

# Here comes the judge!



RONAN DALY BL

20<sup>TH</sup> SEPTEMBER 2021

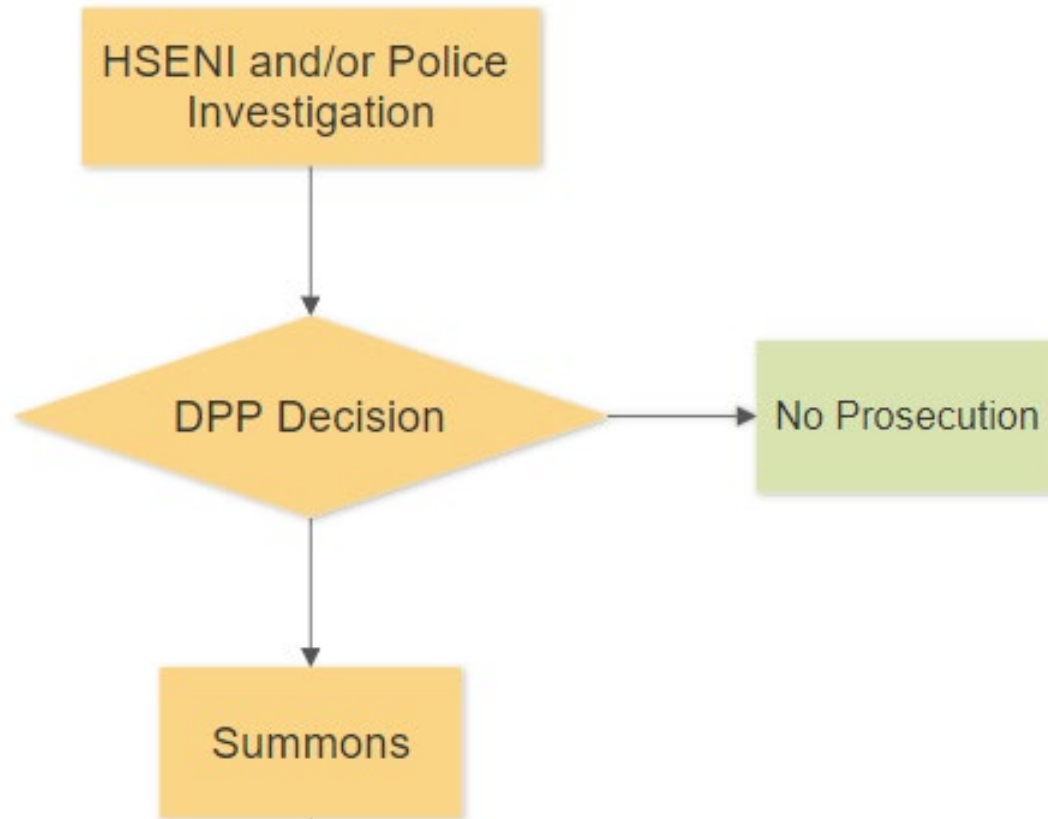
# Overview

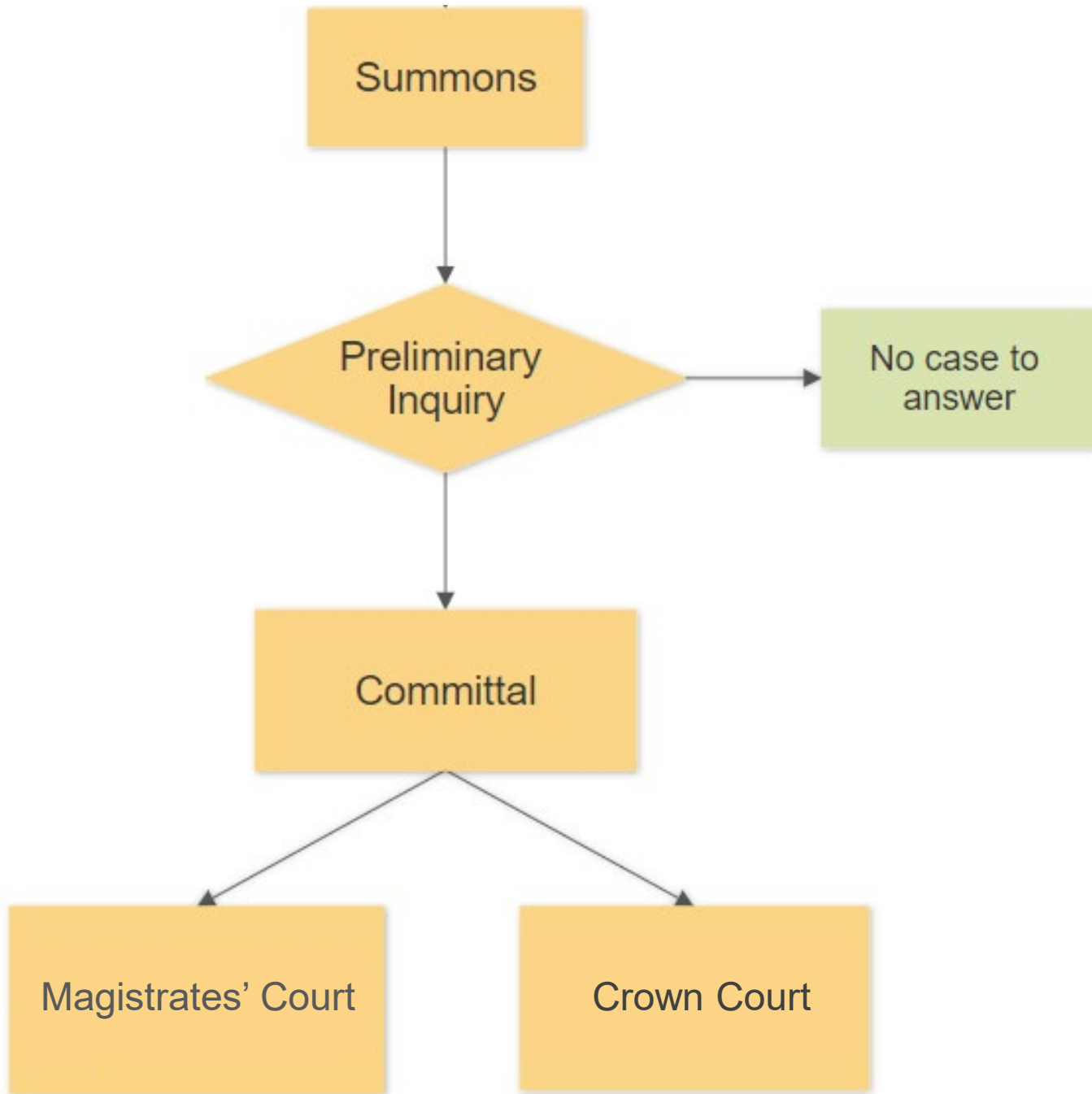
