The despoliation of the environment is arguably the gravest of all the problems we are going to hand on to our children and grandchildren. They will not thank us – particularly those of us who work in the administration of justice – for having done too little about it at a time when action and prevention were feasible.

All criminal justice is complicated: there are at least two sides to every story, and sentencers have to be alive to them all. But environmental crime, if established, strikes not only at a locality and its population but in some measure too at the planet and its future. Nobody should be allowed to doubt its seriousness or to forget that one side of the environmental story is always untold.

And this is why everyone concerned with environmental protection has a use for a practical handbook like the present one: a toolkit to help keep the machinery of justice in motion.

The Rt Hon Lord Justice Sedley
Royal Courts of Justice
London
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Disclaimer: This tool kit uses fictitious characters to aid training. None of the characters or companies referred to in this tool kit is meant to relate to any person, organisation or body in the past, present or future. Any similarity between any person, organisation or body either living or deceased is entirely accidental and is not meant to offend.

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PART I   GENERAL

1      Introduction

This guidance has been designed to be used in two ways. It can be used as a quick reference guide for anyone wishing to clarify a particular point; Section 18.1 provides an ‘at a glance’ guide to the case studies covering particular aspects of environmental cases. It can also be used as the resource materials for a training event on environmental sentencing and law. To assist, Section 1.3 offers guidance for anyone wishing to use the toolkit as a basis for an information session. Whichever way you wish to use the tool kit, the purpose, key aims and rationale for the tool kit are identical.

1.1 Purpose and need of the guidance
Over the past 15 years the introduction of a range of environmental legislation has resulted in higher standards being required from those handling and/or potentially causing pollution. The activities carried out by certain individuals in relation to wildlife are regarded more and more as unacceptable, while levels of general environmental awareness among the public has grown. As a result, an increasing number of environmental cases are reaching court. Yet the area of environmental crime remains comparatively novel to magistrates, partly because the number of environmental crimes being prosecuted is relatively low compared to, say, traffic offences. It is essential that magistrates and their legal advisors are properly informed about these matters so that they can impose penalties that properly reflect the severity of the damage or harm that has arisen.

The primary purpose of this tool kit is to assist magistrates, their legal advisers and anyone else with an interest in environmental crime, about the many aspects of environmental law. It should provide experience and expertise in evaluating cases in order to ensure that the criminal justice system works effectively and appropriately in sentencing those found guilty of environmental offences.

Many environmental offences are of strict liability and for this reason the tool kit does not go into detail about the merits of a case nor does it consider the evidence in support or defence of any action. Its key aims are set out below.
Key aims

- To explain the effects of a range of pollution and other offences relating to the environment.
- To clarify some of the more complex and technical aspects of environmental offences.
- To raise awareness among magistrates of environmental impacts and the legislation and case-law relating to environmental crimes.

The tool kit is designed to clarify areas of environmental sentencing and, in particular, the way that it may impact on judicial decision-making. It is designed to be easy to use and allow selection of particular areas of study or consideration without having to read the whole text. It follows a consistent format throughout selecting key areas that should assist magistrates’ judicial decision-making. In essence, there are two key stages involved in determining a defendant’s penalty:

- assessing the seriousness of the offence (discussed in Section 3) and,
- considering the sentencing criteria available (as explained in Section 4).

It is likely that there will be some areas of overlap but broadly it is a two-stage process. For this reason, each stage has a dedicated section and there is also guidance in the case studies on the respective stages.

The need for environmental sentencing information

While environmental offences and cases are relatively rare compared to, say, traffic offences, their impact can be significant. This seriousness is demonstrated through the enactment of legislation that often provides for maximum sentences to be as much as four times higher than standard sentencing levels. The seriousness is also shown by the fact that many of the offences created by statute are of strict liability.

There has been some concern that the levels of fines and sentences given in environmental cases are not high enough. This has led to instances where, for some unscrupulous companies and individuals, it is cheaper to commit an offence and continue to pay the fines rather than to comply with the law and pay the real cost, including the environmental and social cost, of polluting.
There is therefore a need to ensure that magistrates, prosecutors and anyone else involved in a case are aware of the potential to secure an effective conviction even though the cases that come before the court are not frequent. It is hoped that this tool kit clarifies the wide scope of environmental crimes and the broader impacts of the offences that can be committed. The criminal justice system should, particularly in environmental cases, act as a preventative mechanism as well as a form of punishment for wrongdoers. In this sense, the judiciary, prosecutors and legal advisers have a genuine and significant role to play in environmental protection, equal to the largest environmental groups such as WWF, Friends of the Earth and Greenpeace.

1.2 Structure of the guidance
The tool kit comprises 3 parts:

Part I provides an overview of the principles behind environmental sentencing and what particular actions and criminal activities may mean for both human health and the environment.

Part II is a detailed consideration of the wide range of environmental aspects and the law. Each section is sub-divided into a number of case studies. The case studies follow a set structure:

- An outline of the relevant legislation.
- The facts of the case.
- Guidance on assessing the seriousness of the offence(s).
- Sentencing criteria.

Part III provides further information which includes recently published guidance notes on sentencing wildlife and conservation offences. Section 18 provides a quick reference guide to consider other case studies with similar issues. There are also summary judicial opinions for all of the case studies in the guidance. Although these should only be referred to after the relevant case study has been tackled and a sentence been considered. Importantly, the opinions are only suggested guidance.

1.3 Information sessions
Effective sentencing for environmental crimes will depend on the knowledge and skills of everyone associated with the case including prosecutors, legal advisers and magistrates. Information sessions can provide a vital role in securing the skills required but it should be carefully planned to be effective. The ‘hidden’ cost of taking busy
people away from their job is generally greater than the direct costs of providing a venue, catering, expenses etc.

The session should be designed to meet the needs of participants; identifying those needs is vital. It should be thought provoking as well as improve understanding. Above all, it should be of value to participants. As the tool kit demonstrates, environmental law covers a broad range of areas and it is important that this message is conveyed before, during and after the session(s).

**Organiser’s guidance**

The information session element of the tool kit is as essential as the core materials of the tool kit. There will need to be a designated person who takes overall responsibility for organising the event. This may be someone associated with the magistrates, such as a legal adviser or an independent trainer invited along for the session. An independent trainer with appropriate expertise should always be a serious option because they will have experience in legal and socio-environmental matters and also because they draw upon those outside experiences.

Outlined below is a suggested format that uses the tool kit most effectively. Box 1 provides a model timetable.

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*Box 1: Model timetable*

It is envisaged that anything between 5 and 20 participants can attend any one session. More people can attend but the style and content of the session would need to be adjusted and tailored to suit the increase in numbers.
When considering case studies, it is recommended that participants work in groups of between 4 and 6 people. As a rule of thumb, it is estimated that for each case study around 5 minutes be spent reading the case study and a further 20 minutes be spent on discussion and deciding on an appropriate sentence. 10 minutes should be allocated for each group to provide a summary report to the main group.

It is recommended that up to 3 case studies are covered during a 1/2-day session and that each sub-group carrying out the case studies choose separate cases.

Specialist input will always be useful but if this not possible then the following points will assist:

- ‘Walk through’ each part of the session, thinking about your own response to the likely questions.
- Pre-select the most relevant case studies for the participants due to attend the session. For example, if the local region has an international port then the case studies involving illegal trade in reptiles or unlicensed fishing may be appropriate, whereas in a rural area it may be more appropriate to consider cases involving sheep dip contamination or public rights of way.
- Become familiar with the case studies selected and any questions (and the responses) that may follow the study.
- Rehearse the questions with someone who does have relevant knowledge.
- Importantly, if a matter arises that is beyond your knowledge or expertise, admit it without hesitation and ask if anyone else attending the session can assist. If not, offer to find out and report back after the session.
- During the introductory talk at the beginning of the session set out the ‘ground rules’ for the event ie, only 1 person speaking at a time, that everyone should be encouraged to participate, ensure that note taking and reporting back is shared among sub-group members. Finally, ensure that sensitive matters are not attributed to individuals without explicit agreement.
2 Costing the earth: the importance of sustainable development

2.1 What is sustainable development?

One of the most popular definitions of sustainable development is from the Brundtland Commission Report 1987:

“Development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

This may be put more simply as:

“Please leave this planet as you would wish to find it”

At present, we are not achieving sustainable development because:

- we are using up natural resources and energy faster than the earth can replenish them; and
- we are producing waste and pollution faster than the earth can accommodate them.

Specific examples of this include:

- **Waste.** In the UK, every household generates around 1/2 a tonne of waste every year, and the rate is rising at 3% per annum. The Government is trying to tackle this by increasing the cost of disposal as landfill sites become scarce and the incineration of waste is becoming more unpopular with the public. The increasing cost of waste disposal results in more pressure and incentive to dispose of waste illegally such as illegal burning and fly tipping.

- **Wildlife.** The increasing pressure on habitats and wildlife causes the population of many species to go into decline. This means that the financial value of vulnerable species to collectors increases. In turn the payback in illegal trade of such species can be greater and more attractive to animal traders.

- **Over fishing.** The European Commission recently predicted that a total ban on fishing for cod, haddock and whiting in UK coastal waters was now necessary.
Often, environmental court cases are a response to legislative action taken in pursuit of sustainable development. There are a number of other examples that are not so readily apparent but are nevertheless as significant, these include:

- **Climate change.** The Intergovernmental Panel on Climate Change, a body of over 700 scientists from around the world, recently stated that the climate change now occurring is more likely than not to have been caused by human-induced global warming and, in particular, the emissions of greenhouse gases. Climate change is evident from the fact that the average surface temperature of the earth increased by 0.5°C last century and is set to rise from anywhere between 1.5°C and 6°C Celsius this century. We are also finding that the sea level around the UK is rising an average of 1 cm every 10 years. We are witnessing more extreme weather patterns; with a very wet winter in 2000 resulting in widespread flooding followed by an unusually mild autumn the following year. On a global scale, climate change is producing more unstable and extreme weather patterns with violent storms devastating large areas of the world. For instance, in November 1999, a cyclone devastated parts of eastern India killing up to 10,000 people and in the following month over 30,000 people died in violent storms in Venezuela.

- **Noise.** Noise is unwanted sound. The number of complaints about noise has increased dramatically over the last 15 years to around 300,000 each year. It is a pollutant because it can seriously damage the quality of life and often the physical, psychological and social circumstances of those exposed to it. Noise complaints are one of the most frequently encountered forms of nuisance.

### 2.2 The UK Sustainable Development Strategy

The UK Government has prepared and is implementing a Sustainable Development Strategy in order to help tackle the growing problem facing us today and importantly our children tomorrow. It suggests that there are 4 aspects to sustainable development:

- Effective protection of the environment
- Prudent use of natural resources
- Social progress which recognises the needs of everyone
- Maintenance of high and stable levels of economic growth and employment
**Effective protection of the environment**
We must act to limit global environmental threats, such as climate change; to protect human health and safety from hazards such as poor air quality and toxic chemicals; and to protect things, which people need or value, such as wildlife, landscapes, and historic buildings.

**Prudent use of natural resources**
This does not mean denying ourselves the use of non-renewable resources such as oil and gas, but we do need to make sure that we use them efficiently and that alternatives are developed to replace them in due course. Renewable resources, such as water, should be used in ways that do not endanger the resource or cause serious damage or pollution.

**Social progress which recognises the needs of everyone**
Everyone should share in the benefits of increased prosperity and a clean and safe environment. We have to improve access to services, tackle social exclusion, and reduce harm to health caused by poverty, poor housing, unemployment and pollution. Our needs must not be met by treating others, including future generations and people elsewhere in the world, unfairly.

**Maintenance of high & stable levels of economic growth & employment**
Everyone should be able to share in high living standards and greater job opportunities.

The environmental cases that arise will have at least one and often two or more aspects of sustainable development. For example:

- Abandoned rubbish will have an impact on the aspects of the environment and society through danger to human and animal health (caused by the likelihood of rat infestation). It will also have an economic impact through the financial cost in clearance and disposal rubbish.

- The pollution of watercourses will have an impact on the natural resources by contaminating water supplies and could adversely affect the health of humans, flora and fauna. Again, it will have a financial impact through the cost of any remediation work.
3 Assessing the seriousness of environmental offences

As outlined in Section 1, there are two key parts involved in determining the defendant’s sentence:

- The seriousness of the offence (discussed in this section).
- A range of sentencing criteria (considered in Section 4).

There will be areas of overlap in the two stages. Very broadly, assessing seriousness in this context will mean considering the wider broad environmental consequences and impacts of an offence, while the second stage of sentencing criteria focuses more specifically on the sentencing, including the seriousness of the offence, but also considering ability to pay and the prosecution costs. This section concentrates on the actual or potential impacts.

In line with the Government’s Sustainable Development Strategy (outlined in Section 2.2 above) the full extent of the impact of any offence needs to be assessed and taken into consideration. These will not only include direct environmental impacts (e.g. water pollution, loss of species or contamination of land) but also the social and economic impacts (e.g. health problems from air pollution, litter and aesthetic value of neighbourhood, loss of work due to ill health, commercial advantage by non-compliance).

