

HEALTH AND SAFETY COMMERCIAL SOLUTIONS

MOCK SENTENCING HEARING



Welcome

We will shortly be starting the Mock Sentencing Hearing.
Please note the following:

- You will hear submissions from the Prosecutor first and then submissions from the Defence Advocate;
- Once those submissions are complete there will be a break where you will be invited to apply the guidelines yourself before the Judge comes back into Court;
- We therefore strongly recommend you make notes as the Prosecutor and Defence Advocate make their submissions so you can consider the guidelines yourself;
- After the Judge has sentenced the Defendant there will be time for questions.



CULPABILITY

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

HARM

Seriousness of harm risked			
	Level A <ul style="list-style-type: none"> • Death • Physical or mental impairment resulting in lifelong dependency on third party care for basic needs • Significantly reduced life expectancy 	Level B <ul style="list-style-type: none"> • 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 • A progressive, permanent or irreversible condition 	Level C <ul style="list-style-type: none"> • All other cases not falling within Level A or Level B
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)

LARGE

Large

Turnover or equivalent: £50 million and over

	Starting point	Category range
Very high culpability		
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
High culpability		
Harm category 1	£2,400,000	£1,500,000 – £6,000,000
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AGGRAVATING AND MITIGATING FACTORS

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

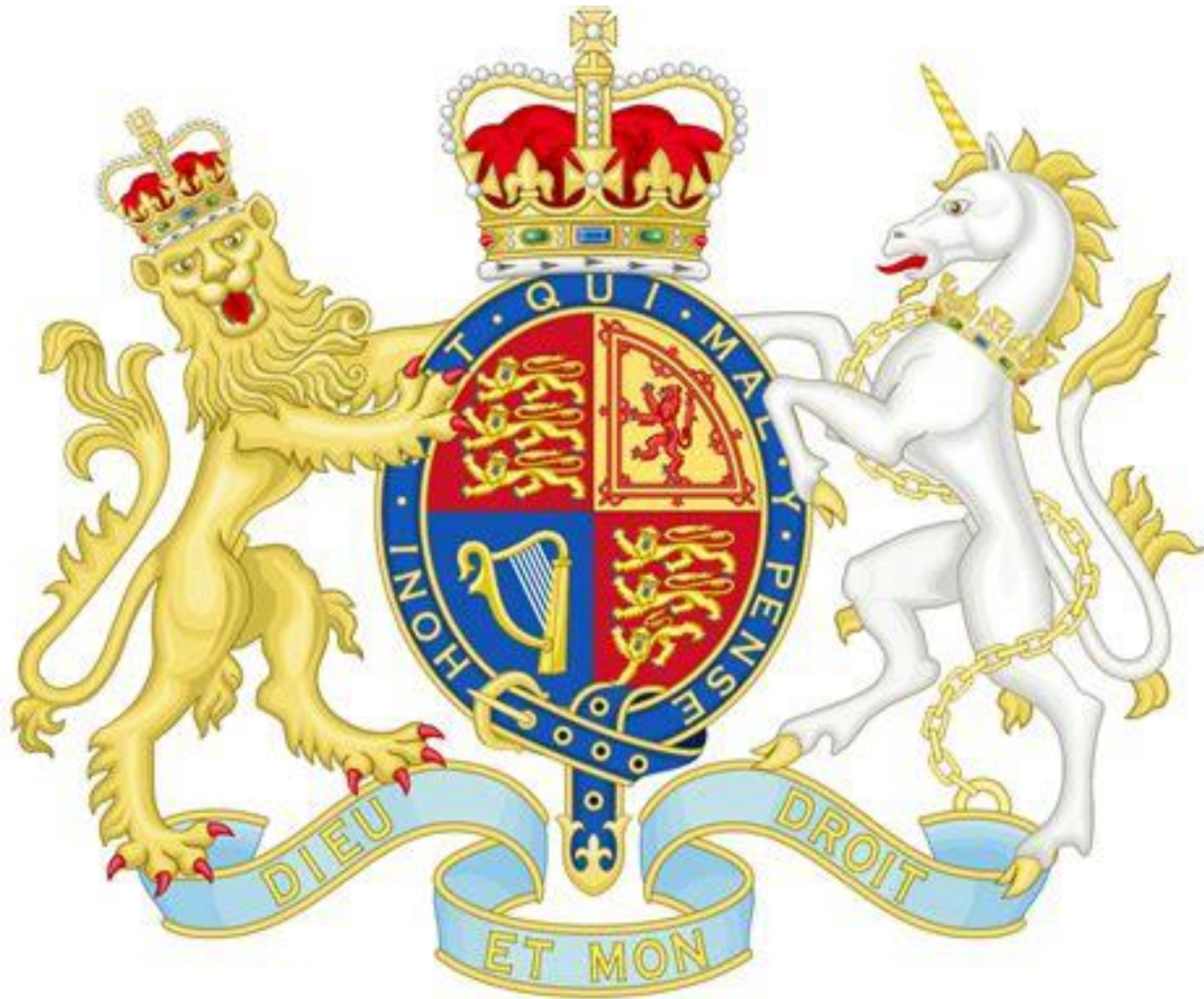
Evidence of steps taken voluntarily to remedy problem

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



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DAC BEACHCROFT

SENTENCING WORKSHOP



WHAT IS YOUR VIEW ON CULPABILITY?

