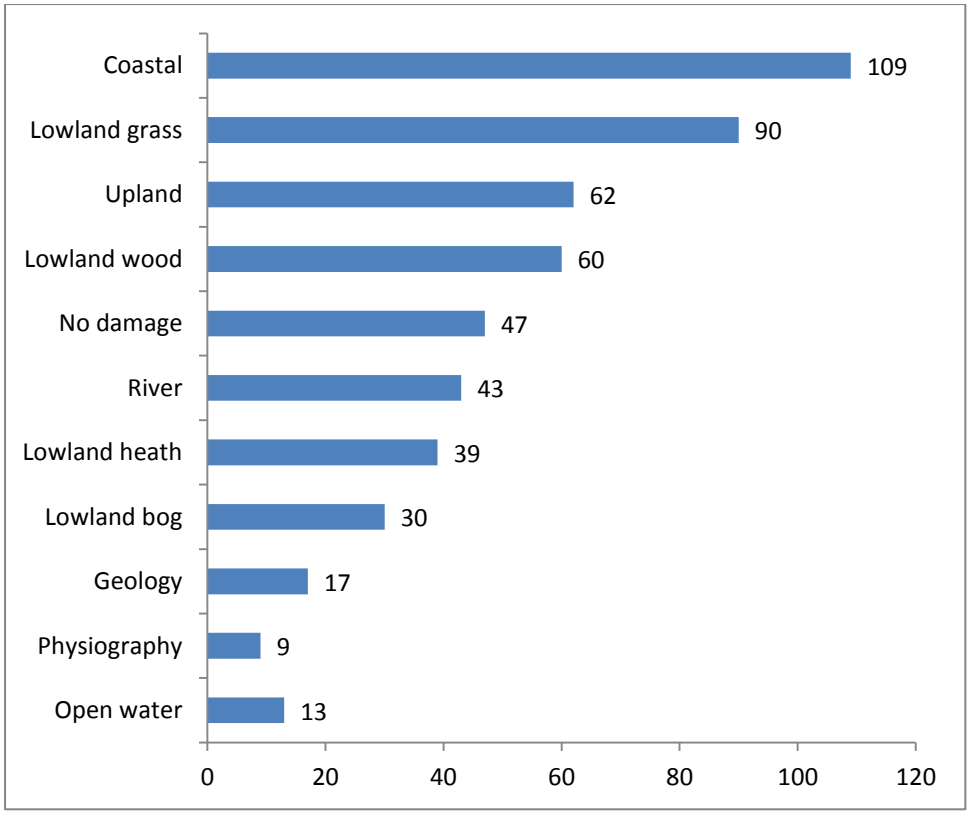


**Figure 1.4.** Criminal activity on SSSIs by affected habitat. Data from 1 April 2008 – 31 March 2014.

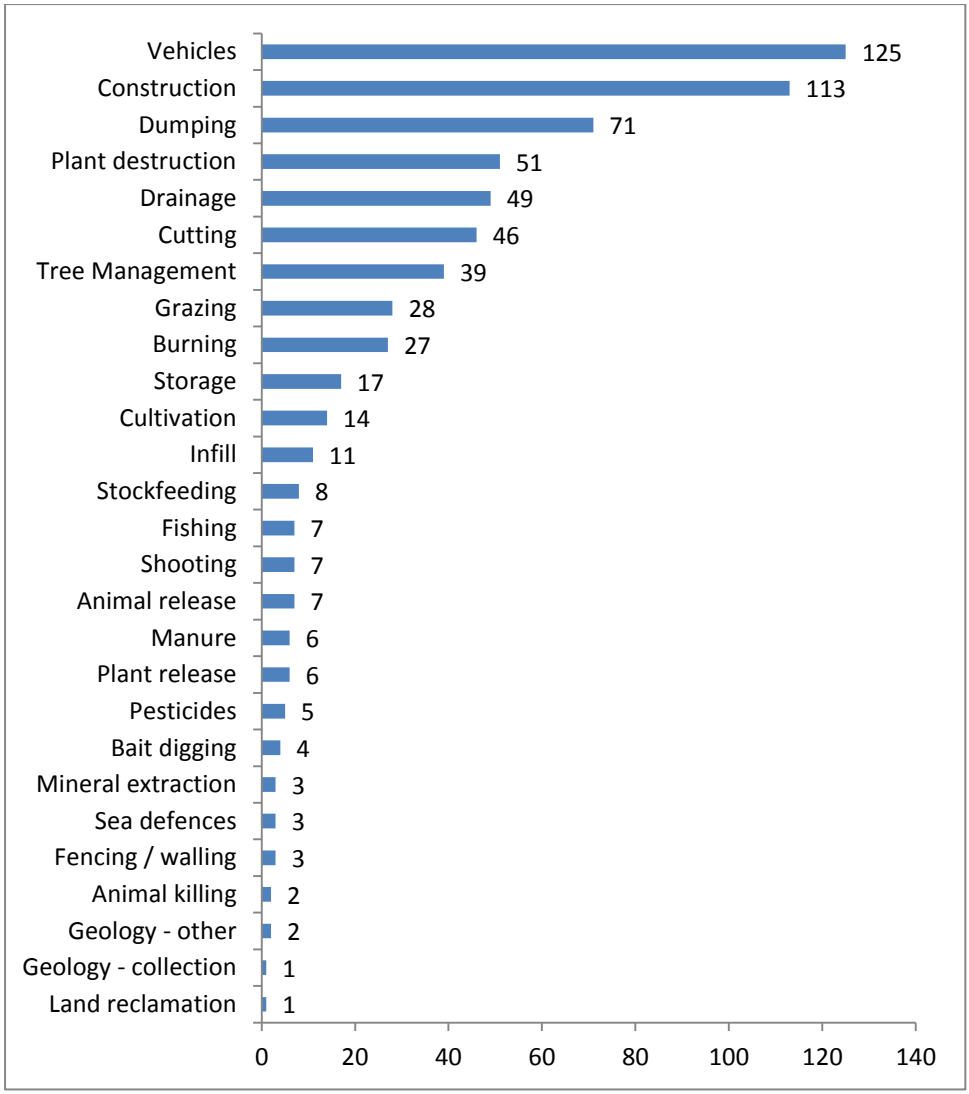


**Figure 1.5.** Criminal activity on SSSIs by activity. Data from 1 April 2008 – 31 March 2014.

## 2. Species Licensing

The number of breaches of licences that we issue rose slightly in 2013-14 (Figure 2.1), but most breaches remain minor and are responded to by warning letters. No cautions, civil sanctions or prosecutions were brought in 2013-14 for a breach of a species licence. The most frequently affected species are great crested newts, bats, cormorants and badgers (Figure 2.2). Offences remain concentrated in the east and south-east of England (Figure 2.3).