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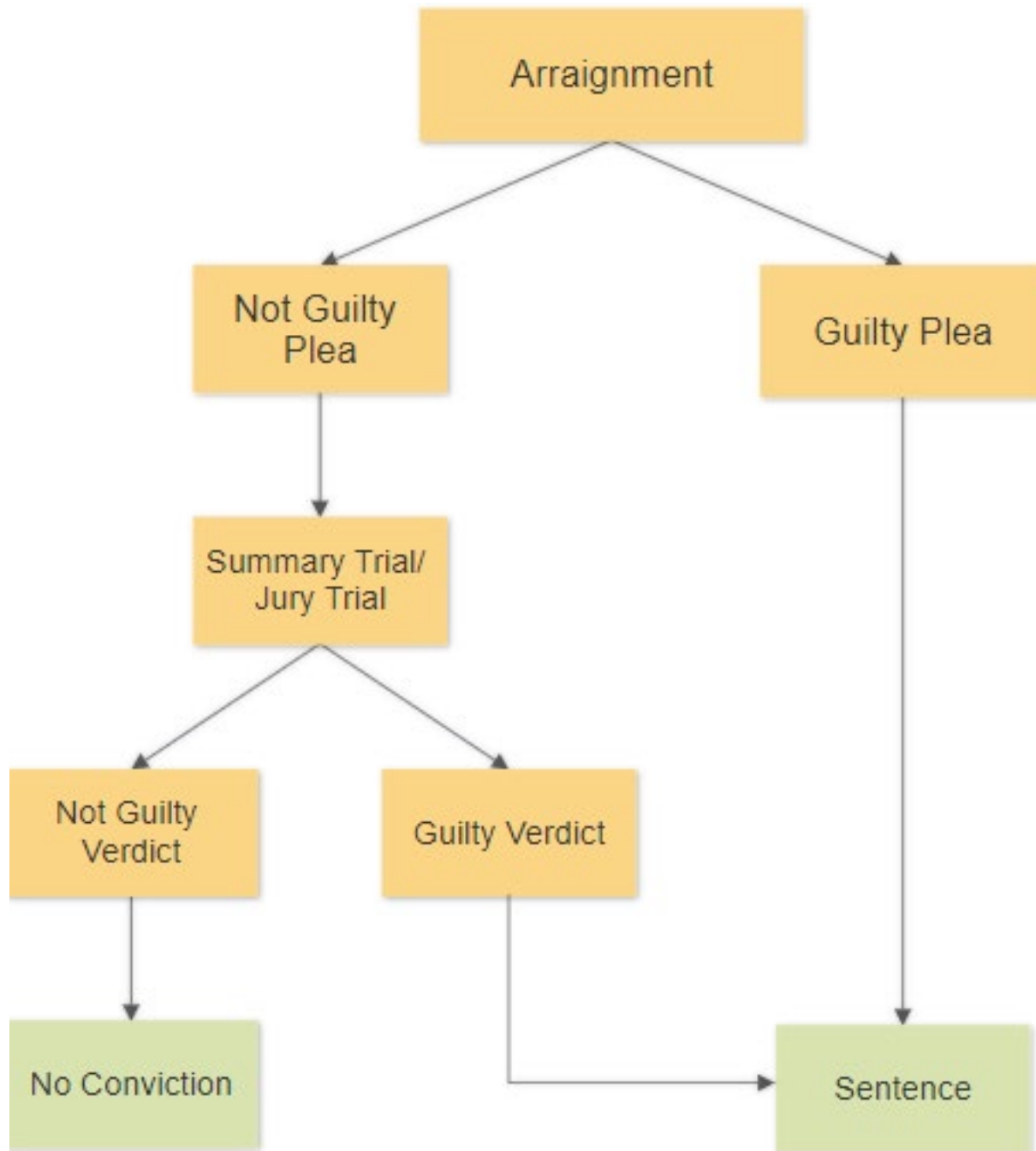
- The Prosecution Process
- Reaching a verdict
- The Judge's Role