- Carefully consider the submissions that you have heard
- What factors do you think are important?
- Where do you think this case rests?

Vote when you are ready (3 minutes allocated to this task):

Very High

High

Medium

Low

WHAT IS YOUR VIEW ON HARM?

- Carefully consider the submissions that you have heard
- You do not need to consider level A,B or C as it is agreed this is a level A case.
- You therefore need to decide what the likelihood of the harm occurring is.

Vote when you are ready (2 minutes allocated to this task):

High Likelihood – Level 1

Medium Likelihood – Level 2

Low Likelihood – Level 3

Do **not** consider whether to uplift just yet.

HAS YOUR VIEW ON HARM NOW CHANGED?

- Does the fact that harm has been caused and / or the public and employees exposed to risk change your view on the correct harm category rating?

Vote when you are ready (1 minute allocated to this task):

Harm Category 1

Harm Category 2

Harm Category 3

TURNOVER

- Do you not need to consider turnover, it has been agreed between the parties that this is a large organisation as its turnover is greater than £50 million.

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YOU SHOULD NOW HAVE YOUR STARTING POINT AND RANGE – CONSIDER AGGRAVATING AND MITIGATING FACTORS

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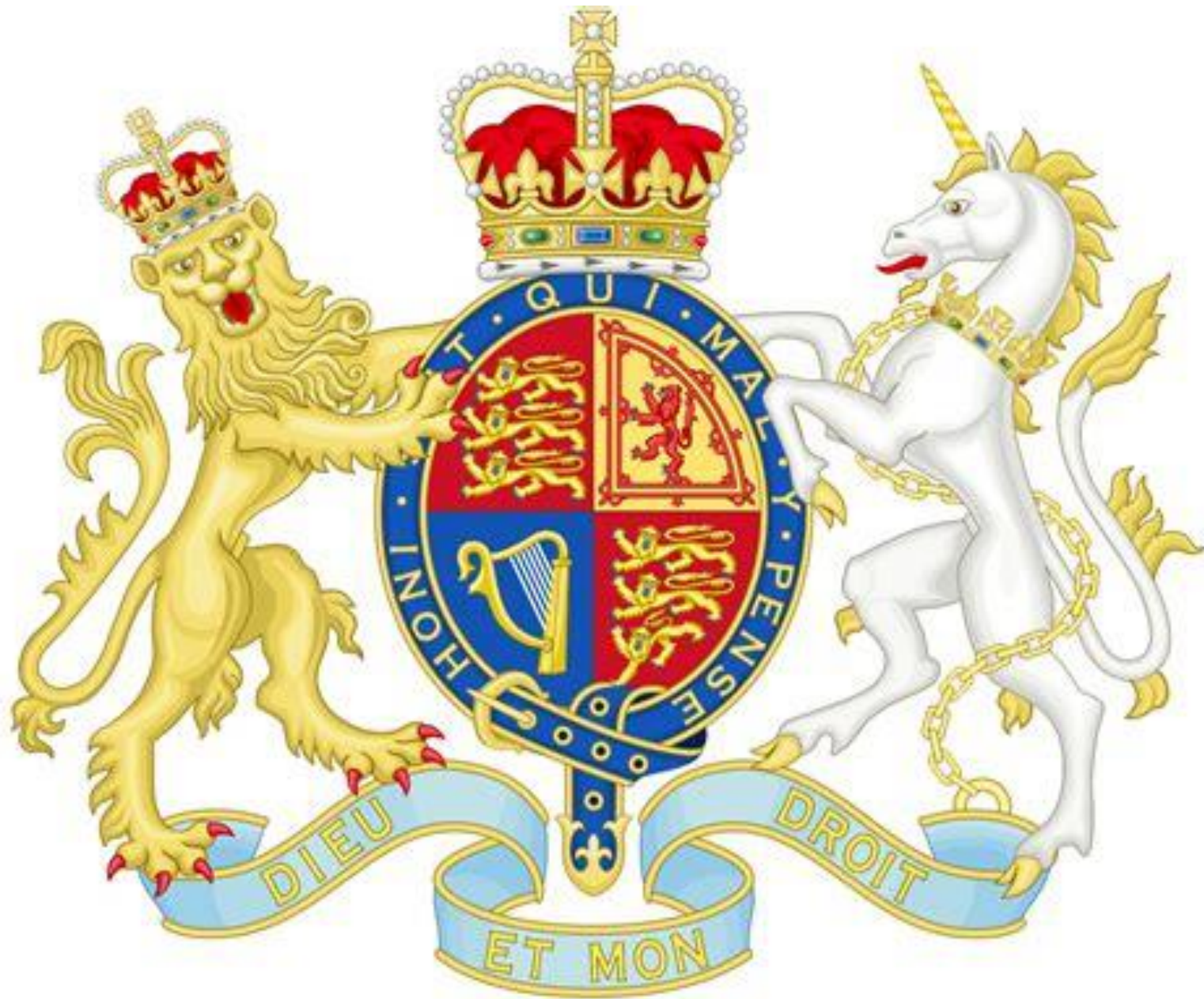
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WHAT IS YOUR FINE?

- Please use the Q & A facility to type in your fine

3 minutes allocated to this task

Court will resume shortly



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Health & Safety Commercial Solutions

CONTACT INFORMATION

Ask us to add you to our mailing list to receive invites to our events, podcasts and articles by emailing

she@dacbeachcroft.com