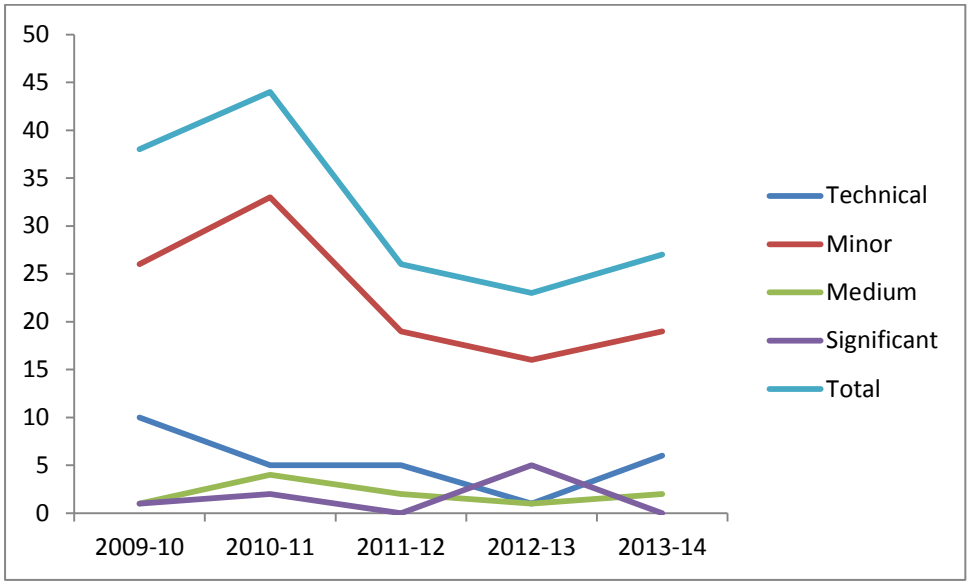


**Figure 2.1**. Breaches of species licences by classification. Classifications of technical, minor, medium or significant are based mainly on the environmental impact of the breach but also on a range of aggravating and mitigating factors.

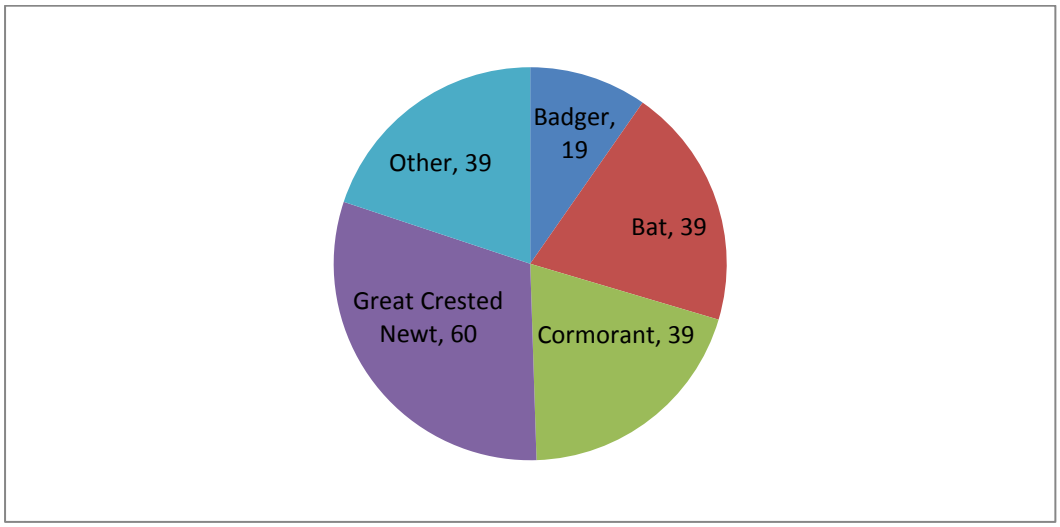


**Figure 2.2**. Species affected by breaches of species licences. Data from April 2009 – March 2014.

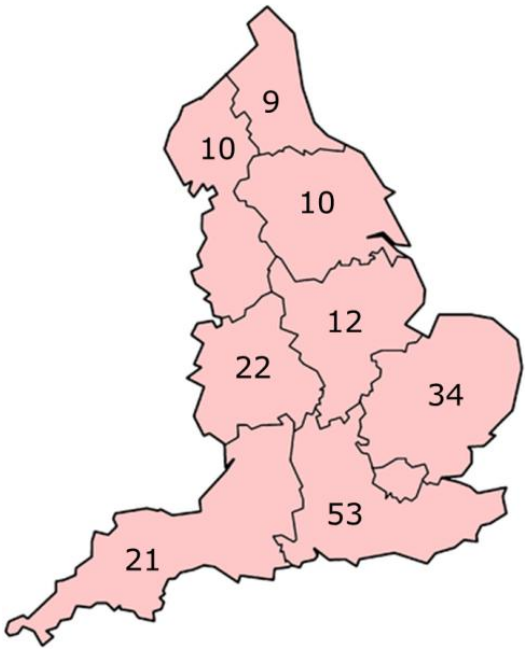


**Figure 2.3**. Spatial variability in breaches of species licences. Data from April 2009 – March 2013.

### 3. Animal poisonings

Although the number of reports of animal deaths under the Wildlife Incident Investigations Scheme rose slightly in 2013-14, the number of incidents accepted into the scheme has remained steady in recent years (Figure 3.1). Cases are rejected where it is not thought that pesticides were implicated. In 2013-14 reports of vertebrate poisonings rose whilst invertebrates fell (Figure 3.2). The deliberate abuse of pesticide rose whilst other uses fell. Cases remain unevenly spread throughout England with the highest number of incidents in the east of England (Figure 3.4).