The culpability of the defendant should also be assessed (e.g. extent of involvement in crime, motivation and co-operation with regulatory authorities). Highlighting the aggravating and mitigating circumstances surrounding the case can help to illustrate the seriousness of an environmental offence.

Environmental offences are generally based on strict liability. In these cases, the defendant is responsible regardless of blameworthiness or fault. The prosecution has no need to prove fault or guilty knowledge. This is quite deliberate and is due in part to the heavy obligation on operators due to the inherent risks in the processes and materials they handle. The extent of the blameworthiness can increase or decrease depending on any mitigating and aggravating circumstances.
3.1 The overall impact of environmental crime
What is the overall impact of the crime? Consider the environmental, social and economic impact as discussed above in terms of sustainable development.

- **Environmental impact.** Dead fish from polluted water, loss of threatened or endangered species or their habitats that may be irreplaceable, contamination of land, air or water by pollutant, poor plant health due to air pollution.

- **Social impact.** The link between abandoned vehicles and neighbourhood effect, nuisance and mental health of victim, food poisoning and physical health problems, air pollution and health problems, polluted waters and inability to fish, pollution effect on amenity values, difficulty in remediation of blighted areas, graffiti decreasing aesthetic value, regeneration and renovation, poverty and concentration of factors that cause environmental deterioration.

- **Economic impact.** Replenishing fish stocks, effect on businesses and employment, crops damaged by air pollution, tourism, costs of clean-up, cost of loss of time at work due to health impacts, re-offending and the savings from not doing the work necessary to prevent the crime.

3.2 The wider effects in environmental, social and economic terms.
Consider all the effects in environmental, social and economic terms including the bigger picture, diffuse impact, cumulative effects and long-term effects.

- **Bigger picture (global, transboundary).** Fishing offence and global fishing problem, threatened species and global status of species, air pollution and climate change, water pollution from the use of pesticides into watercourses and pollution of global waters, global warming and transboundary air pollution,

- **Diffuse impact.** Air pollution can have a small impact over a large area, water pollution in rivers, the sea and on beaches, use of pesticides leaching into watercourses, radioactivity.

- **Cumulative effects.** The impact on health from multiple sources of pollution such as a high number of factories in one area, fly tipping encouraging others to dump waste in the locality.

- **Long term effects.** Health impact from radiation or asbestos, persistent pesticides in soil, irretrievable loss of natural resources (unsustainable fishing by over-harvesting, over abstraction of water, loss of habitat by the destruction of micro organisms, loss of grounds water through a pollutant).
3.3 The economic gain for the defendant
Consider the economic gain to the defendant. Profit, cost saving, neglecting to put in preventative methods, avoiding payment for relevant licence.

- **Profit.** Tearing down a listed building and profiting from the development, collecting waste for money and dumping it illegally, illegally trading in wildlife specimens.
- **Cost saving.** Disposing of own waste illegally to avoid disposal costs.
- **Neglecting preventative methods.** Training for workers handling toxic substances, deliberate failure to install telemetry technology which could have detected failure of equipment, failure to use preventative equipment when necessary eg, air filters, noise insulation and protective gear.
- **Avoiding payment for licence.** Carrying out an act that requires a licence.
- **Tax and Duties evasion.** Import and/or export duties that have been avoided.

3.4 State of mind of the defendant
Consider the state of mind of the defendant.

- **Intentional (deliberate breach of the law).** Disposing of pollutant in river deliberately, collecting wildlife specimens (rare species, bird eggs) for personal pleasure and no regard for conservation implications, fly tipping waste, joyriding and burnt out vehicles.
- **Reckless (behaviour might lead to an offence).** Not preventing pollutant run off from entering a water body.
- **Carelessness/lack of awareness (mitigates offence).** Unaware that discharge is polluting a water body.

3.5 Relationship with regulatory authorities
What is the defendant’s attitude towards, and co-operation with, either the regulatory authorities or his/her own workforce?

- **Advice from enforcing authority.** Complete disregard when an enforcing authority advises how to abate pollution.
- **Warnings from enforcing authority.** Failure to take notice when warned of committing an offence.
- **Warnings from workforce.** Workforce notifying the employer of unsafe work methods.
• **Disregard an abatement notice.** Polluter does nothing to abate the pollution once a notice has been served.

• **Lack of co-operation.** Failure to turn up for interviews, failure to turn up to court and bad attitude towards regulatory authority.

### 3.6 Assessing the potential harm and risks taken
Assess the potential harm and the risks taken by the defendant.

• **Negligence.** The risk/potential harm to workers.

• **Characteristics of pollutant.** Radioactivity and the potential impact on human and environmental health, high toxicity and pervasiveness means there is a larger risk and potential harm to be aware of, possibility of the spread of disease in plants, animals or humans.

### 3.7 Human fatality, serious injury or ill health
Take into account any human fatality, serious injury or ill health as a consequence of the defendant’s actions.

• **Human fatality.**

• **Serious injury.** For example, loss of limb or loss of sight.

• **Ill health.** Persistent respiratory problems from air pollution, carcinogens, ease of access (inadequate security) to toxic chemicals or the spread of disease.

### 3.8 Health of flora and fauna
Has animal health or flora health been adversely affected?

• **Animal Health.** Endangered species killed or poisoned by pesticides.

• **Flora Health.** Air pollution affecting crops and plants.

### 3.9 Offence pattern
What is the defendant’s offence pattern?

• **Re-offender.** Previous conviction for the same offence eg, repeat conviction of fly tipping.

• **Repeat offender.** Broken the law at least once but has not received a formal sanction from the court.

• **Unrelated previous offences.**

• **Isolated incident.**
3.10 Licensing
What is the defendant’s licensing status?
  • **Breach of Licence.** Is the defendant carrying on activities outside his or her licence?
  • **No licence.**
  • **Fraudulent papers.**

3.11 Mitigation
Are there any mitigating circumstances?
  • **Isolated incident.** Is there a good past record of the defendant?
  • **Awareness.** The defendant genuinely and reasonably lacked awareness or understanding of the regulations specific to the activity in which he was engaged.
  • **Guilty plea.** Timely plea of guilt.
  • **Co-operation.** Co-operative with enforcing authority.
  • **Role in the offending activity.** A relatively minor role was played by the individual defendant, little personal involvement.
  • **Personal position.** Genuine hardship or adverse social circumstances of the defendant.
  • **Tackling the problem.** Steps were taken to remedy the problem as soon as possible.

In May 2001, the Magistrates’ Association published useful guidelines on environmental sentencing. A copy of the guidelines is included in Section 20.
4 Sentencing criteria for environmental offences

“... the law is clear as to where the interests of conservation lie. These are serious offences. An immediate custodial sentence is usually appropriate to mark their gravity and the need for deterrence.”

Mr Justice Ouseley in R v Sissen [2000] All ER (D) 2193

Many of the offences contained in environmental legislation carry maximum summary penalties of £20,000 for each offence. If dealt with at Crown Court there is an unlimited fine. Magistrates have the ability to commit for sentence to the Crown Court if they feel their sentencing provisions are insufficient. The prosecution can draw the court’s attention towards guideline cases.

The criteria laid down in R v Howe & Son (Engineers) Limited [1999] 2 All EF 249 as mentioned in the magistrates’ current sentencing guidelines is important. It emphasises that fines need to be large enough to bring the message home not only to the management of an organisation but also to its shareholders. The adverse publicity accompanying substantial fines may also help to change corporate behaviour. Under R v Howe, magistrates are entitled to conclude that a company is able to pay any fine imposed unless it has supplied financial information to support any representations to the contrary before the hearing. The R v Howe guidelines establish that a deliberate and/or regular breach of legislation with a view to profit seriously aggravates the offence.

In deciding on the sentence for an environmental crime there are a range of criteria to consider including the seriousness of the offence, the defendant’s ability to pay, economic gain, the polluter pays principle, abatement and prosecution costs, whether a fine is the most appropriate sentence and the ability of referral to the Crown Court.

4.1 Seriousness
The extent of the damage and the blameworthiness of the defendant should be reflected in the level of the fine – how far below the relevant statutory environmental standard the defendant’s behaviour actually fell. The potential risk as well as the actual harm brought about should also be considered. This criterion is considered in some detail in Section 3 above.
4.2 Ability to pay

The fine imposed should reflect the means of the individual or company concerned. A fine for a small local company or an individual will not have the same economic impact as it will on a multinational company with a multi-million pound turnover.

In the case of a large company, the fine should be substantial enough to have a real economic impact and certainly be higher than the cost of complying with the requirements. For small companies, the fine must be higher than the cost of complying with the requirements. However, it is necessary to bear in mind that a large fine could make it difficult to improve conditions in order to comply with the law. Or, the company may have to close down which would lead to unemployment and affect the local economy.

The closure of a company should be avoided unless it seems as the only way to stop what is already a track record of serious repeat offending. Should a re-offending company be in business at all? bearing in mind that prosecutions are there to protect employees as well as the public and the environment.

4.3 Economic gain

The revenue gained or cost saved from the crime should be reflected in the sentence. The gain in monetary terms should be reflected in the sentence. An offender should not profit from the crime. For example, avoiding landfill tax and dumping the waste illegally should be punished so that the sentence is higher than the landfill tax. Otherwise, there is no deterrent because it is cheaper to dump the waste illegally.

4.4 Polluter Pays Principle

The sentence should reflect the value of the overall damage caused by offender: the environmental, social, and economic impact. One of the over-arching pieces of international legislation, the Rio Declaration on Environment and Development (1992) provides that:

‘National authorities should endeavour to promote the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.’
Further, Article 174 of the EU Treaty provides that EU policy on the environment shall: ‘aim at a high level of protection taking into account the diversity of the situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventative action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.’

Assessing the overall impact (environmental, social, economic) allows the full costs of the offence to be recognised and therefore for the Polluter Pays Principle to be applied. The UK Strategy for Sustainable Development establishes 10 guiding principles, one of which is making the polluter pay.

4.5 Abatement costs
The sentence should reflect the cost of clean up and restoration. For example, the resources used to clean up contaminated land or water or the cost to replenish fish stock.

4.6 Prosecution costs
The level of the fine should reflect the process of negotiation and discussion repeated, repeated requests to abate and site visits are all costly to the public purse. It is important to reflect this as part of the Polluter Pays Principle. An uncooperative defendant increases the costs of the enforcing authority.

4.7 Refer to Crown Court
Is it more appropriate to commit the case for sentencing in Crown Court where there is unlimited fine available? In R v Humphrey (2002) a case prosecuted under the Customs and Excise Management Act 1979 in Isleworth Crown Court, the court recognised the serious nature of damage in trafficking endangered birds of prey. The trial resulted in a custodial sentence of over 6 years.

4.8 Form of sentencing
Is another form of sentencing rather than a financial penalty more appropriate? For example, a custodial sentence, a discharge or community service.
PART II CASE STUDIES

5 Air Quality

There is a wide range of air pollutants. However, there are 8 key pollutants that the Government has set limits on and is taking steps to reduce. These include; benzene (from transport fuel) carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, sulphur dioxide, and 1,3 butadiene. The main sources of these pollutants are from burning of fossil fuels and their derivatives in energy production, transport and the burning of waste.

Sulphur dioxide and nitrogen oxides contribute to acidification and local air pollution. They can affect human health and vegetation. Particulate matter (eg, PM10s) comes from a range of sources but significantly from diesel engines. It can be carried into the lungs and is a known carcinogen. Ozone occurs naturally but levels are aggravated by reactions with volatile organic compounds and nitrogen oxide. Ozone can cause damage to the airway lining as well as cause eye and nose irritation. It can also harm vegetation. Benzene and 1,3 butadiene are carcinogenic and have no absolutely safe level.

Overall air pollution in the UK is in decline, in part due to the reduction in heavy industry and the use of less polluting power stations. Nevertheless, air pollution remains a problem. People in the UK exposed to air pollution over the long term are at an increased risk of premature death, particularly through heart disease. Short-term health effects include those relating to the respiratory and cardiovascular systems, asthma and death. It is estimated that there are up to 24,000 premature deaths every year because of cardiovascular and respiratory diseases brought on by air pollution.

All local authorities are now required to assess the air quality in their area and take action to reduce local air pollution where necessary. They are also responsible for controlling and preventing air pollution whether under the Local Air Pollution Control regime or by tackling illegal burning of waste and other matter. Key areas of legislation include the Clean Air Act 1993, the Integrated Pollution Control regime contained in Part I of the Environmental Protection Act 1990 (EPA) and, in a more limited way, under the statutory nuisance provisions of Part III of the EPA.
5.1 Black smoke

**Legislation**
Section 2 of the Clean Air Act 1993 (CAA): the prohibition of dark smoke from industrial or trade premises.

*Maximum penalty:* Section 2(5) of the CAA: £20,000 fine on summary conviction.

