

# SENTENCING EXPLAINED

## FINES

Although they receive relatively little attention, by far the most common sentence imposed by courts are fines; in the year to June 2019, 78% of all sentences imposed were fines.<sup>1</sup> The fine is generally considered to sit above a discharge in the sentencing hierarchy but below a Community Order (although fines can also be imposed in addition to more severe penalties). Fines are most commonly used in relation to summary offences (the least serious category of offences which can only be tried in the magistrates' courts) and 83% of summary non-motoring offences and 95% of summary motoring offences in the year to June 2019 were dealt with by way of a fine.<sup>2</sup> In March 2015, restrictions on the maximum fines that could be imposed in the magistrates' courts were removed and magistrates can now impose an unlimited fine (the largest fines, however, are still likely to be imposed in the Crown Court as they deal with the most serious offences).<sup>3</sup>

The statutory basis for fines currently comes from the Sentencing Code, with section 125 providing that the amount of any fine must reflect the seriousness of the offence and take into account the financial circumstances of the offender.<sup>4</sup> According to the Sentencing Council, 'The aim is for the fine to have an equal impact on offenders with different financial circumstances; it should be a hardship but should not force the offender below a reasonable 'subsistence' level. Normally a fine should be of an amount that is capable of being paid within 12 months though there may be exceptions to this.'<sup>5</sup>

If the offence is being sentenced in the magistrates' court, there is a sliding scale of maximum fines, depending on the seriousness of the offence. For Level 1 offences, the maximum fine is £200; for Level 2 offences, it is £500; for Level 3 offences, it is £1,000; for Level 4 offences, it is £2,500; and for Level 5 offences it is now unlimited.<sup>6</sup>

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<sup>1</sup> Ministry of Justice (2019) *Criminal Justice System statistics quarterly: June 2019*, Table Q5.1.

<sup>2</sup> Ministry of Justice (2019) *Criminal Justice System statistics quarterly: June 2019*, Table Q5.1.

<sup>3</sup> In March 2017, a record fine of £19.75 million (plus a further £600,000 in costs) was imposed on Thames Water at Aylesbury Crown Court for a series of significant pollution incidents on the River Thames.

<sup>4</sup> Before imposing a fine the court can make a financial circumstances order under section 124 of the Sentencing Code to ascertain the offender's financial circumstances.

<sup>5</sup> <https://www.sentencingcouncil.org.uk/explanatory-material/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/1-approach-to-the-assessment-of-fines-introduction/>.

<sup>6</sup> If the offence was committed before 12 March 2015, the maximum fine in the magistrates' court for a Level 5 offence is £5,000.

### *How are fines calculated?*

When sentencing an offender to a fine, a court will first decide which of the six different bands from the Sentencing Council's guidance the offence falls into: the more serious the offence, the higher the band. According to the Sentencing Council, 'For the purpose of the offence guidelines, a fine is usually based on one of three bands (A, B or C). The selection of the relevant fine band, and the position of the individual offence within that band, is determined by the seriousness of the offence. In some cases fine bands D – F may be used even where the community or custody threshold have been passed.'<sup>7</sup>

	Starting point	Range
<b>Fine Band A</b>	50% of relevant weekly income	25 – 75% of relevant weekly income
<b>Fine Band B</b>	100% of relevant weekly income	75 – 125% of relevant weekly income
<b>Fine Band C</b>	150% of relevant weekly income	125 – 175% of relevant weekly income
<b>Fine Band D</b>	250% of relevant weekly income	200 – 300% of relevant weekly income
<b>Fine Band E</b>	400% of relevant weekly income	300 – 500% of relevant weekly income
<b>Fine Band F</b>	600% of relevant weekly income	500 – 700% of relevant weekly income

Once the sentencer has determined which band the offence falls into, they must then consider the offender's financial circumstances. The Sentencing Council states:

'Where:

- an offender is in receipt of income from employment or is self-employed and
- that income is more than £120 per week after deduction of tax and national insurance (or equivalent where the offender is self-employed),
  - the actual income is the relevant weekly income.

Where:

- an offender's only source of income is state benefit (including where there is relatively low additional income as permitted by the benefit regulations) or
- the offender is in receipt of income from employment or is self-employed but the amount of income after deduction of tax and national insurance is £120 per week or less,
  - the relevant weekly income is deemed to be £120.<sup>8</sup>

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<sup>7</sup> <https://www.sentencingcouncil.org.uk/explanatory-material/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/2-fine-bands/>. There is a separate guideline issued by the Sentencing Council which is applicable to organisations that have committed environmental offences. This guideline adopts a different approach to fine banding.

<sup>8</sup> <https://www.sentencingcouncil.org.uk/explanatory-material/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/3-definition-of-relevant-weekly-income/>.

If the court has not been provided with the relevant information by the offender – or is not satisfied that it has been given sufficient reliable information – section 126(2) of the Sentencing Code empowers the court to make such determination as it thinks fit regarding the financial circumstances of the offender. Where there is no information available the court should proceed on the basis of an assumed relevant weekly income of £440.<sup>9</sup>

A fine is payable in full on the day on which it is imposed. Where the offender is present in court when the fine is imposed, they should be asked to make immediate payment and some payment on the day should be required wherever possible. A court can, however, allow payments to be made periodically, with the full fine normally payable within a maximum of 12 months. Where one of the higher fine bands of D, E or F have been applied, a longer repayment period might be appropriate with a maximum period of 18 months for band D fines and two years for bands E and F.<sup>10</sup> When fines are being paid in instalments the Sentencing Council states that ‘payments should be set at a realistic rate taking into account the offender’s disposable income’<sup>11</sup> and offers the following guidance:

Net weekly income	Suggested starting point for weekly payment
£60	£5
£120	£10
£200	£25
£300	£50
£400	£80

The Sentencing Council also offers the caveat that the weekly payment is likely to be reduced where the offender has dependants or larger than usual commitments.