We issue Enforcement Notices to remedy immediate issues with storage and use of pesticides discovered as part of our enquiries. In 2013-14 we worked in conjunction with the Chemicals Regulation Directorate of HSE who issued 2 Enforcement Notices in relation to storage issues arising in Wildlife Incidents.

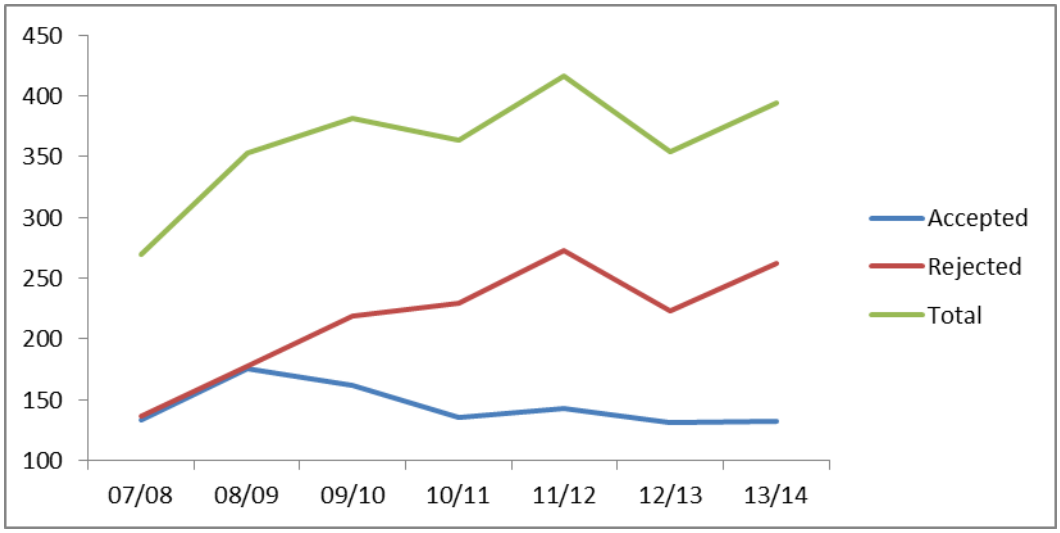

**Figure 3.1.** Reports of injury of death of animals to the Wildlife Incident Investigation Scheme. Cases are accepted if pesticides are suspected of being involved.

