

## Impact of Covid-19 upon level of fine

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**Please note: the information contained in this legal update is correct as of the original date of publication.**

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The judge when applying the 3 stage test under the sentencing guidelines considered whether the fine ought to be reduced to reflect a likely halving of the company's projected annual turnover as a result of Covid-19. She relied on a letter from the company's auditors setting out the impact of the pandemic on their projected trading and sales which was reduced substantially compared to their projected forecast from the start of the year.

Ultimately, the information put forward by Modus was insufficient to warrant a reduction in fine. In the judge's view, on the facts before her, the impact of Covid upon the company's finances was only relevant to the period of time over which the fine could be paid. Even then, this was only on the basis that the company's turnover may decrease. The judge was of the view that "at this stage it is too early to say what the long term effect will be".

The issue of Covid had previously been considered earlier in the case of IFG Drake's Victoria Mills in July 2020, following a factory fatality. Here, Judge Stubbs was described as troubled as to how he should approach the effect of Covid-19 in the sentencing process. He stated that step 3 of the 3 stage test was the appropriate point at which to address the Covid-19 issues and that Covid-19 itself, was an appropriate factor to consider, when deciding whether the proposed fine was proportionate to the offender's overall means.

He ultimately accepted that one must look at the overall economic situation. As a result of the identified drop in turnover and predicted profit margin of IFG, he reduced the fine.

These cases highlight the obvious relevance of Covid-19 when determining a suitable punishment/fine for a H&S offence.

Whilst the impact of the pandemic is a factor which can be considered, it is by no means a guarantee that the fine will be reduced. A company which is being prosecuted by the HSE ought to be thinking at an early stage whether their finances are such that they would want to make submissions about the impact of Covid 19 and if so, present early and clear evidence to spell the position out.

A Judge will want to understand the company's overall economic situation and a statement from the Finance Director or a company accountant to show a clear picture of impact and forecasts is essential if a reduction in penalty is sought.

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