**Related legislation**
Part III of the Environmental Protection Act 1990 (EPA): statutory nuisance

**Facts of the case**
After receiving a complaint, an environmental health officer from the local council went out to investigate smoke in the vicinity of Turner Construction Ltd (TCL). The officer entered the company site and, on arrival, noted a large bonfire about 4 metres by 3 metres in area and 2 metres in height, emitting thick, dark smoke that rose some 25 metres into the air. The officer noted plastic paint containers, plastic sheeting, household rubbish and green conifer trees on the bonfire; all of which give rise to black smoke. Skip loads of mixed building waste were being brought to the site by lorry and sorted and processed for reuse. TCL was burning rubbish mixed in with the waste brought to the site to save on the cost of proper disposal, either by incineration or landfill. The officer spoke with a TCL employee and instructed him to extinguish the bonfire, which required the use of a JCB digging machine and four loads of earth.

The council had received a number of earlier complaints about odour and smoke nuisance from bonfires on the site and Mr Turner, the site owner, had been visited 27 times before as a result. An abatement notice served under the EPA was currently in force on the premises.

The site was close to open grazing land, garden centres and nurseries, a local museum and a small number of residential homes. Any one of the neighbouring premises could be affected depending on the direction of the wind and local weather conditions. In the warmer weather, neighbours liked to leave their windows and doors open and were therefore likely to be affected by odour/smoke from bonfires and which may in turn affect the enjoyment of their property. Mr Turner had previously also been advised, in writing, of the need to instruct his employees to prevent dark smoke being admitted
from bonfires and contrary to section 2 of the CAA. The officer was satisfied that an
offence under these provisions had been committed.

The following day, the council officer revisited the company site and again found thick,
dark smoke coming from a bonfire. At the request of the officer, Mr Turner instructed
one of his employees to extinguish the fire. He was again informed that the emission of
dark smoke was an offence under the CAA. Mr Turner was subsequently advised in
writing of both offences and invited to attend a formal interview. A prosecution was
brought against TCL and the company was convicted on 2 counts of emitting dark
smoke.

In dealing with the case, council officers carried out a large number of out of hours
monitoring to try and resolve ongoing complaints and to witness breaches of the
Abatement Notice. The visits and resources cost the council around £3,000. Such
disregard for pollution control legislation can have a potentially significant effect on the
rising level of local people who suffer allergies and respiratory problems related to air
pollution. The pollution can be very distressing, both mentally and physically, for
residents and businesses. A few months after the conviction, TCL was once again
charged with similar offences.

Assessing seriousness

• The council visited the site over 27 times and undertook out of office hours
monitoring to try and gather concrete evidence. The cost to the council amounted
to £3,000.
• TCL was advised on numerous occasions and took no notice of the advice or the
abatement notice that was served.
• The owner had also been told to advise his employees regarding the correct
practice.
• They were avoiding the disposal costs of the rubbish and therefore gaining
economically. They have an advantage over other companies by not complying
with the law.
• The potential harm of the air pollution must be considered in cases like this. The
air pollution could generate a rise in the level of allergies and respiratory problems
in the surrounding area. Children are more vulnerable to the air pollution.
There is the economic impact of loss of work due to respiratory problems and allergies from the air pollution.

Air pollution damages plants and crops.

Air pollution can give rise to an impact over a very large area as it diffuses.

**Sentencing criteria**

- There were no published statements of accounts of TCL. Where a company fails to produce their accounts it is assumed that they are able to pay any level of fine.
- The economic gain was the cost of the legal disposal route for the rubbish that the company was avoiding.
- The cost of the investigation must be taken into account. The council costs totalled £3,000.
- Polluter Pays Principle – costs of all social, economic and environmental damage.

**Questions**

1. What is the most appropriate sentence for TCL?
2. What would a likely sentence be if TCL were convicted of similar offences some months after this case?
3. Can Mr Turner be charged and prosecuted?
5.2 Odour

Legislation
Section 6(1) of the Environmental Protection Act 1990 (EPA): no person shall carry on a prescribed process except under an authorisation granted by the enforcing authority.
Section 13(1) of the EPA: the power of the enforcing authority to serve an enforcement notice.
Section 23(1) of the EPA: it is an offence to contravene or breach section 6(1) of the EPA.

Maximum Penalty: Section 23(2) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Related legislation
Schedule 1 of the Environmental Protection (Prescribed Processes and Substances) Regulations 1991 (EPR)

Facts of the case
Abbott Lloyd Ltd (AL Ltd) operated an animal feed mill process in the village of Little Sheen. The mill was authorised under section 6(1) of the EPA and Schedule 1 of the EPR by the enforcing authority, the district council.

The council received complaints from members of the public of a foul and offensive odour coming from the AL Ltd mill. This resulted in an investigation by the council which, having made a number of repeated visits to the area over a few weeks, determined that there was a persistent and offensive odour coming from the mill; the complaints having coincided with an increase in production at the mill and a change by AL Ltd in product use. AL Ltd was informed that they were in breach of their authorisation conditions (relating to the control of air emissions/odour) and required to put preventative and/or abatement measures in place. AL Ltd disputed that they were causing a persistent and offensive odour. During this time the number of complaints continued to increase: with up to 150 properties being potentially affected by offensive odour at any one time.
At the request of the council, the local health authority was asked to determine whether the emissions were harmful to health. The resulting report indicated that the components of the odour emission were unlikely to be harmful, although serious loss of amenity was occurring, and further, that the odours could possibly affect those with existing respiratory problems/breathing difficulties.

The council served an enforcement notice on AL Ltd under section 13 of the EPA requiring them to install odour abatement equipment. This resulted in AL Ltd developing an in-house wet-abatement system. However, complaints continued and the council were of the opinion that the in-house abatement system was not effective. They considered that AL Ltd was still in breach of their authorisation and that they had not fully complied with the requirements of the enforcement notice.

As a result AL Ltd proposed to re-engineer the in-house system in an attempt to improve the effectiveness of the system and the council gave AL Ltd the opportunity to do so. This, along with an increase in the mill stack emission height, brought some minor improvements to the odour intensity, however, the council determined that this was still insufficient and undertook further intensive odour assessment exercises. These concluded that the odour problem remained. AL Ltd was asked to investigate the installation of new, purpose-built, odour abatement equipment but they declined. A decision was therefore made by the council to bring proceedings against AL Ltd in respect of breaches of their authorisation contrary to section 23(1) of the EPA.

Over 350 individual complaints of offensive odour were made to the council and that this was unlikely to reflect the much greater number of actual odour events and people affected. An estimated 750+ hours of council officers’ time were used in investigating the on-going offence, taking actions and bringing the prosecution (excluding legal time/costs). The cost to the enforcing authority amounted to an estimated £4,250.

AL Ltd were taken to court under section 23(1) of the EPA for causing offensive odour outside their process boundary, contrary to their authorisation requirements. AL Ltd pleaded not guilty to the offence. AL Ltd were convicted and fined. They were also required to appoint an independent consultant to produce an odour emission assessment and identify a BATNEEC (Best Available Technique Not Entailing Excessive Cost) solution for the mill.
Assessing seriousness

- Up to 150 properties were being affected by offensive odour at any one time. The emission was unlikely to be harmful to health but serious loss of amenity occurred.
- The local health authority concluded that the odours could potentially affect those with existing respiratory problems/breathing difficulties (cumulative effects).
- AL Ltd were informed by the council that they were in breach of their authorisation conditions and advised to abate/prevent the odour. This advice was ignored and subsequently an Enforcement Notice was served. AL Ltd made insufficient progress in abating the odour. They were then asked to carry out an investigation into the odour and declined to do so.
- The continuing investigation, number of visits, number of complaints to follow up and the 750+ man hours all add up the costs of this prosecution for the enforcing authority.
- Avoiding paying for preventative methods. There is a need to protect the level playing field and protect other traders from a commercial advantage.

Sentencing Criteria

Economic gain of the cost avoidance.

Questions
1. What is the most appropriate sentence for AL Ltd?
2. What are the general adverse social, environmental and economic impacts arising from the offence?
6 Animal Health

Legislation and the law protecting animal health ranges from offences under the Wildlife and Countryside Act 1981 (which is covered in Section 17 of the toolkit on Wildlife and Nature Conservation), their well-being in relation to the slaughter and transportation of animals and the trade of meat or animal products. While the last criterion may appear to have little to do with health of the dead animals its significance is in the health of live animals that may be associated with the meat. For instance, although there is no certainty, the 2001 foot and mouth outbreak was believed to have started through imported meat.

The trade in importing exotic meat such as chimpanzee and bush rat from West Africa has increased significantly in recent years. For example, during one raid on premises in London, environmental health officers seized 2 tonnes of unfit meat including a crocodile head.¹

No items of raw or smoked meat may be brought into the UK as a personal import from outside the EU. When illegally imported meat or animal products are seized at ports and airports the enforcement authorities are charged with the disposal of these goods. Disposal can create its own environmental difficulties. These goods have to be incinerated. In landfill, they pose a threat to water supplies and can introduce harmful pests or bacteria to soils. Incinerators charge about £700 per tonne of frozen meat products.

Import controls for legally imported foodstuffs from outside the EU help to ensure that they meet the same standards as food produced within the EU. Illegal imported foodstuffs will not have been subjected to the same tests and checks. Animal diseases can be spread by discarded sandwiches or catering waste.

¹ The Observer, 22 October 2002.
6.1 Illegal meat imports

Legislation


Reg. 21(1) of the PAOR: no person shall import any product of animal origin unless he has given to either the official veterinary surgeon at the border inspection post or the Minister the required advance notice.

Reg. 36(1)(c) of the PAOR: no person shall furnish any person acting under the Regulations with any information which he knows to be false or misleading.

Reg. 37(1) of the POAE: a person contravening any provision of the Regulations or any notice served under them shall be guilty of an offence.

*Maximum penalty:* Reg. 37(3) of the POAR: £5,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Related legislation


Facts of the case

Mrs Jones (J) arrived at an international airport on a flight from Sierra Leone. In her suitcase she had pigs trotters, pork pieces, and an item known as welly meat, which is essentially pork fat and rind. She had identified herself on the waybill for the goods as both the exporter from Sierra Leone, and the importer to the UK. It was clear that she was aware of the goods and not an unwitting courier. Port Health Officials (the enforcing authority) decided to charge J under the PAOR.

All the items that J had with her were prohibited on the basis that they posed a threat to animal/public health. No items of raw or smoked meat may be brought into the UK as a personal import from outside the EU.
When illegally imported meat or animal products are seized at ports and airports the enforcement authorities are charged with the disposal of these goods. Disposal can create its own environmental difficulties. These goods have to be incinerated as if placed in landfill they could pose a threat to water supplies and indeed introduce harmful pests or bacteria to soils. Incinerators charge about £700 per tonne of frozen meat products. The district council decided to proceed with a prosecution and the case came to court a few months later. J pleaded guilty to the three offences she was charged with, namely:

- The import of Products of Animal Origin other than through a border inspection post.
- The import of Products of Animal Origin without giving the required notice.
- Furnishing of false or misleading information.

The council decided to proceed with the prosecution because they had observed a number of cases pass through the airport where they suspected that items not only posed a threat to animal health but also were being couriered for commercial purposes. These other cases though were difficult to proceed with either because the passengers were not UK citizens or the evidence was not strong enough to warrant prosecution. The total cost to the enforcing authority was £400, including incineration costs.

**Assessing seriousness**

- J’s action could have had significant impact on animal and human health. Diseases such as foot and mouth are endemic in many parts of the world.
- Import controls for legally imported foodstuffs from outside the EU are there to ensure that they meet the same standards as food produced within the EU. Illegal imported foodstuffs will not have been subjected to the same tests and checks.
- Animal diseases can be spread by discarded sandwiches or catering waste. Although there is no definite proof, the 2001, foot and mouth outbreak that cost the country billions of pounds, was believed to have started through imported meat.
- The strict disposal regime of these illegally imported products illustrates the potential harm that they pose to water supplies and soil. Water supplies and soil can become contaminated.
• Passengers bringing in small amounts of these prohibited imports may be part of a network of couriers, acting for commercial gain, and spreading the risk amongst themselves. The economic gain should be considered.
• In mitigation, J pleaded guilty and was co-operative with the enforcing authority.

Sentencing criteria
• The enforcement authorities bear the costs of the disposal of illegally seized meats at airports. The prosecution costs were an estimated £400, which included the meat disposal costs.
• Any economic gain should be reflected in the level of the fine.

Questions
1. What is the most appropriate sentence for J?
2. What are the broader social and environmental impacts of the offence?
Over fishing in either coastal waters or inland watercourses can lead to an unsustainable level of fish stocks where the fish are unable to replenish themselves. This is an international problem. The European Commission recently predicted that a total ban on fishing for cod, haddock and whiting in UK coastal waters was now necessary. An example of the extent of the problem is an American experience with cod and the fishing grounds of New England. For many years, trawl nets were used to catch cod. In the 1980s coastal fisherman of New England realised that cod were disappearing, although the US government declined to take any preventative action. By 1992, the cod had gone altogether.