# The Prosecution Process

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# Reaching a verdict

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- Magistrates' Court
  - District Judge
- Crown Court
  - Trial by jury
  - Judge directs on law and sentencing
  - Jury makes findings on facts
  - Majority and unanimous verdicts

# Reaching a verdict

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- Burden and standard of proof
  - Beyond a reasonable doubt
  - Article 37 and the reverse burden of proof
- Witnesses and Evidence
  - Examination-in-chief
  - Cross examination
- Bad character
- Hearsay
- Special measures

# Sentencing

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- ‘Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences – Definitive Guideline’ came into force in England and Wales on 1<sup>st</sup> February 2016.
- The guidelines provide tariff-based starting points and category ranges for fines with a step-by step approach to sentencing based on:
  - the degree of culpability
  - risk of harm
  - size of the company
  - aggravating and mitigating factors



# Sentencing Guidelines - Culpability

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## Very high

Deliberate breach of or flagrant disregard for the law

## High

Offender fell far short of the appropriate standard; for example, by:

- failing to put in place measures that are recognised standards in the industry
- ignoring concerns raised by employees or others
- failing to make appropriate changes following prior incident(s) exposing risks to health and safety
- allowing breaches to subsist over a long period of time

Serious and/or systemic failure within the organisation to address risks to health and safety

## Medium

Offender fell short of the appropriate standard in a manner that falls between descriptions in 'high' and 'low' culpability categories

Systems were in place but these were not sufficiently adhered to or implemented

## Low

Offender did not fall far short of the appropriate standard; for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk to health and safety

Failings were minor and occurred as an isolated incident

# Sentencing Guidelines - Harm

| Seriousness of harm risked |   |  |  |
|----------------------------|---|--|--|
|                            | <b>Level A</b> <ul style="list-style-type: none"> <li>• Death</li> <li>• Physical or mental impairment resulting in lifelong dependency on third party care for basic needs</li> <li>• Significantly reduced life expectancy</li> </ul> | <b>Level B</b> <ul style="list-style-type: none"> <li>• Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer's ability to carry out normal day-to-day activities or on their ability to return to work</li> <li>• A progressive, permanent or irreversible condition</li> </ul> | <b>Level C</b> <ul style="list-style-type: none"> <li>• All other cases not falling within Level A or Level B</li> </ul> |
| High likelihood of harm    | Harm category 1   | Harm category 2  | Harm category 3  |
| Medium likelihood of harm  | Harm category 2   | Harm category 3  | Harm category 4  |
| Low likelihood of harm     | Harm category 3   | Harm category 4  | Harm category 4 (start towards bottom of range)  |

