

Gough Square Chambers: Food Law Column

Ian Thomas and **Stuart Jessop** are specialist food law barristers at Gough Square Chambers and editors of the Food Law Column. Together with contributions from other members of chambers, they provide expert commentary and analysis on topical developments and key issues in the field of food regulation and policy.

In the first November 2025 column, **Ian Thomas** discusses whether the changes to the sentencing regime for VLOs will have any significant practical implications for practitioners and the courts.



Sentencing VLOs – all change or carry on as before?

By **Ian Thomas**, Gough Square Chambers

Introduction

Most food law offenders are sentenced having regard to the Sentencing Council's Guideline applicable to breaches of food safety and food hygiene regulations ('the Guideline').

It was introduced in February 2016 following a consultation deemed necessary over concerns about the low level of sanctions imposed on larger organisations. There was also a concern about inconsistencies in sentences imposed by the courts.

The Guideline applies to offences contrary to regulation 19 (1) of the Food Safety and Hygiene (England) Regulations 2013 and the Welsh equivalent legislation (regulation 17 (1) of the Food Hygiene (Wales) Regulations 2006 and regulation 4 of the General Food Law Regulations 2004).

Courts are required to follow any sentencing guidelines that are relevant to the case. Where a food offence falls outside the scope of the Guideline, courts may either apply its general framework of (see by analogy, *R v Butt* [2018] EWCA Crim 1617, *R v Dubb Catering Limited* [2022] EWCA Crim 918) or have regard to the 'General guideline: overarching principles' (*British Telecommunication PLC v Crown Court at Carlisle*

and another [2025] EWHC 1826).

Whichever approach is taken, courts will have regard to the seriousness of the offence (assessing culpability and harm) and, of specific relevance to this article, the financial means of the organisation being sentenced.

Sentencing of VLOs

The Guideline contains four tables depending on the size (based on turnover or equivalent) of the organisation. They are micro (not more than £2 million), small (between £2 million and £10 million), medium (between £10 million and £50 million) and large (£50 million and over).

Many food businesses have a turnover or equivalent that exceeds £50 million. This begs the question, when does a large organisation become 'very large'?

According to the Guideline, this happens when the turnover 'very greatly exceeds' £50 million (the threshold for a large company). There is no precise figure that tips the balance and there is no 'bright dividing line' between large and very large (*R v Places for People Homes* [2021] EWCA Crim 410 [32]) although 'In the case of most organisations it will be obvious if it either is or is not very large' (*Places for*

People Homes [31]). In that case the average annual turnover was £298 million which ‘putt squarely within the very large organisation category’ [33].

In *R v Thames Water Utilities Limited* [2015] EWCA Crim 960, Mitting J rejected a prosecution submission that an organisation should be treated as being very large if its turnover exceeds £150 million per year on a three-yearly average (paragraph 37) and the judge continued by saying the dividing line will be obvious and observed that ‘Doubtful cases must be resolved as and when they arise’ (paragraph 37).

An organisation with a turnover of £700 million was deemed to be very large’ (*R v Whirlpool UK Appliances Limited* [2017] EWCA Crim 2186 and it was obvious that an organisation with a turnover of £4 billion was very large (*R v Tata Steel UK Limited* [2017] EWCA Crim 704).

An organisation with a turnover of £50 billion is by any measure a VLO (*Birmingham City Council v Tesco Stores Limited* Birmingham Magistrates’ Court 19 April 2021 – a fine of £7.5 million was imposed for placing unsafe food on the market).

How the Guideline approaches the sentencing of VLOs and what has changed?

Prior to 1 June 2025, the Guideline stated that where an organisation’s turnover or equivalent greatly exceeds £50 million, ‘it may be necessary to move outside the suggested range to achieve a proportionate sentence.’

Following a consultation process, the Sentencing Council revised the Guideline in respect of sentencing VLOs.

From 1 June 2025, the Guideline now says ‘courts should consider fines outside the range for large companies’.

The revised Guideline also includes references to courts focussing on the seriousness of the offence and the aggravating and mitigating factors, in addition to having regard to the organisation’s financial circumstances and the need to send a message to management and shareholders that legal compliance is not optional.

Sentencing of VLOs – will anything change, and should it?

In *Tesco*, District Judge (Magistrates’ Court) Qureshi observed that a further sentencing table should be introduced into the Guideline to assist in the sentencing of VLOs. At first blush this seems a sensible suggestion. However, this would require the creation of a bright dividing line by setting a turnover figure for VLOs. This runs contrary to judicial comment and arguably would remove some of the flexibility the Guideline offers.

The current method of determining VLO status at least gives larger organisations the ability to argue that they should not be treated as one.

Is the change merely a play on words or does it impose a real and significant change to the court’s approach and hence to the organisation’s preparation for a sentencing hearing?

The overall approach to sentencing remains the same after 1 June 2025. The court will weigh all the relevant factors in the balance and by following the stepped approach in the Guideline, will aim reach a sentence that it fulfils the sentencing objectives.

However, telling the court that it ‘should consider’, rather than saying ‘it may be necessary’ implies more of a command to positively look outside the range for large organisations.

Will this result in courts starting with an assumption or presumption that with a VLO the range of fines for large organisations should not apply or should carry

little weight? If so, this is unlikely to be a significant departure in sentencing practice as 'In the case of a very large organisation the starting points and ranges for large organisations do not apply' (*Places for People Homes* [31]).

The additional emphasis in the revised Guideline on the seriousness of the offence is also unlikely to have much impact on the approach taken by the court and by the parties.

There has always been a link between turnover and fines, particularly as the fine must be sufficiently large to send a message to management and shareholders. The larger the turnover, the larger the fine might need to be.

However, the subtle, or not so subtle, message in the revised Guideline might be seen to have parallels with the justification of the Guideline, namely the criticism that fines for larger organisations high not enough.

If the intention is to invite courts to consider higher fines across the board for VLOs, then the change of emphasis in the wording coupled with the heightened focus on culpability and harm and aggravating and mitigating factors, could very easily result in a higher overall level of fines for VLOs. Might this set the bar too high or at an artificially high level and thus serve as an informal precedent?

The answer is very possibly yes, because the revised Guideline will enable courts to more easily justify the imposition of significantly higher fines for VLOs.

What now?

The revision to the Guideline was made for a reason. Was this to merely reflect and collate the various judicial comments given in sentencing cases involving VLOs, or was it to signal a change of approach?

It might be very difficult to identify any general upward trend in the level of fines for VLOs following the

revision to the Guideline. The inherent in-built flexibility in the application of the Guideline requires courts to impose sentences that are case-specific.

Any impact, for better or worse, may only become apparent when assessing the reasons that the court is dutybound to give when imposing a sentence pursuant to step 8 of the Guideline and section 52 of the Sentencing Act 2020.

Those advising VLOs should therefore be aware of the potential for uncertainty created by the revised Guideline and be ready to argue that this should not result in any change of overall approach (and where applicable, to argue that the organisation is not a VLO).

If sentences in food law cases involving VLOs do see an upward shift, this may require a more careful strategic assessment of whether there is merit in taking the case to trial (in an appropriate case of course) rather than pleading guilty (even with the significant benefit of a guilty plea reduction).

The Sentencing Council Guideline for breach of food safety and food hygiene regulations in respect of organisations can be found at:

<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/organisations-breach-of-food-safety-and-food-hygiene-regulations> (please note the reference to VLOs at step 2 still includes reference to 'it may be necessary to move outside the suggested range' which has been removed in the finalised version).

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