In 2000, 87% of fish stocks around the UK were outside safe biological limits. Overfishing challenges fish as a renewable resource and a vital source of food. It also risks fishing as a way of life to many. It is now subject to strict legislative control that derives from EU Regulations and the Common Fisheries Policy. For commercial sea fishing, fish quotas are set annually on a national basis and run for the calendar year from 1 January. The quotas are set on the basis of scientific samples of fish populations and from the data provided from fishing boats. It is essential that the data as to species, amounts and area of capture are accurate so that scientists have an accurate picture of fish stocks and can advise on action to protect species of fish in areas under pressure from over fishing. If not, then fish stocks are likely to fall below viable levels before unsustainable fish stocks become detected and corrective action can be taken.

At a local level, the main problem from fishing arises from unlicensed fishing and poaching. The main regulatory controls are found in the Salmon and Freshwater Fisheries Act 1975.
7.1 Poaching fish

Legislation
Section 2(4) of the Salmon and Freshwater Fisheries Act 1975 (SFFA): any person who wilfully disturbs spawning fish will (subject to exceptions) be guilty of an offence. 
*Maximum penalty:* £2,500 fine on summary conviction.
Section 19 of SFFA: the offence of fishing during the closed season. 
*Maximum penalty:* £2,500 fine on summary conviction.
Section 27 of SFFA: the offence of unlicensed fishing. 
*Maximum penalty:* (fishing with a net) £5,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.
Section 31 of SFFA: the offence of obstruction of a water bailiff. 
*Maximum penalty:* £2,500 fine on summary conviction.

Section 89 of the Police Act 1996: assault on a constable in the execution of his duty. 
*Maximum penalty:* £5,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction.
Section 36 of SFFA: water bailiff deemed to be a constable.

Facts of the case
A river has a small run of mainly large (3lbs+) sea trout. The annual declared rod catch varies between 20 and 60 fish with an average of 35 over the past 10 years. There is no licensed net fishery within the river catchment. The river is an important coarse fishery in its lower and middle regions with brown trout fishing in the upper reaches and into tributaries. The brown trout stocks are supplemented through stocking by two angling clubs. Sea trout tend to spawn in just 2 localised areas in one of the tributaries. These two sites are known to be vulnerable to poaching, particularly during the spawning season when anglers are absent from the fishery.

During a period of low river flows in November, a member of the angling club contacted the Environment Agency (EA) hotline reporting possible poachers. Voices had been heard after dark near a local pub and flashlights were also seen. Consequently, EA bailiffs investigated and observed two men operating a seine net (a fishing net that hangs in the water where its ends are drawn together to encircle the fish) in a pool that
was known to be a sea trout spawning area. One of the poachers ran off but the other was caught. There was a scuffle in which one of the bailiffs suffered a black eye.

The net was recovered from the river and a bag containing five large sea trout (51bs - 81bs in weight). The items and the fish were seized. The man caught was identified as a Mr John Fisher (JF) previously prosecuted by the EA on two occasions for unlicensed fishing with a rod and line. It is estimated by the EA that the fish could have been sold on for approximately £30. If caught legally, a licence would have cost £60. Further, an angling club had the rights to fish that particular stretch and charged its members £500 each per season.

JF was charged and found guilty of the following offences:

- Unlicensed fishing under s 27 of SFFA.
- Obstruction of a water bailiff under s 31 of SFFA.
- Assaulting a water bailiff under s 89 of Police Act 1996.
- Fishing during the closed season under s 19 of SFFA.
- Disturbing spawning fish under s 2(4) SFFA.

Assessing seriousness

- Deliberate breach of the law to make money.
- In addition the sea trout population is known to be diminishing and this sort of activity in a spawning area is aggravating that process.
- The apprehension was resisted and a public servant was assaulted during the course of conducting his lawful business.
- There had been other fishery-related offences recorded against JF.

Sentencing criteria

The cost of a licence and the money made from the fish.

Question

What is the most appropriate sentence for JF?
7.2 Poaching fish 2

Legislation
Section 1 of the Salmon and Freshwater Fisheries Act 1975 (SFFA): any person fishing with a prohibited instrument, including a setline, shall be guilty of an offence.
*Maximum Penalty:* £5,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Section 27 of SFFA: the offence of unlicensed fishing.
*Maximum Penalty:* if single rod and line used £2,500 fine on summary conviction. If other than a single rod and line a £5,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Section 35(3) of SFFA: If any person required to produce his fishing licence or state his name and address fails to do so he shall be guilty of an offence. If within 7 days he produces his licence he shall not be convicted for failing to produce it.
*Maximum Penalty:* £2,500 fine on summary conviction.

Section 32 and Schedule 1(2) of the Theft Act 1968 (TA): it is an offence to unlawfully take or destroy fish in water that is private property.
*Maximum Penalty:* £1,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction.

Facts of the case
A lake is owned by an angling club and managed as a mixed trout and coarse fishery. The lake itself is a worked-out gravel pit, and has matured bank side trees and marginal vegetation. There is nearby housing. A non-statutory closed season is maintained from 1 May - 16 June and night fishing is permitted from a small area of bank located on the far side from the housing.

The fishing was very poor in the previous season and the club contacted the Environment Agency (EA) for advice. During a visit in May an EA officer, on close inspection of the surrounding vegetation, discovered 2 hidden setlines in dense bushes. A setline is a fishing line left unattended in water with one or more lures or baited hooks attached. There were no fish on the lines and they were left in place to avoid arousing suspicion.
The Agency kept the location under surveillance. After dark, a vehicle arrived and half an hour later a man (M) carrying a sack arrived to check the setlines. It was seen that a large trout was caught and placed in the sack. M was apprehended and found to have 3 large fish in the sack. There were another 3 inside his van along with items of fishing gear and bait. The van, the fish and the other items of fishing gear were all seized and M detained. When asked for his name and address, M gave details but had no means of confirming it. A PNC check was then carried out on the vehicle which provided a different name. M then agreed that he had given a false name and provided a name and address that coincided with the PNC details. The following day a further 5 set lines were discovered around the lake. 2 had caught fish. A licence to fish would have cost £21 but in addition the club’s fees would have been in the region of £100.

The EA prosecuted M and he was found guilty of the following offences:

- Fishing with a setline under section 1 of SFFA.
- Unlicensed fishing under section 27 of SFFA.
- Providing a false name and address under section 35 of SFFA.
- Taking or destroying fish under section 32 of the TA.

Assessing seriousness

- These seem to be offences committed for gain as the 5 trout could have been sold on for at least £10.
- The activity was not an isolated incident as M admitted laying the other set lines that were eventually discovered.
- M had gone well equipped and under cover of darkness.
- M tried to avoid detection and mislead the Agency by initially providing a false name and address.
- M was unemployed with a wife and two children.

Sentencing criteria

Economic gain from the offence and the costs avoided should be reflected in the level of the fine.

Questions

1. What is the most appropriate sentence for M?
2. Is M actually guilty of an offence under section 35 of SAFFA?
7.3 Unlicensed fishing

Legislation
Section 27 of SFFA: the offence of unlicensed fishing.

Maximum Penalty: £2,500 fine on summary conviction.

Section 35(3) of SFFA: If any person required to produce his fishing licence or state his name and address fails to do so he shall be guilty of an offence. If within 7 days he produces his licence he shall not be convicted for failing to produce it.

Maximum Penalty: £2,500 fine on summary conviction.

Facts of the case
In April, Mr Sanders (S) (aged 55) was fishing with two rods, one with a float and one with a ledger on a club lake. He was asked for his rod licence by an Environment Agency (EA) bailiff. He was unable to produce it.

Scenario 1
S claimed that his wife had bought one for him the previous week but had forgotten to give it to him. Mr Sanders was able to verify his identity by producing a valid driving licence. He was issued a notice to produce his licence within 7 days to the local Agency office.

2 days later S presented a licence. It was a full trout and coarse licence but had been purchased on 15 April (the day after he had been approached). He was informed that he had committed an offence and the matter would be reported. He became angry at this point, saying that it was all the fault of his wife, who had forgotten to get his licence at the beginning of April and that he had given her the money for it. He claimed that he always bought a licence, and produced licences for the past three years to prove his point. All 3 were purchased during the first week of April of the year in question. The current cost of a Trout and Coarse Licence was £21 per annum.

S was found guilty of unlicensed fishing under Section 27 of SFFA and failing to produce a licence under Section 35 (3) of SFFA.

Assessing seriousness
There had been a deliberate attempt to mislead the EA.
**Scenario 2**

When unable to produce his fishing licence on the bank side, he gave his name and address as: John Henry Sanders of 9 Fishers Way S but was unable to verify this. There was one car in the fisheries car park, but S denied that it was his, saying that his wife had dropped him off that morning. The bailiff ran a PNC check on the vehicle and found that the registered name agreed with that given by Mr Sanders.

2 days later a fishing licence arrived at the EA by post. It was bought a week prior to the 14 April and appeared to be a full valid licence. However, the date of birth on the licence was 20.08.75 whereas that given by S at the time of fishing was 16.05.46. The bailiff concerned remembered S as being in his 50s and suspecting that Mr Sanders might have given false details, paid a visit to the address given. A John Henry Sanders did live at the address given. However, after questioning it became clear that he was the son of S and had given his licence to his father to use after the father had been caught without one. The car was registered in the son’s name but his father often borrowed it to go fishing.

S was found guilty of unlicensed fishing under Section 27 of SFFA and failing to produce a licence under Section 35 (3) of SFFA.

**Assessing seriousness**

There had been a deliberate attempt to mislead the EA.

**Questions**

1. What is the most appropriate sentence for S in each scenario?
2. If there was a difference in sentences between the scenarios, what was this?
3. In scenario 1, is S actually guilty of an offence of not producing a valid licence?
7.4 False landing declarations

Legislation

Maximum penalty: Article 4(3) of the SFO: £50,000 fine on summary conviction, an unlimited fine on indictment.

Facts of the case
Allegations of fish being landed and passed through a sales agent without being declared prompted a lengthy investigation by the Investigation Branch of the Department for Environment, Food and Rural Affairs (DEFRA).

All fishing vessel masters and owners are responsible for keeping an accurate record of all species of fish caught and landed. Sales notes from sales agents have to be submitted to DEFRA so that there is a cross-check on the figures from the fishing boat. Some species are subject to catch limits and the data provided are used to ensure that these limits are not exceeded. When the UK’s fish quota for a species is reached then fishing for that species should stop. This is so that the fish stock can replenish naturally and so that we do not over-harvest the waters.

Fish quotas are set annually and run from 1 January. They are set on the basis of scientific samples of fish populations and from the data provided from fishing boats. It is essential that the data as to species, amounts and area of capture are accurate so that scientists have an accurate picture of fish stocks and can advise on action to protect species of fish in areas under pressure from over fishing. If not, then fish stocks may fall below viable levels before corrective action can be taken.

Enquiries by DEFRA revealed that large quantities of high value fish had been mis-described over a long period of anything up to a year for a large number of fishing boats. The premises of the sales agent, Dock Trawler Agents Ltd (DTAL), were searched and a further set of accounts was found at the premises which showed that the
description of the types of fish landed had been changed to other types of fish which were not the subject of landing restrictions.

DTAL had assisted in the deception by facilitating the sale of the mis-described fish outside the normal fish auction and had provided false sales notes to DEFRA.

DTAL, ten individual skippers and six owners pleaded guilty to some 256 offences of falsifying log book entries and landing declarations and the filling in of false landing declarations with DEFRA. The offences were contrary to the regulations introduced by the EU through the Common Fisheries Policy. The quota system is designed to protect any species of fish from over fishing and therefore to conserve stocks for the benefit of public fishermen alike. Breach of the regulations is a serious offence, each carrying a maximum fine of £50,000.

DTAL is the common factor in all the offences. It auctioned off all the fish involved in the offences admitted by the masters and owners. DEFRA’s Investigation Branch raided the company’s offices and uncovered what was a substantial and widespread abuse of the regulations, designed it would seem to protect the owner’s quotas by mis-describing substantial portions of their catch and by auctioning off ‘black fish’. DTAL was also seeking to attract business from the rival sales agents. The value of the ‘black fish’ sold during this period was in the order of £180,000. The court acknowledged that all appropriate taxes and duties were paid and that it was the quota that was avoided.

None of the defendants originated the deception but simply fitted in with the practices being operated by the market. No one informed DEFRA.

The type of fishing meant that the skippers could not just target sole or plaice, not knowing until the catch has been brought aboard what proportion each type of fish had been caught. There are concerns about having to throw back dead or dying fish when the catch put the skipper over the quota. However, the ability exists for a skipper to utilise another Master’s unused quota.

DTAL was established to keep a fish market in their area and they have struggled to survive. The present managing director was aware of what was going on and turned a
blind eye to the activities of the auctioneer who was at the centre of what was happening.