# Sentencing Guidelines – Organisation size

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- Starting point taken from organisation's annual turnover:
  - Micro - <£2 million
  - Small - £2 million - £10 million
  - Medium - £10 million - £50 million
  - Large - >£50 million
  - Very Large - >> £50 million

# Sentencing Guidelines – Category Ranges for large organisations

| <b>Large</b><br>Turnover or equivalent: £50 million and over |                       |                          |
|--|-----------------------|--------------------------|
|  | <b>Starting point</b> | <b>Category range</b>    |
| <b>Very high culpability</b>                                 |                       |                          |
| Harm category 1  | £4,000,000            | £2,600,000 – £10,000,000 |
| Harm category 2  | £2,000,000            | £1,000,000 – £5,250,000  |
| Harm category 3  | £1,000,000            | £500,000 – £2,700,000    |
| Harm category 4  | £500,000              | £240,000 – £1,300,000    |
| <b>High culpability</b>                                      |                       |                          |
| Harm category 1  | £2,400,000            | £1,500,000 – £6,000,000  |
| Harm category 2  | £1,100,000            | £550,000 – £2,900,000    |
| Harm category 3  | £540,000              | £250,000 – £1,450,000    |
| Harm category 4  | £240,000              | £120,000 – £700,000      |
| <b>Medium culpability</b>                                    |                       |                          |
| Harm category 1  | £1,300,000            | £800,000 – £3,250,000    |
| Harm category 2  | £600,000              | £300,000 – £1,500,000    |
| Harm category 3  | £300,000              | £130,000 – £750,000      |
| Harm category 4  | £130,000              | £50,000 – £350,000       |
| <b>Low culpability</b>                                       |                       |                          |
| Harm category 1  | £300,000              | £180,000 – £700,000      |
| Harm category 2  | £100,000              | £35,000 – £250,000       |
| Harm category 3  | £35,000               | £10,000 – £140,000       |
| Harm category 4  | £10,000               | £3,000 – £60,000         |

# Sentencing Guidelines – Aggravating and mitigating factors

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## Factors increasing seriousness

### *Statutory aggravating factor:*

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:*

Cost-cutting at the expense of safety

Deliberate concealment of illegal nature of activity

Breach of any court order

Obstruction of justice

Poor health and safety record

Falsification of documentation or licences

Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities

Targeting vulnerable victims

## Factors reducing seriousness or reflecting mitigation

No previous convictions **or** no relevant/recent convictions

Evidence of steps taken voluntarily to remedy problem

High level of co-operation with the investigation, beyond that which will always be expected