### *Fines in combination with other sentencing disposals*

Whilst fines are most commonly used as a standalone penalty, they can be combined with other sentencing disposals. A fine cannot be imposed in addition to a discharge, a hospital order or where a mandatory custodial sentence applies but can be imposed in addition to Community Orders, Suspended Sentence Orders and custodial sentences – although their use in combination with the latter is likely to be rare.<sup>12</sup>

<sup>9</sup> <https://www.sentencingcouncil.org.uk/explanatory-material/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/3-definition-of-relevant-weekly-income/>. This is derived from the national median pre-tax earnings.

<sup>10</sup> <https://www.sentencingcouncil.org.uk/explanatory-material/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/12-payment/>.

<sup>11</sup> <https://www.sentencingcouncil.org.uk/explanatory-material/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/12-payment/>.

<sup>12</sup> The Sentencing Council give the example of where an offender has profited financially from an offence but there is no obvious victim to whom compensation can be awarded.

### *What happens if the offender fails to pay the fine?*

When imposing a fine, the court must make a collection order, which must state: the amount of the sum due; whether the court considers the offender to be an existing defaulter; whether an attachment of earnings order (AEO)<sup>13</sup> or application for benefit deductions (ABD)<sup>14</sup> has been made and information about the effect of the order; if the court has not made an AEO or ABD, the payment terms; and, if an AEO or ABD has been made, the reserve terms (i.e. the payment terms that will apply if the AEO or ABD fails – this will normally require payment in full within 14 days).<sup>15</sup>

A fines officer is responsible for enforcing a collection order and where an offender defaults on the fine, the fines officer has a range of possible enforcement options, including: the issue of a warrant of control;<sup>16</sup> registering the sum in the Register of Judgments and Orders; making an AEO or an ABD (if not already made); making a clamping order;<sup>17</sup> taking proceedings to enforce payment in the county court or High Court (provided that the defaulter has the means to pay the fine); or referring the matter back to court (and issuing a summons to ensure attendance if necessary).

If the fines officer remits a case to the magistrates' court, the court has a number of options: requiring the offender to attend an attendance centre in default of the payment of any sum of money (if the offender is under 25);<sup>18</sup> the court may increase the fine by 50%;<sup>19</sup> local detention;<sup>20</sup> the imposition of a money payment supervision order;<sup>21</sup> remission of the fine;<sup>22</sup> vary payment terms;<sup>23</sup> or committal to prison. A fine defaulter should only be committed to prison as a last resort and custodial terms are imposed in accordance with the following scale:<sup>24</sup>

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<sup>13</sup> This requires an employer to deduct money from the offender's pay with the employer paying the deducted amount to HM Courts & Tribunals Service.

<sup>14</sup> This enables the court to direct that deductions are taken directly from the offender's benefit payments to pay the fine.

<sup>15</sup> <https://www.sentencingcouncil.org.uk/explanatory-material/item/fines-and-financial-orders/approach-to-the-assessment-of-fines-2/13-collection-orders/>.

<sup>16</sup> This authorises the seizure of the defaulter's goods so that they may be sold to settle monies due to the court.

<sup>17</sup> The vehicle may be stored for up to one month and if this does not result in the fine being paid the fines officer will remit the case back to the court to request the vehicle be sold at auction.

<sup>18</sup> The order must be for a period of between 12 and 36 hours.

<sup>19</sup> This requires a finding of wilful refusal or culpable neglect on the part of the defaulter.

<sup>20</sup> The court can order detention for one day within the courthouse or any police station in lieu of payment; the order should specify the time when the detention ends (often expressed as 'until court rises') but no later than 8pm.

<sup>21</sup> The court appoints a person to act as a supervisor and their duty is to advise and befriend the defaulter with a view to inducing them to pay and thereby avoid imprisonment. It is most appropriate in cases where the defaulter is willing to pay but would respond to advice on managing their finances.

<sup>22</sup> The court may remit all or part of a fine if there has been a change of circumstances and it is just to do.

<sup>23</sup> The amount to be paid periodically may be reduced or the date by which the full amount must be paid may be extended.

<sup>24</sup> Judicial College, *Adult Court Bench Book*, August 2017, p. 118.

Up to £200	7 days
£200.01 – £500	14 days
£500.01 – £1,000	28 days
£1,000.01 – £2,500	45 days
£2,500.01 – £5,000	3 months
£5,000.01 – £10,000	6 months
Over £10,000	12 months

These are the maximum periods and the court may impose a shorter period if it feels appropriate. The minimum period of custody in default is 5 days.<sup>25</sup> For a committal to prison for a fine default, the court must be satisfied that: the default is due to culpable neglect or wilful refusal; and all other methods of enforcement have been tried or considered and reasons given if an alternative method is not used; and the defaulter has the means to pay.<sup>26</sup> The court may suspend the custodial sentence imposed.

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<sup>25</sup> Judicial College, *Adult Court Bench Book*, August 2017, p. 118.

<sup>26</sup> Wilful refusal is defined as ‘a deliberate defiance of a court order and will include situations where the defaulter will not pay on a point of principle’. Culpable neglect is defined as ‘a reckless disregard of a court order and includes situations where the defaulter has chosen to use his available income for non-essential items in preference to paying the fine.’ Judicial College, *Adult Court Bench Book*, August 2017, p. 120.