**Assessing seriousness**
- The defendants’ action was a commercial gain for all the fishermen who sought to comply with the quotas as well as the other auction houses.
- There was deliberate and prolonged breach of legislation. The offences were committed with full knowledge of the penalties the offence attracted.
- Additional landing occurred in this area that might otherwise have gone elsewhere because false landing declarations were filed by DTAL.
- Over-harvesting waters can lead to unsustainable stocks and the fish cannot replenish themselves.
- Profiting from the crime through the economic gain in profits of fish caught that should not have been caught.
- The defendants all acknowledged their culpability, regretted their involvement and provided timely guilty pleas.

**Sentencing criteria**
Economic gain: the level of fine should reflect the profit from the crime.

**Questions**
1. What is the most appropriate sentence for DTAL?
2. Were DTAL more culpable than, say, the skippers?
3. What is the most appropriate sentence for the owners?
4. What is the most appropriate sentence for the skippers?
Over the last 5 years there has been widespread popular concern about Genetic Modification (GM) and, in particular, genetically modified food. GM is a technology that allows scientists to take genes from one organism and put them into another. This changes the way the organism develops, making new types of plants and animals. It is often claimed that genetic modification is just an extension of the plant and animal breeding that has been going on for hundreds of years, although traditional breeders are restricted by natural barriers that stop unrelated organisms (such as a rat and a cotton plant) from breeding with each other. Genetic modification allows genes to be crossed between organisms that could never breed naturally. A gene from a fish, for example, has been put into a tomato.

There is uncertainty surrounding genetic modification and, at present, they are only being grown in the UK in trials that aim to clarify some of the uncertainty. All the trials being undertaken must be carefully monitored and the seeds being trialled placed on the National Seed Lists. The National Lists are lists of the varieties of agricultural and vegetable species eligible for certification and marketing in the UK. All seeds to be released commercially must be placed on the National List. GM is regulated under Part VI of the Environmental Protection Act 1990 and the Genetically Modified Organisms Regulations 1992-3.
8.1 GMO breach of licence

**Legislation**
Section 111(1) of the Environment Protection Act 1990 (EPA): no person shall import, acquire, release or market GMOs except in pursuance of a consent granted by the Secretary of State and in accordance with any limitations and conditions.  
*Maximum Penalty:* section 118(1)(c) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 5 years on indictment.

**Facts of the case**
A large, multi-national, multi-billion dollar, biotechnology company Seed GM Plc (SGP) was granted consent to release genetically modified (GM) glufosinate-ammonium herbicide tolerant winter oilseed rape at a trial site. The size of the trial site was 0.75 hectares. The GM seed release was part of the ongoing plant variety National List trials. The National Lists are lists of the varieties of agricultural and vegetable species eligible for certification and marketing in the UK. All seeds to be released commercially must be placed on the National List. GM varieties make up only a small proportion of seeds trialed for the National List. A third party managed the release site, however as consent holders SGP retained legal responsibility to ensure conditions of the consent were implemented.

Consent to release a GM seed is issued along with a number of conditions that the holder has a legal requirement to fulfil. The condition that SGP broke was the provision of a 6 metre border of non-GM oilseed rape around the crop. This border was designed to act as a pollen trap to prevent surrounding commercial oilseed rape around the GM crop. SGP acknowledged in its application for release ‘gene transfer to winter rape grown adjacent to the GM oilseed rape would be minimised by incorporating at least 6 metres adjacent non-transgenic rape into the trial plot area’.

A routine unannounced inspection of the trial site by the Health and Safety Executive (HSE) found that the pollen barrier surrounding the GM crop trial was reduced to between 2 and 4 metres. The oilseed rape immediately adjacent to the oilseed rape had been removed earlier in the year (before the crop flowered) to produce roadways for farm machinery.
No one from SGP bothered to visit the site to see if the terms of their licences were being followed and this was their responsibility. SGP had not taken sufficient steps to ensure that the barrier was in place. The company had also previously breached the conditions of other release consents but so far had not been prosecuted.

Immediately after the HSE inspection, a variation to the consent was issued to SGP such that all the seed harvested within 50 metres of the GM trial would be destroyed and the same 50 metre area would be included in the standard post-trial monitoring to check for contamination.

As a result of this breach of consent the HSE prosecuted SGP for breach of consent under section 111(1) of the EPA, which is then an offence under section 118(1)(c) of the EPA. SGP pleaded guilty.

Assessing seriousness

- The Conditions of the licence are there to ensure safety to humans and the environment.
- Strict liability: something did go wrong but SGP says it wasn’t a deliberate flouting of the law. However, in such cases strict liability applies.
- Genetic Modification is a very controversial and sensitive issue. Looking at the whole picture, a breach in licence affects the reputation of genetic modification as a whole not just in this particular case.

Sentencing criteria

The fine imposed should reflect the means of the company concerned. In the case of a large company, the fine should be substantial enough to have a real economic impact in order for the company to take note. SGP is a multinational, multimillion pound company.

Questions

1. What is the most appropriate sentence for SGP?
2. Should the matter be referred to the Crown Court for sentencing?
3. What are the broader policy issues surrounding the case?
9 Health and Safety

There is considerable overlap between environmental and health & safety law. Much of the requirements under the Health and Safety at Work Act 1974 will help secure environmental protection as well as provide a safe workplace. For example, regulations relating to emissions from office electrical equipment, such as computer screens, may equally be regarded as environmental matters. Indeed, much of the environmental legislation today has built upon and consolidated earlier public health law. The requirements contained in Part III of the Environmental Protection Act 1990 relating to statutory nuisance were first introduced in the UK under the Public Health Act 1848, with some environmental aspects relating to culverts and watercourses still cross-referring to sections in the Public Health Act 1936.

In 1999/2000, there were 162 fatal injuries to employees and 58 to self-employed people. Individual workers who suffer work injuries and work-related illness are estimated to lose around £558 million a year in reduced income and additional expenditure. In addition, they and their families suffer a further loss of welfare in the form of pain, grief and suffering. This is difficult to quantify in monetary terms, but it is estimated that this loss is equivalent to a further cost of some £5.5 billion.\(^1\) The way health and safety law influences environmental matters is also illustrated by the fact that the use of guidance given in *R v Howe & Son (Engineers) Ltd* [1999] 2 All ER 249 is regarded as being equally applicable to environmental offences (see *Fining of Companies for Environmental and Health and Safety Offences* issued by the Magistrates Association in May 2001).

An area of environmental/health law that has found to require legislation is in the use and handling of asbestos with legislation such as the Asbestos (Licensing) Regulations 1983 trying to ensure health and safety and to minimise its adverse environmental impact. Asbestos fibres can be inhaled and can remain and accumulate in the lungs. Asbestos can cause lung cancer, mesothelioma (a cancer of the chest and abdominal linings), and asbestosis (irreversible lung scarring that can be fatal). Symptoms of these diseases do not show up until many years after exposure began. The number of deaths and disablement benefit cases due to asbestos-related diseases has continued to rise: mesothelioma deaths stand at almost 600 a year and asbestosis cases at 450.

\(^1\) Health and Safety Executive.
9.1 Asbestos

Legislation
Section 15(1) of the Health and Safety at Work Etc Act 1974 (HSWA): the Secretary of State has power to make health and safety regulations.
Section 33(1)(c) of the HSWA: it is an offence for a person to contravene any health and safety regulations.
*Maximum Penalty*: Section 33(3) of the HSWA: £5,000 fine on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Regulation 6 of the Control of Asbestos at Work Regulations 2002 SI 2002/2675 (CAWR): an employer shall not carry out any work which exposes any of his employees to asbestos unless he has made an adequate assessment of that exposure.
Regulation 3 of the Asbestos (Licensing) Regulations 1983 (ALR): an employer shall not undertake any work with asbestos insulation or coating without a licence.

Facts of the case
A small building contractor (BC) employing 8 people was contracted by a local council to renew windows and doors in council houses. While carrying out the work one of the joiners broke some asbestos insulating board which formed part of the fabric of the house around the windows. As a result, the house was contaminated with asbestos fibres.

Asbestos fibres can be inhaled and can remain and accumulate in the lungs. Asbestos can cause lung cancer, mesothelioma (a cancer of the chest and abdominal linings), and asbestosis (irreversible lung scarring that can be fatal). Symptoms of these diseases do not show up until many years after exposure began. As a result some of the furnishings had to be disposed of and environmental monitoring had to be carried out in the premises. The joiner involved in the incident had not been instructed about the presence of asbestos nor had they been told there was asbestos present in the building fabric. The company did not hold an asbestos licence.

Informations were laid against the company alleging:
- Failure to carry out an assessment of possible exposure to asbestos as required under Regulation 6 of CAWR.
• Carrying out work with asbestos insulation without holding a licence as required under Regulation 3 of ALR.

The company pleaded guilty to both offences.

Assessing seriousness

• BC should have been aware of the asbestos and briefed the joiner.
• In mitigation, BC argued that it had committed the offences because there was insufficient information about the premises in the contract and other documents provided by the council.
• There is widespread public and political concern about the adverse health effects relating to asbestos, and this case involved workers who had been put at risk. There is a long-term risk of chest and abdominal cancers and lung diseases. In addition to this, exposure can also lead to early death.
• The potential harm is significant. It is difficult to show that the risk would have resulted in actual harm to a person, particularly since the health effects may not manifest themselves until many years after the exposure.
• The Regulations are there to ensure health and safety of workers and the public and breaches of these regulations are not to be considered as solely technical errors.

Sentencing criteria

The fine imposed should reflect the means of the company.

Question

What is the most appropriate sentence for BC?
9.2 Chemical in eyes

Legislation

Section 2(1) of the Health and Safety at Work Etc Act 1974 (HSWA): it is the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare of all his employees.

Section 33(1)(a) of HSWA: it is an offence for a person to fail to discharge his section 2 duties.

*Maximum penalty*: section 33(3) of the HSWA: £20,000 fine on summary conviction, an unlimited fine on indictment.

Facts of the case

An employee of a large cloth weaving company, Silk & Co (SC), suffered eye injuries after being splashed with formic acid. The acid was in an open topped bucket which had been placed at the edge of a raised platform. The accident happened when the injured person, who was looking for an empty bucket, tipped the one containing the acid to see if there was anything in it. When he saw that it had already contained material he lowered the bucket back down but some of the contents splashed over the side and landed in his eye. He was permanently blinded in one eye and suffered damage to the other.

Formic acid is a potentially harmful chemical. Formic acid targets the respiratory system, skin, kidney, liver and eyes. Ingestion can cause severe poisoning death. Exposure can lead to an asphyxial death. Exposure can also cause severe damage to the skin, mucosal surface and eye.

A subsequent investigation revealed that it was common practice to carry chemicals in open buckets and it was not unheard of for these to be left lying around for long periods. There was no safe system in place for carrying or storing chemicals. No risk assessments had been carried out for handling of hazardous substances. The staff had not been trained or advised in the use and handling of hazardous materials. The employee had received no previous advice to wear eye protection. It is generally advised that protective gear should be worn when handling formic acid.
SC was taken to court for failing to ensure the health, safety and welfare of its employees as required by section 2 of HSWA. SC pleaded guilty.

Assessing seriousness

- The seriousness of the injuries must be taken into account. The employee lost his sight in one eye and suffered permanent damage to the other.
- Poor standards had existed for a considerable length of time prior to the event.
- The potential harm and the risk involved are quite large since no employees had received adequate training and did not wear protective equipment.
- SC would have a cost saving advantage by not complying with commercial standards. For example, equipment for handling and storing hazardous chemicals, resources used for risk assessments, training and protective gear. These costs that have been avoided would amount to tens of thousands of pounds for this large company.
- In mitigation, SC showed that it had gone to considerable lengths and expense to improve standards since the incident, in particular to remedy the identified defects.

Sentencing criteria

- In the case of a large company, the fine should be substantial enough to have a real economic impact.
- Economic gain by avoiding the safety and training costs.

Question
What is the most appropriate sentence for SC?
9.3 Timber preservative

Legislation
Section 16(2) Food and Environmental Protection Act 1985 (FEPA): ministers may make regulations under the act.
Section 16(12) of FEPA: a person who, without reasonable excuse, contravenes or causes or permits any other person to contravene any regulations made under the act shall be guilty of an offence.
The Control of Pesticides Regulations 1986 (CPR): the storage of pesticide is prohibited without approval and consent. 
*Maximum penalty*: section 21(3) of FEPA: £5,000 fine on summary conviction, an unlimited fine on indictment.

Section 2(1) of the Health and Safety at Work Etc Act 1974 (HSWA): it is the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare of all his employees.
Section 33(1)(a) of HSWA: it is an offence for a person to fail to discharge his section 2 duties.
*Maximum penalty*: section 33(3) of HSWA: £20,000 fine on summary conviction, unlimited fine on indictment.