Good health and safety record

Effective health and safety procedures in place

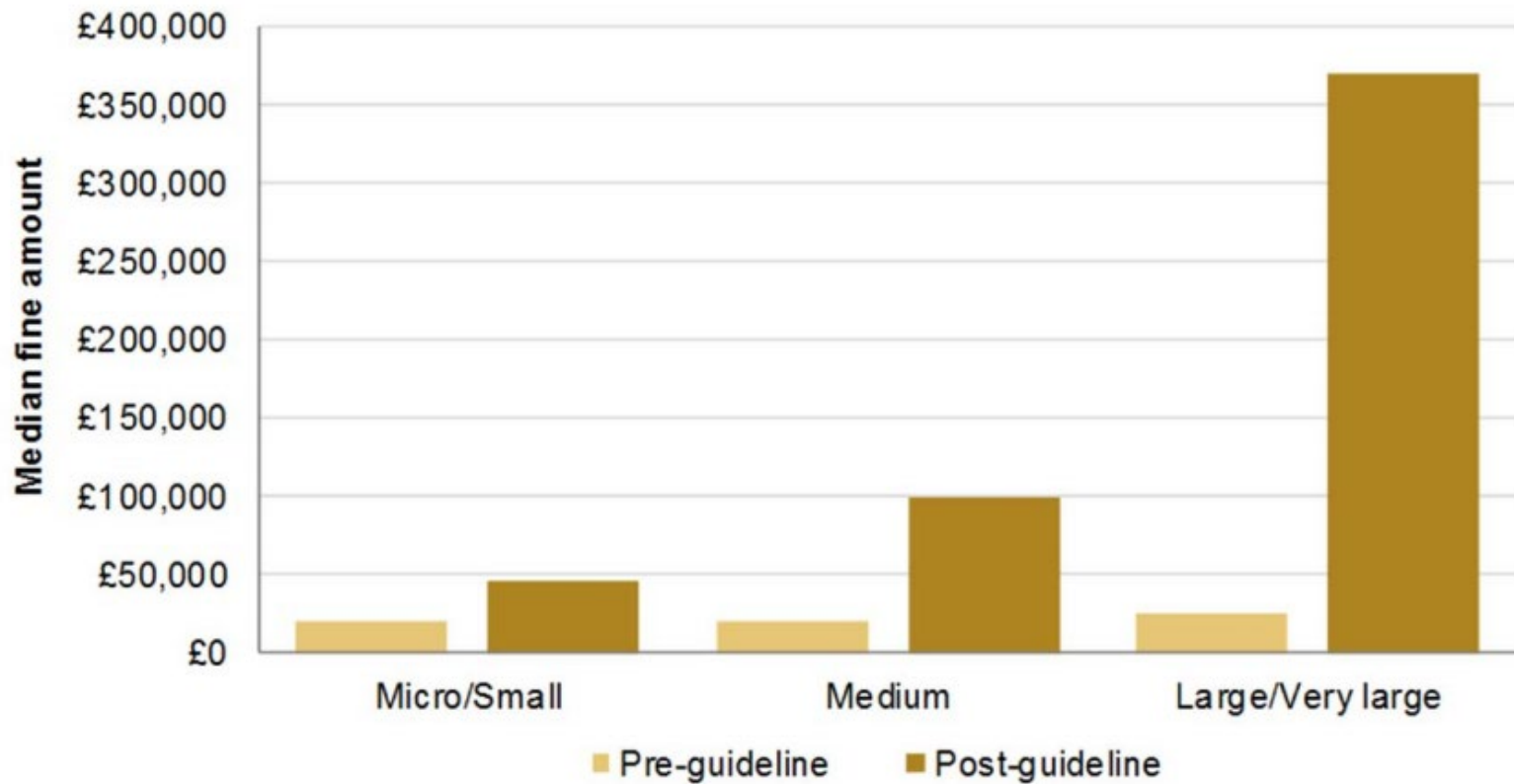
Self-reporting, co-operation and acceptance of responsibility

# Sentencing Guidelines - Impact

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- In force in England and Wales from 1<sup>st</sup> February 2016
- Regular fines over £1 million
- Merlin fined £5 million in September 2016
  - Very Large Organisation (turnover £367 million)
  - High Culpability
  - Harm Category 1
  - Previous H&S conviction
  - “Exceptional level” of co-operation with the investigation
  - 1/3 reduction for early guilty plea

# Sentencing Guidelines - Impact



Resource - Assessment of the Health & Safety Offences, Corporate Manslaughter and Food Safety & Hygiene Offences Definitive Guideline (<https://www.sentencingcouncil.org.uk/wp-content/uploads/Health-and-safety-guideline-assessment-summary.pdf>)

# Sentencing Guidelines - Northern Ireland

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- Guidelines do not expressly apply in Northern Ireland
- Courts have referred to the guidance, including steps taken to determine culpability, level of harm etc when considering sentence



# Case law

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## Judicial Precedent:

- Binding vs persuasive
- Hierarchy of Courts
  - Supreme Court > Court of Appeal > Crown Court > Magistrates' Court
- What were the facts of the case?
- Ratio decidendi and obiter dicta

# Corporate Manslaughter

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- Corporate Manslaughter and Corporate Homicide Act 2007:
  - “An organisation ... is guilty of an offence if the way in which its activities are managed or organised—
    - (a) causes a person's death, and
    - (b) amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.”
  - “An organisation is guilty of an offence under this section only if the way in which its activities are managed or organised by its senior management is a substantial element in the breach.”
  - An organisation that is guilty of corporate manslaughter or corporate homicide is liable on conviction on indictment to a fine.

# Questions?

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