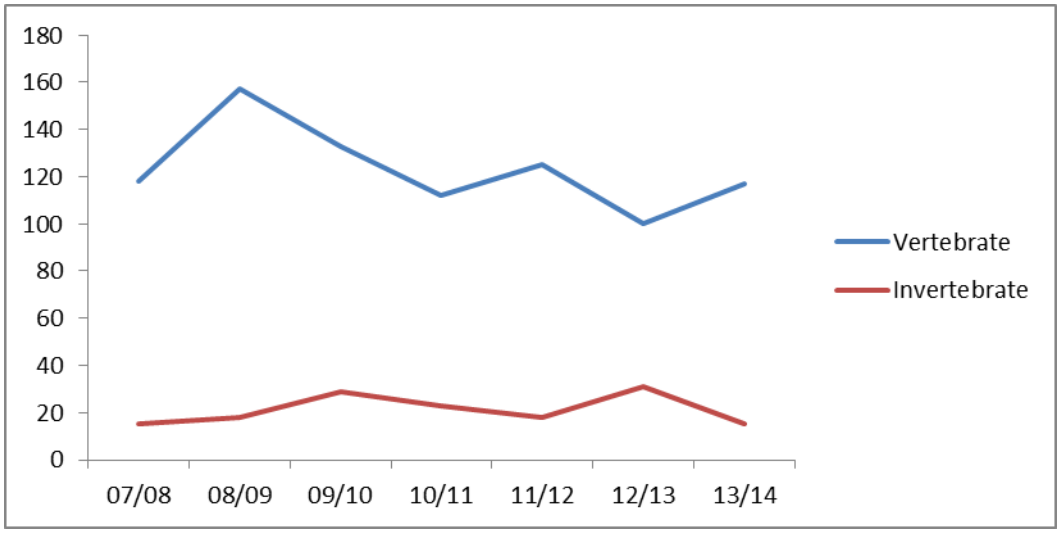


**Figure 3.2**. Vertebrate and invertebrate cases accepted into the WIIS scheme

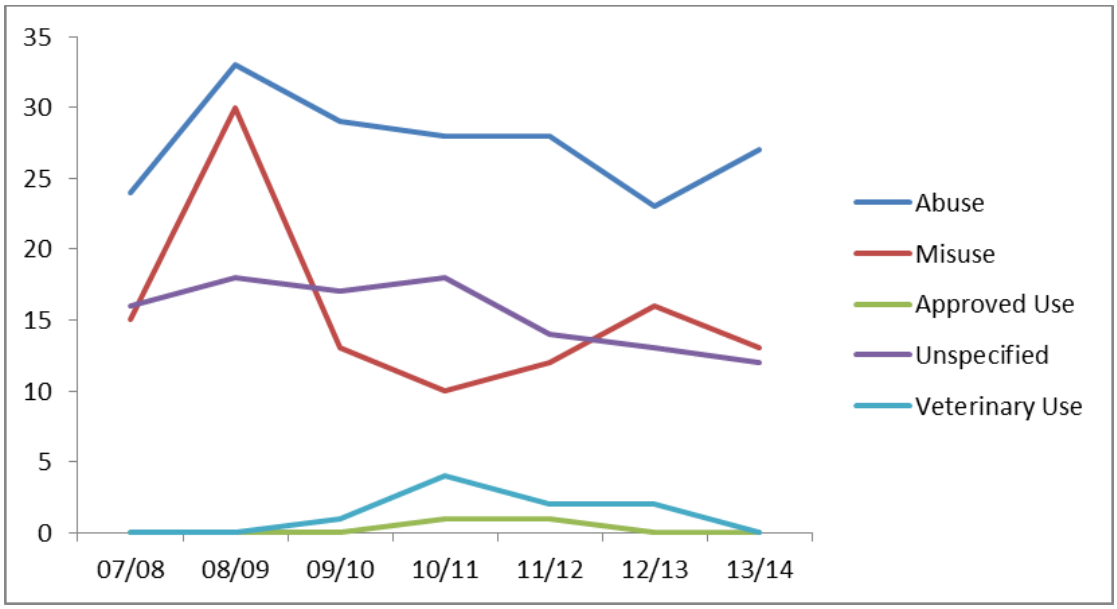


**Figure 3.3**. Classification of poisoning incidents by suspected use of pesticide

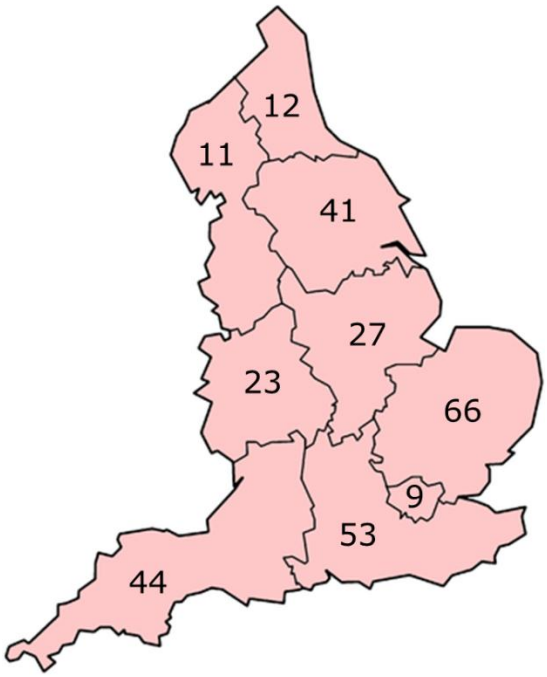


**Figure 3.4**. Confirmed pesticide cases by Government Region. Data from April 2009 – March 2014.

### 4. Environmental Impact Assessment (Agriculture) Regulations

The number of queries received by our helpline was similar in 2013 to 2012, but the number of incidents that we investigated rose slightly (Table 4.1). One restoration notice was served and one prosecution was taken, the details of which are in section 6.

**Table 4.1.** Enforcement action relating to the EIA (Agriculture) Regulations

| Year | Queries | Investigations | Stop Notices | Restoration Notices | Prosecutions |
|---|---|---|---|---|---|
| 2006 | 1795 | 21 | 0 | 0 | 0 |
| 2007 | 1462 | 20 | 2 | 0 | 0 |
| 2008 | 1105 | 23 | 1 | 0 | 0 |
| 2009 | 633 | 19 | 0 | 1 | 0 |
| 2010 | 575 | 23 | 0 | 0 | 0 |
| 2011 | 899 | 48 | 2 | 1 | 0 |
| 2012 | 1627 | 51 | 1 | 1 | 0 |
| 2013 | 1640 | 68 | 0 | 1 | 1 |

## 5. Injurious weeds

Contacts, queries and complaints of damage caused by injurious weeds have continued to fall in recent years (Table 5.1). In 2013 37 enforcement notices were served but no clearance actions were required.

**Table 5.1.** Enforcement action relating to injurious weeds

| Year | Contacts/ queries | Complaints | Inspections | Enforcement notices | Clearance actions | Prosecutions |
|---|---|---|---|---|---|---|
| **2006** | 1950 | 342 | 67 | 19 | 5 | 0 |
| **2007** | 1924 | 234 | 117 | 52 | 2 | 0 |
| **2008** | 2664 | 319 | 136 | 39 | 3 | 0 |
| **2009** | 944 | 202 | 73 | 40 | 0 | 0 |