Facts of the case
A timber treating company (TTC) employing 6 people carried out work treating timber with a preservative. The preservative was copper chrome arsenate, a pesticide used to guard against wood being attacked by pests. This work was done outdoors on the company premises. As a result of a routine inspection TTC was issued with a notice under FEPA and 3 improvement notices under section 2(1) of HSWA requiring it to take action to provide:

a) Safe and secure storage of a pesticide, the substance used to treat the timber.
b) Suitable and sufficient sanitary and washing facilities for workers exposed to toxic pesticides.
c) Personal protective equipment for workers mixing pesticides.
d) Training for employees responsible for mixing and using pesticides.
The substance being used, copper chrome arsenate is a poisonous substance that can be taken into the body by ingestion, inhalation or skin absorption. Arsenic is extremely toxic to humans and is a neurotoxin and a carcinogen. The uncontrolled release of this substance could also have adverse environmental effects, for example, contaminating the soil and drinking water. At a subsequent inspection it was found that the company had not complied with these notices. The risk from wood preservative is well known in the industry with advice readily available from the local council and the industry trade association. Indeed, TTC had received advice from the council. TTC was also saving money in training, protective gear and suitable sanitary costs of an estimated figure of £4,000.

TTC was prosecuted for failing to comply with the 4 notices; which resulted in 3 offences under the HSWA and 1 under FEPA. The company pleaded guilty and stressed that it had completed all the work by the time the case came to court.

Assessing seriousness

- TTC initially ignored advice from the enforcing officers and failed to comply with the 4 notices.
- The risk of using Copper Chrome Arsenate is well known to the industry.
- TTC was aware of the health and environmental risks associated with the substance and did not take the necessary precautions.
- The company did not take the necessary steps to comply with the 4 notices until it knew the case was going to court.
- The potential harm to human health and environmental health must be considered. The substance in question here is a neurotoxin and a carcinogen. The adverse effects it can have on the environment by contaminating the land and drinking water is also a serious potential harm. The implications of using this substance without following guidelines or in an uncontrolled environment are considerable.
- TTC was saving costs by not providing suitable sanitary and washing facilities, protective equipment (gloves, overalls, aprons, inhalation protection) or training on how to handle the product.
Sentencing criteria
The economic gain by avoiding necessary expenditure should be reflected in the level of the fine.

Question
What is the most appropriate sentence for SC?
10 Integrated Pollution Control

Integrated Pollution Control (IPC) is a regulatory regime introduced by the Environmental Protection Act 1990 which aims to ensure that pollution is tackled in a comprehensive way and that cutting pollution in one form does not increase it in another. For example, a business may seek to avoid battery acid from entering the sewage system by tipping it on to waste ground on site. A related system is the Local Authority Air Pollution Control (APC) regime which controls less polluting processes that generate emissions into the air alone, and are not subject to control under IPC.

More recently, the Integrated Pollution Prevention and Control (IPPC) Directive (EC/61/96) has been introduced throughout the European Union to improve the standard of environmental protection. The Directive had to be implemented by all Members States by the end of October 1999 and has been transposed into UK law through the Pollution Prevention and Control Act 1999. IPPC covers a much larger number of pollution processes than IPC. IPPC should, by 2007, completely replace IPC and APC.

The legislative purpose of IPPC is to achieve prevention and control of pollution arising from the range of activities listed in Annex 1 of the IPPC Directive. It lays down measures designed to prevent, or where that is not practicable, to reduce emissions to air, land and water from these activities, including measures concerning waste. This is being done in order to achieve a high level of protection of the environment taken as a whole. The regulatory bodies are the Environment Agency, which controls the heavier polluting processes, and local authorities that control the rest.
10.1 Colourless gas discharge

Legislation

Section 6(1) of the Environmental Protection Act 1990 (EPA): no person shall carry on a prescribed process except under an authorisation granted by the enforcing authority.

Section 13(1) of the EPA: the power of the enforcing authority to serve an enforcement notice.

Section 23(1) of the EPA: it is an offence to contravene or breach section 6(1) of the EPA.

*Maximum Penalty:* Section 23(2) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Facts of the case

Chemical Treat Ltd (CTL) carries on the business of chemical treatment and recovery. It operates from premises on a small industrial estate close to residential property. It is authorised by the Environment Agency (EA) to carry out those activities.

One day in March, CTL received a chemical from one of its customers that was placed for treatment into one of their stills. That afternoon, witnesses working on land adjacent to the site noticed an ammonia-like smell and began to feel unwell. One of them had to be taken to hospital and was detained overnight. After his release he felt discomfort and had a week off work, as too did a colleague. Both of them estimated to have lost in the region of £500 each in wages. Warnings were also given by the EA and the police to other residents in the area and animals had to be kept inside as they too became distressed.

It was discovered that a chemical called ethylamine, a colourless gas with an ammonia type smell, which is a by-product of the treatment process that was carried out by CTL, was causing the problem. Exposure to this gas can lead to inflammation of the lungs and respiratory complaints. CTL was alerted to the possibility of the release and the process was shut down immediately.
Investigations revealed that a new heating system had been installed in the still into which the chemical had been placed. This had resulted in the ethylamine by-product being driven off at a faster rate than had occurred previously. The neutralising and scrubber equipment was unable to cope, it was overwhelmed, and this led in turn to the ethylamine fumes being discharged into the atmosphere. There had been no previous incidents at this site and CTL had not been prosecuted in the past.

Two offences were alleged under sections 6 and 23 of the EPA of failing to comply with conditions in the authorisation issued to the company to prevent escapes of gas to the atmosphere, and failing to use best available techniques in operating the process. CTL pleaded guilty.

Assessing seriousness

- There was serious impact on humans in the vicinity. Fortunately, the physical effects cleared after around 2 weeks. However, there is now a residual distrust of the CTL in the community.
- CTL had not carried out a proper risk assessment in relation to the installation of the new heating system otherwise they would have discovered that the increased efficiency would have had an implication for the neutralising and scrubbing equipment.
- CTL handled potentially dangerous materials and therefore its obligations must be complied with to the highest degree.
- CTL reacted immediately once aware of the problem.
- Remedial action was taken and proper controls on the equipment have now been installed.
- There had been no previous incidents or convictions recorded against CTL.

Sentencing criteria

A serious escape of gas.

Questions

1. What is the most appropriate sentence for CTL?
2. Should the matter be referred to the Crown Court for sentencing?
10.2 Effluent into river

Legislation
Section 6(1) of the Environmental Protection Act 1990 (EPA): no person shall carry on a prescribed process except under an authorisation granted by the enforcing authority. Section 13(1) of the EPA: the power of the enforcing authority to serve an enforcement notice. Section 23(1) of the EPA: it is an offence to contravene or breach section 6(1) of the EPA.

Maximum Penalty: Section 23(2) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Facts of the case
An engineering company, Tectron Engineering Ltd (TEL) is authorised by the Environment Agency (EA) to use chemicals. Its site works are situated close to some open marshland which has been designated as a site of special scientific interest (SSSI). Effluent from the works after it has been fully treated is discharged lawfully to a nearby river.

The operations at the plant produce a strong acidic effluent. That effluent flows via an underground drain into an interceptor pit. From there it is pumped to an effluent treatment plant for cleansing purposes before being released to the river. In February abnormally high acid levels were recorded in the drain which were initially attributed to leaks of alkali into the effluent system. Initial checks found nothing.

However, later that month, TEL decided to institute a drain sampling exercise and consideration was given to possible leaks of acid from the process. Checks carried out on the outfall pipes revealed a problem. When the storm water drains were checked, liquid was observed entering through the brickwork. It was decided to flush the storm drain system with water to remove the acid contamination. The EA was informed of these moves.

The following month the EA was shown a video camera examination of the process drain which indicated fractures of the pipe. TEL stated that acidic liquor from the
effluent drain had leaked into the ground and from there into storm water drains and off the site.

Consultants were then asked to determine the effects of this escape of acid liquor from the system on the nearby marshland. Samples were taken. The results indicated that in the areas of open water in the marshland, which were affected by the acid spill, the invertebrate population had either been completely wiped out or very substantially reduced. The affected area would gradually regenerate but only after a lengthy period of several years. In the meantime, visiting bird life would be unlikely to return or roost at the site and the fish population similarly had been decimated.

TEL concluded that significant loss of acid was likely to have occurred from early in February and they themselves estimated a loss of about 17.5 tonnes of 100% proof hydrochloric acid. From an inspection of the records however, the Agency calculated that there had been a significant loss of acidic scrubber liquor from the drain from the previous month January until the final detection of the leak later on in the following month of February. If that was correct it would mean there was an estimated loss of 39 tonnes of 100% proof hydrochloric acid.

The cause of the incident was the leaks in the process drain. The company accepted that acid had leaked from this drain via the surface drains into the marshland and that consequently the leak was a breach of the conditions of the authorisation.

On investigation, the EA also discovered that the drains had been examined in 1996 and had been found to be leaking at that time and to have structural damage. The company however, had decided that no remedial action was necessary. The company had failed to consider the implications of continued operation of the drains in view of the known state of them. It is highly likely that the acid had attacked the drains over a period due to the flooded state of them.

TEL was found guilty of 3 offences under sections 6 and 23 of the EPA in failing to abide by conditions in its Licence in that:

- it failed to maintain in good operating condition all its plant equipment and technical means;
• it failed to operate the site in such a way as to prevent pollution of any surface or underground waters and so that there was no discharge of trade effluent to any underground strata;
• it failed to use the best available techniques for rendering harmless any substance which might cause harm if released into any environmental medium.

Assessing seriousness
• TEL was aware of the problem several years ago but had taken no remedial action. If it had done so at that time it would have cost in the region of £20,000.
• The environmental impact has been considerable with the marshlands being gravely affected for a protracted period. TEL could be considered to have taken a risk in respect of its drainage systems so as to save cost.
• As soon as fully aware of the extent of the problem TEL spent £50,000 on rectifying its drainage system.
• The effluent had diffused and affected other water bodies. The discharge affected the nearby marshland which is designated as a site of special scientific interest.

Questions
1. What is the most appropriate sentence for TEL?
2. Should the matter be referred to the Crown Court for sentencing?
3. Is the £50,000 spent on rectification a true mitigating feature, bearing in mind that the work should have been done several years before?
10.3 Escape of acid gas

Legislation
Section 6(1) of the Environmental Protection Act 1990 (EPA): no person shall carry on a prescribed process except under an authorisation granted by the enforcing authority.
Section 13(1) of the EPA: the power of the enforcing authority to serve an enforcement notice.
Section 23(1) of the EPA: it is an offence to contravene or breach section 6(1) of the EPA.
Maximum Penalty: Section 23(2) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Facts of the case
Recycle It Plc (RIP) is a medium-sized public company with pre-tax profits of £20 million. It is involved in the recycling and reclamation of waste acids and is licensed by the Environment Agency (EA) with various conditions attached to that licence. The conditions include that they must not release gas; cause offensive smells; must provide full training for staff and must keep their equipment in good repair. Unfortunately, due to an unpredictable technology failure, approximately 4 tonnes of acid gas escapes. The gas comprises sulphur dioxide and hydrogen chloride. This can cause severe respiratory problems if inhaled in large quantities. Even in smaller amounts it can cause severe discomfort to those suffering from chest complaints and breathing problems such as asthmatics. There is also risk of considerable discomfort to young children.

Local residents are advised to remain indoors and vegetation within a radius of 700 metres from the site is damaged (although this will recover over the next 12 months). The technology breakdown would not have been discovered on an inspection. It was caused by an unforeseeable valve failure. There was, though, a lack of full operating instructions and training for the staff that operated it. TEL did not initially report the escape to the emergency services or the EA. Instead it was members of the public who made the complaints. RIP had been fined £10,000 on a previous occasion, again, for an escape of gas although not in the present quantities.
3 offences under sections 6 and 23 of the EPA were alleged for breach of three of the conditions in the licence of releasing gas, causing offensive odours and not providing proper training. RIP pleaded guilty.

**Assessing seriousness**
- The failure to provide a proper operating and training regime to relevant staff.
- The worry caused to nearby residents, together with the environmental impact on local vegetation. Residents have now lost trust in RIP and several are looking to sell their houses after this incident.
- The failure by RIP not to notify the emergency services.
- Re-offender.
- RIP had allocated considerable sums in instituting an inspection regime and in sending staff on training courses. RIP estimated that it has cost it in the region of £5,000 to provide this.
- RIP pleaded guilty at the first opportunity.

**Sentencing criteria**
- These are offences of strict liability with no need for the prosecution to establish fault.
- A serious escape of gas from a public company which has been lax in its operational control.
- The maximum fine is £60,000 whereas at Crown Court the fine can be unlimited.

**Questions**
1. What is the most appropriate sentence for RIP?
2. Should the matter be referred to the Crown Court for sentencing?
Land use is probably the most significant of all the environmental impact categories. It affects visual amenity, generates a range of other pollutants such as air pollution and noise, and uses significant levels of natural resources and energy, both in development and in use.

The main control of land use in the UK is the Town and Country Planning system, which was set up over 50 years ago to limit the development of land for the benefit of society. The system is regulated largely through local councils and Local Planning Authorities (LPAs) by a 3-part process of long-term planning, development control and enforcement. LPAs decide whether applications for planning permission should proceed and around 500,000 applications are made each year; just under half of these relate to applications by homeowners to adapt their homes. Except under very limited circumstances, developing land without planning permission is not a criminal offence. However, unlawful development is prevented through enforcement provisions contained in Part VII of the Town and Country Planning Act 1990 as amended. In summary, an LPA may serve an Enforcement Notice on anybody known to be carrying on or have carried out unauthorised development requesting that the development cease and/or be removed. The failure to comply with an Enforcement Notice is a criminal offence.