| **2010** | 684 | 145 | 41 | 24 | 2 | 0 |
| **2011** | 1775 | 230 | 86 | 46 | 0 | 0 |
| **2012** | 1384 | 193 | 72 | 36 | 1 | 0 |
| **2013** | 1096 | 127 | 59 | 37 | 0 | 0 |

## 6. Prosecutions, civil sanctions and cautions

*April 2013*

A 49-year-old pigeon fancier from Sunderland has pleaded guilty to three charges of illegally using and storing a banned pesticide. He was fined £200 for each of the three charges. This police prosecution was handled as a WIIS case by Natural England.

*June 2013*

A company agreed an Enforcement Undertaking to restore a damaged area of blanket bog within Bewick and Beanley Moors SSSI in Northumberland

*July 2013*

A landowner was fined £450,000 and ordered to pay £457,318 costs for tree felling and track construction within Gelt Woods SSSI in Cumbria.

*September 2013*

A landowner was fined £45,000 and ordered to pay £90,000 costs for carrying out numerous unauthorised activities within Pevensey Levels SSSI in East Sussex. The activities included planting non-native trees, erecting fencing, erecting temporary structures, constructing a track and constructing a bridge. The court also served a restoration order.

*October 2013*

A man was cautioned for scraping mudflats within St John's Lake SSSI in Cornwall

*January 2014*

Two men were prosecuted for causing damage to blanket bog through recreational off-roading in Leek Moors SSSI within the Peak District National Park.

*April 2014*

A landowner was fined £2,500 and ordered to pay £10,000 costs and a £250 victim surcharge after failing to comply with the terms of a remediation notice served under the Environmental Impact Assessment (Agriculture) Regulations. The landowner had unlawfully installed a number of underground pipes which drained water into Miller Beck.