Another area of land use, or misuse, includes damage to property and, in particular, graffiti. This, at the very least, causes an adverse impact to visual amenity. Londoners put the problem of graffiti as third only to crime and traffic as the factor most damaging to their quality of life, while estate agents estimate that house prices can drop by 10% when an area is blighted by graffiti.

Other land use matters include the prevention of public rights of way, with the rights of the public recently been enhanced by the Countryside and Rights of Way Act 2000 and also the misuse of public land by leaving litter (dealt with in Section 15 on Waste) and dog faeces.

A recent Keep Britain Tidy survey found that 95% of respondents stated that the amount of dog mess in public places worried them. This was the second biggest concern to the public. There are currently around 7 million dogs in the UK. Each local authority
has a duty under the EPA, as well as the Dogs (Fouling of Land) Act 1996 (DFLA), to keep their land free of litter and dog faeces. A local authority can designate land where it is a crime for dog-owners not to clear up after their dogs. The DLFA introduced the method of issuing Fixed Penalty Notices. Some types of land, such as next to roads with speed limits over 40 mph, cannot be designated. On these types of land, the council can apply to make dog byelaws that can ban dogs from the land, make owners keep them on leads or make owners clear up after the dogs.
11.1 Dog fouling

Legislation
Section 3(1) of the Dogs (Fouling of Land) Act 1996 (DFLA): if a dog defecates at any time on designated land and a person in charge of the dog at that time fails to clear it up that person is guilty of an offence.

Maximum penalty: Section 3(2) of the DFLA: £1,000 on summary conviction.

Section 4 of the DFLA: A local authority officer may give a person committing an offence under section 3 an opportunity of discharging liability by payment of a fixed penalty.

Facts of the case
Mrs Jackson (J) was walking her dog in a London park near a children’s play area. A senior warden witnessed her not clearing up after her dog and asked that she do so. J refused, saying she had not seen her dog create the mess the warden was referring to, even though she was walking behind her dog.

The local council had instigated a major campaign on dog fouling after a large amount of complaints had been lodged by residents about the persistent problem. A ‘scoop the poop’ campaign publicised the law and wardens met dog walkers and distributed free ‘poop scoop’ bags. A leaflet had also been sent to all households reminding owners of their duty.

Each local authority has a duty to keep their land free of litter and dog faeces. A council can designate land where it is a crime not to clear up after your dog. Fixed Penalty Notices (FPNs) can be issued under the DFLA. J was issued with a FPN of £50 but refused to pay. She was subsequently taken to court and found guilty of being in charge of a dog that defecated and failing to clear it up.

Assessing seriousness

- The offence was well publicised, making dog-owners in the area well aware of the offence and a campaign was underway to overcome the problem.
- J did not co-operate with the authority and refused to pay the FPN leading to more resources being used by the local council.
Dog fouling lowers the amenity value of the public space and creates a nuisance for the rest of the public wanting to enjoy the public space. This is more serious with the incident taking place near a children’s play area.

**Sentencing criteria**

The level of the fine should reflect the initial refusal to pay the £50 FPN and the need to use extra council resources to prosecute J.

**Question**

What is the most appropriate sentence for J?
11.2 Breach of Tree Preservation Order

Legislation
Section 210(1) of the Town & Country Planning Act 1990 (TCPA): if any person in contravention of a Tree Preservation Order cuts down, uproots or wilfully destroys a tree he shall be guilty of an offence.
Section 210(3) of the TCPA: In determining the amount of any fine for this offence the Court must have regard to any financial benefit that has accrued, or is likely to accrue, in consequence of the offence.
Maximum penalty: £20,000 fine on summary conviction, an unlimited fine on indictment.

Section 198 of the TCPA: if it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees or woodlands in the area, it may for that purpose make a Tree Preservation Order.

Facts of the Case
While carrying out investigations into unauthorised use of an area of land under planning legislation, local planning authority officers observed the possible removal of trees on land covered by a Tree Preservation Order (TPO). The planning officers notified the authority’s tree officer who confirmed that a TPO has been made for a large area of mixed woodland two years earlier as a direct result of incremental tree loss which could not be controlled by the Forestry Commission’s felling licence requirements; this often happened in conjunction with unauthorised use of the land. The area subject to the TPO was some 500 metres by 200 metres in total. Further investigations by the tree officer established that a number of offences may have occurred in respect of the removal of trees without authorisation and a number of saplings being uprooted.

The landowners, Mr Alder (A) and Mr Birch (B), were charged and pleaded not guilty to a total of 14 individual counts including six planning enforcement charges. Before trial, the local authority agreed to drop two planning charges in response to information they received. At court, both A and B pleaded guilty to six counts of wilfully destroying protected trees. On day two of the trial, the council accepted a guilty plea on two
charges in relation to uprooting seedlings for commercial gain and the Council further agreed to offer no evidence in relation to the final four counts due to the timing of the defence statement. As a result the defendants were found not guilty on these counts. In summary, the defendants pleaded guilty to eight counts of breach a Tree Preservation Order.

Overall, the matter cost the local authority £15,000 in bringing the case to court.

**Assessing seriousness**

Environmental impact: loss of trees and woodland likely to result in loss of habitat for birds and other wildlife.

Social impact: potential impact on the visual amenity.

Wider environmental impacts: long term loss of woodland is a continuing problem in the UK.

Trees help to filter air and are an important part of the bio-chemical cycle of life.

Economic gain for the defendant? Pulling down trees without authorisation was in the course of carrying out a commercial activity.

Intentional breach of the TPO in place.

Impact of health of flora: damage/loss of trees.

**Sentencing criteria**

Extent of damage is widespread.

Defendant landowners are running a commercial activity and are likely to have the ability to pay fines.

Probably no direct economic gain (unless timber from the trees cut down was sold), however environmental loss occurred in the pursuance of commercial activity.

Local authority costs totalled £15,000.

**Question**

What is the most appropriate sentence for A & B?
11.3 Planning enforcement

Legislation
Section 172(1) of the Town & Country Planning Act 1990 (TCPA): the planning authority may, when expedient to do so, issue an enforcement notice where it appears that there has been a breach of planning control.
Sections 179(1)(2) of the TCPA: after the enforcement notice period, the owner of the land is in breach of the notice and is guilty of an offence if any step required under the notice has not been taken or any activity that should have stopped is continuing.
*Maximum penalty:* section 179(8) of the TCPA: £20,000 on summary conviction, an unlimited fine on indictment.

Section 329(1) of the TCPA: any notice or other document to be served or given under this Act may be served or given by delivering to the person by, among other things, leaving it at the usual or last known address or by sending in a prepaid registered letter.
Section 329(4) of the TCPA: any person who fails to comply with a notice under 329(1) shall be guilty of an offence.
*Maximum penalty:* £1,000 on summary conviction.

Facts of the Case
Mr and Mrs P had extensive building works carried out on a Victorian outbuilding, owned by them and situated at the bottom of their garden. The development included raising the building’s roofline by 60 cm, using new bricks and changing the direction of roofline by 90°. They then used the building for residential purposes. The building was in a conservation area and the works were carried out without planning permission.
Retrospective permission was sought six months after the development had completed but was refused by the local planning authority (LPA). There was no appeal against refusal. The LPA then corresponded with Mr and Mrs P on several occasions re-iterating that the building should not be used for residential purposes and that it should be demolished. No action was taken was taken by Mr and Mrs P. The LPA had also received complaints from three neighbours, initially about the building works and then regarding noise from the building and litter that they believed was generated from people living inside.
After three years the Council inspected the building one final time and after being
denied access to look in the rooms, issued and delivered an enforcement notice by
personal service. The grounds were that the building should not be used for residential
purposes, that it should be demolished and that any resulting debris should be cleared.
The appropriate appeal forms and guidance were served with the notice, although no
appeal against the notice was made. The Council then brought the matter to court for
breach of an enforcement notice under section 179 of the TCPA.

In evidence, Mr P stated that he knew little about what had gone on after the building
works were complete because he had been in prison serving a two year sentence for tax
evasion. However, he had been released from prison three months prior to service of the
enforcement notice and the court was satisfied that he had known what was going on.
Mrs P, in evidence, admitted that the building had been used for residential purposes but
only for a period of two months while her family had been visiting. She admitted that
the couple housed asylum seekers in their main home and that they received £6,500 per
month from the council for this. Their mortgage was £3,700 per month and monthly
outgoings, including food for the residents, was £2,000.

During the trial, two neighbours gave evidence confirming the changes to the
outbuilding and that they had seen several males leaving the building on numerous
occasions. They stated that they had seen that two rooms each had three beds in them.
They also stated that they had complained to the LPA on at least five occasions in the
last two years about excessive noise and litter generated from the building (mainly
empty beer cans and whisky bottles). The LPA confirmed this.

Before trial, the court was informed that the matter had been listed on two previous
occasions and that two days of court time had been wasted. On the first occasion the
court was told Mr P was visiting relatives but had not informed the court. On the second
time, the defence lawyer had not been paid and therefore had not attended court. The
court was satisfied that the enforcement notice had been properly served and that there
was no evidence that Mr and Mrs P had taken any action subsequently to secure
compliance with the notice or to appeal within the time limits.
Assessing seriousness
Environmental impact: change in aesthetic quality of the outbuilding within a Conservation Area.
Social impact: noise and litter generated by users of the outbuilding impacting on the local neighbourhood.
Potential long term effects include change to character and style of building (built environment) and possibly to character of locality.
Unlawful change of use of building resulted in significant economic gain for the defendants.
Intentional acts by the Defendants by way of unlawful development of building and change of use.
Relationship with LPA was poor with disregard for warnings and ignoring enforcement notices.
Noise and litter generated by the use of the building for residential purposes had a deleterious effect on the neighbourhood.

Sentencing criteria
It is likely that the Defendants have the ability to pay with significant income being generated by rental income.
Economic gain arising from the breach of planning controls – the offender should not profit from crime.
Prosecution costs: the level of fine should reflect costs incurred in negotiation, discussion and repeated requests to resolve the problems. Site visits and public authority correspondence are all costly and all are a burden on the public purse.

Questions
1. What are the most appropriate sentences for Mr and Mrs P?
2. Should the matter be referred to the Crown Court for sentencing?
Concerns over pesticide use were first raised publicly in the 1962 publication; Silent Spring by Rachel Carson. Throughout the book, the author gave numerous accounts of the death of birds and other wildlife caused by chemical and pesticide poisoning. Indeed, the term ‘pesticide’ gives some indication of its potential harm. The Oxford Dictionary of English defines ‘-cide’ as denoting a person or substance that kills or an act of killing.

‘Pesticide’ is a generic term that includes a number of poisons including herbicides, rodenticides and insecticides. Some of the most highly toxic insecticides are organophosphate and organochlorine. Lindane is an organochlorine which appears to be associated with breast cancer. Lindane use in the UK doubled in the 1990s with 114 tonnes being sprayed on vegetables, arable crops and orchard fruit each year. Insecticides are also used in large quantities in animal husbandry such as sheep dipping. One tablespoon of spilled pesticide concentrate could pollute the water supply of 200,000 people for a day and 60 pesticide active ingredients have been classified as being carcinogenic to some degree, 118 pesticides have been identified as disrupting hormonal balance.

The Pesticide Safety Directorate (PSD) is an executive agency of DEFRA responsible for the issue of approvals ie, licences for the sale, supply, storage, and use. The issue of approval depends on the provision of safety and efficacy data showing that the product works and is safe to operators, consumers and the environment in general.

The safe and effective use of a pesticide product is set out in specific Conditions of Approval under the Control of Pesticides Regulations 1986 and repeated in the instructions on the product label. The conditions are based on the safe use of the pesticide and to prevent exposure to wildlife species and humans. Misuse of a pesticide product occurs, by careless, accidental or wilful failure to adhere to the correct practice. It is an offence to not follow the conditions of approval.

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2 Pesticide Action Network, UK Review 1999
12.1 Bees poisoned by spray

Legislation
Section 16(2) Food and Environmental Protection Act 1985 (FEPA): Ministers may make regulations under the Act.
Section 16(12) of FEPA: A person who, without reasonable excuse, contravenes any regulations made under the Act shall be guilty of an offence.
*Maximum penalty:* section 21(3) of FEPA: £5,000 fine on summary conviction, an unlimited fine on indictment.

Regulation 4(5)(b) of the Control of Pesticides Regulations 1986 (CPR): failing to comply with the specific conditions of approval and consent relating to use.
Regulation 7(1) of CPR: a Minister can seize or dispose of the pesticide and/or anything treated with it and also order remedial actions to be taken.

Facts of the case
Daff Co. (DC) runs a specialist garden nursery. When a daffodil crop was in flower, it was treated with dimethoate, an organophosphate pesticide that is acutely toxic to wildlife species and human, to control narcissus fly. At the time of spraying, bees from a nearby smallholding were foraging on weeds flowering within the crop and as a result, a large numbers of bees died. A local bee-keeper contacted the Pesticide Safety Directorate, an agency of Defra, which carried out some tests on the bees. The analysis showed that significant residues of dimethoate in the dead bees.

The safe and effective use of a pesticide product is set out in specific conditions of approval and consent issued under the CPR and repeated in the instructions on the product label. The conditions are quite clear in prohibiting application to crops in flower, or when flowering weeds are present within the crop. Guidance is also available in the approved Code of Practice for the safe use of Pesticides on Farms and Holdings: ‘the Green Code’. For example, the Code advises that spraying is better carried out in the evening when bees have stopped flying and also that local beekeepers should be kept informed about intention to spray. The beekeeper in this case had only once been contacted by anyone about the intention to spray, although he had made himself known to farmers in the area when he arrived 6 years ago.
Dimethoate is not a major threat to the environment being a non-persistent organophosphate. Microbial mediated degradation takes place in anaerobic soil and the pesticide is unlikely to leach because it is rapidly degraded in the soil. It is also non volatile and only slightly persistent in sediment and water systems. The concern therefore lies with exposure to humans and non-target species. Dimethoate is highly toxic to bees on an acute contact basis, particular concern has been expressed over this.

As a result of the PSD investigation charges were brought against DC under section 16 of the FEPA alleging failure to comply with regulation 4(5) of the CPR for failing to comply with the specific condition of approval and consent concerning spraying during flowering.

Assessing seriousness

- Misuse of a substance that is hazardous to humans and wildlife.
- Misuse: disregard for the conditions of approval by ignoring the guidance on the label and guidance in the code of practice. (1) Spraying when crops in flower and (2) Failing to contact the beekeeper to warn him of the spraying activities
- Potential harm: the harm from the misuse could have been greater than the actual harm that occurred eg, exposure to other non-target species.

Sentencing criteria

Polluter Pays Principle: the death of the bees and the loss of the honey to the beekeeper.

Questions

1. What is the most appropriate sentence for DC?
2. Would it be appropriate to seize or dispose of the pesticide?
12.2 Conditions of use of pesticide

Legislation
Section 16(2) Food and Environmental Protection Act 1985 (FEPA): Ministers may make regulations under the Act.
Section 16(12) of FEPA: A person who, without reasonable excuse, contravenes any regulations made under the Act shall be guilty of an offence.
*Maximum penalty:* section 21(3) of FEPA: £5,000 fine on summary conviction, an unlimited fine on indictment.

Regulation 4(5)(b) of the Control of Pesticides Regulations 1986 (CPR): failing to comply with the specific conditions of approval and consent relating to use.
Regulation 7(1) of CPR: a Minister can seize or dispose of the pesticide and/or anything treated with it and also order remedial actions to be taken.

Facts of the case
Mr Farmer (F) operated a small farm and had been suffering an infestation of rats. English Nature (EN) who, among other things, help protect and preserve wildlife were operating a red kite release scheme in the locality. They found a red kite from a release scheme dead and laboratory tests revealed that the red kite had been poisoned with brodifacoum.

Brodifacoum is a rodenticide that requires approval under the Control of Pesticide Regulations 1986. An important factor to consider when using rodenticides is the risk to non-target species eg, inquisitive dogs eating the poisoned bait. This can generally be countered by making rodent bait inaccessible to larger animals and/or birds, for example using specialised containers. Secondary poisoning can also occur. Unless the dead rodents are cleared away promptly, predator birds may ingest fatal doses of rodenticide when scavenging corpses. With respect to brodifacoum, the danger of secondary poisoning has been well recognised for many years and since 1985, brodifacoum can only be used indoors to prevent access to poisoned corpses. This is a condition of approval that is clearly stated on the product label.

The ‘indoor only’ instruction has been particularly important for some years because of the various red kite release schemes organised by EN. Red kites are regularly found
poisoned with brodifacoum. The poisoning led to the discovery that F had been using brodifacoum to treat a rat infestation.

Although no direct link could be established between the red kite and the improper use of brodifacoum, it was revealed that F was still breaching its Conditions of Approval. Investigation showed that the brodifacoum had been used outdoors and a case was taken on this basis to the Magistrates Court.

Misuse of a pesticide product occurs, by careless, accidental or wilful failure to adhere to the correct practice. It is an offence to not follow the Conditions of Approval. In this case the misuse is allegedly wilful failure.

Charges were laid under section 16(12) of FEPA and under Regulation 4(5)(b) of the CPR. F admitted that the bait had been laid in specialised boxes and in a pipe outside farm buildings. The court accepted the prosecution submission that the bait had been placed outdoors. The Conditions of Approval clearly state that brodifacoum cannot be used outdoors because of the dangers it poses. F was found guilty of both offences.

Assessing seriousness

- Misuse of a pesticide: disregard for the conditions of approval by ignoring the guidance on the label and guidance in the code of practice: (1) using pesticide outdoors and (2) a possibility that the rodents were not promptly cleared away.
- The Conditions of Approval are there for the safe use of the pesticide.
- There is also potential harm through the misuse of a pesticide – persistent in soils and highly toxic to aquatic organisms, mammals and birds.
- Bigger picture: this is a serious issue that needs to be overcome because the biggest cause of death of red kites is illegal poisoning.

Question

What is the most appropriate sentence for F?
13 Radioactive substances

Radiation arises from 2 main sources. Radon occurs naturally and is produced by uranium decaying deep in bedrock, with certain geographical areas more likely to produce it than others, eg, Devon and Cornwall in the UK. Radiation also arises synthetically through nuclear reaction and other man-made processes.

Cancer, and in particular, leukaemia has been linked to radiation. Investigations have found clusters of childhood leukaemia around nuclear power and processing plants such as Sellafield in Cumbria, Dounreay in Scotland and Le Hague in Northern France, although there is no proof of a causal link. There are other uncertainties about the emissions of radiation from mobile phones and telecommunications masts.

Notwithstanding the uncertainty about radiation, government has legislated to control radioactive substances ie, those substances that are naturally radioactive and those that have become radioactive by being subject to radiation emissions and are therefore contaminated. The principal legislation is the Radioactive Substances Act 1993.
13.1 Lost radioactive source

Legislation
Section 6 of the Radioactive Substances Act 1993 (RSA): no person shall keep or use radioactive material unless he is registered or exempt from registration.
Section 7(6) of the RSA: any registration may be subject to limitations and conditions.
Section 32(1) of the RSA: any person who contravenes section 6 shall be guilty of an offence.
Maximum penalty: Section 32(2) of the RSA: £20,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 5 years on indictment.

Facts of the case
The Environment Agency (EA), the regulatory authority, was informed that an employee of Radio Active Ltd (RAL) had just had his car stolen and that in the car boot there had been a radioactive source. The employee was taking the source to one of RAL’s sites to fit it to another machine. The source was properly registered and its transportation was in accordance with the conditions of the authorisation that had been issued by the EA under the RSA. The employee told the EA that the source had been properly packed and labelled in his car while he had gone into a shop to buy some cigarettes. He had left the car keys in the ignition. He had only been out of sight of his car for a matter of moments and when he returned the car had gone.

Fortunately, the car was found the following day with the radioactive source still intact and not tampered with. The source was securely contained but it was possible for it to have been broken open. If that had occurred and anyone had been in close proximity to it for a protracted period then harm would have been caused.

RAL was convicted of an offence under section 32 of the RSA for being in breach of registration conditions.

Assessing seriousness
• There was the potential for significant damage or harm if the car thief either mischievously or maliciously had allowed the radioactive substance to become uncontrolled in public.
• There were no company policies in force in respect of training or procedures when carrying sources to other sites. Training costs were avoided.
• RAL had a previous conviction for using an unregistered radioactive source and 3 years ago was fined £5,000.

Questions
1. What is the most appropriate sentence for RAL?
2. Should the matter be referred to the Crown Court for sentencing?
13.2 Radioactivity in the laboratory

Legislation

Section 6 of the Radioactive Substances Act 1993 (RSA): no person shall keep or use radioactive material unless he is registered or exempt from registration.

Section 7(6) of the RSA: any registration may be subject to limitations and conditions.

Section 32(1) of the RSA: any person who contravenes section 6 shall be guilty of an offence.

*Maximum penalty:* Section 32(2) of the RSA: £20,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 5 years on indictment.

Facts of the case

Activate Ltd (AL) telephoned the Environment Agency (EA) and informed it that there had been an unauthorised release of a small quantity of a radioactive substance. Apparently a laboratory at the factory was undertaking low temperature testing of sealed glass ampoules that contained quantities of tritium (a radioactive substance). A first year university student, who was acting as a temporary laboratory technician during the summer vacation, had been told to put the containers in the freezer. He had done so and set the temperature to –75°Celsius and not –75°Fahrenheit as required for the test. This had resulted in a number of the ampoules cracking and a consequent release of tritium into the laboratory and its ventilation system. That had triggered an alarm. The situation had been contained immediately and no damage or injury had been caused. If there had been an escape, and due to the volume, discomfort could well have been caused to anyone inhaling it but it would not have caused lasting effects.

AL was found guilty of an offence under section 32 of the RSA because of the unauthorised release of radioactive material.

On investigation, the EA discovered that AL had committed an offence of allowing the escape of polluting material (not radioactive material) almost a year previously and a written warning had been issued.
Assessing seriousness

- No actual harm occurred but the potential harm to health is high due to the nature of the material being released.
- There was no adequate supervision of the trainee who was handling such dangerous material.
- Although there had been no previous convictions recorded against the company, there had been a previous enforcement incident for allowing the escape of a different type of gas for which a formal written warning was sent to the company.

Questions

1. What is the most appropriate sentence for AL?
2. Should the matter be referred to the Crown Court for sentencing?
13.3 Unregistered cobalt source

Legislation
Section 6 of the Radioactive Substances Act 1993 (RSA): no person shall keep or use radioactive material unless he is registered or exempt from registration.
Section 7(6) of the RSA: any registration may be subject to limitations and conditions.
Section 32(1) of the RSA: any person who contravenes section 6 shall be guilty of an offence.
Maximum penalty: Section 32(2) of the RSA: £20,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 5 years on indictment.

Facts of the case
A company, Radiation R Us (RRU) used radioactive sources in providing industrial radiographic services. This is a method of non-destructive testing in which the examination of a variety of castings, forgings and welds is carried out in order to detect internal defects or weaknesses. RRU is registered to hold and use up to 3 radioactive cobalt sources. These have been registered with the Environment Agency (EA) under the provisions of the RSA.

In October, during a routine inspection by the EA of RRU procedures for the tracking and use of the sources, one of them was found to be defective. The relevant manager was informed of the steps that the EA wanted to be followed in order that the situation could be remedied.

There was a further inspection 4 months later when it was discovered that there was an additional non-registered cobalt source being used on the premises which had not been registered. It was therefore being held contrary to the RSA. On interview of a senior manager, it was disclosed that the management was unaware that a further registration was needed in order for the 4th cobalt source to be used.

RRU subsequently applied for and received an additional registration allowing them to store and use a fourth source. There was no suggestion that the use of the source by RRU was a risk to the environment but RRU had been using these sources for a number of years and should have been well aware of the regulatory requirements. They had also
received advice from officers as to the control of the potentially hazardous items only months prior to the discovery of the fourth source.

RRU was charged with 1 offence contrary to section 32 of the RSA of keeping radioactive material, knowing it to be radioactive material and for which there was no registration under the Act, for 4 months between October and February. RRU pleaded guilty.

Assessing seriousness

- RRU had been advised only months earlier of the need for tighter control of its use of radioactive sources.
- The containers holding the sources are secure but can be broken into. If that occurs, then anyone handling the radioactive sources or being in close proximity for a lengthy period of time is at a significant risk of being exposed to radiation. Consequently, due to the inherent risk in the acquisition and handling of the sources there is an accompanying high obligation on users to keep them secure.
- RRU applied for and indeed received registration of the fourth source as soon as it became aware of its mistake.
- No previous convictions had been recorded against the company.

Questions

1. What is the most appropriate sentence for RRU?
2. Should the matter be referred to the Crown Court for sentencing?
14 Statutory nuisance and noise

Statutory nuisance is all nuisance that falls within the legislation enacted for the purpose of protecting the environment and human health. The legislation is designed to provide a summary procedure for the remedy of a disparate collection of unacceptable states of affairs, most of which put at risk human health and the amenity of neighbours. Summary remedies are provided by local authorities and the magistrates’ courts and are intended to be ‘speedy, cheap and readily accessible to ordinary people.’

The protection is provided by Part III of the Environmental Protection Act 1990 (EPA) which in section 79(1) sets out 9 categories of statutory nuisance which relate to:

a) the state of premises,

b) certain smoke emissions

c) fumes or gases from dwellings

d) dust, steam, smell or other effluvia from industrial, trade or business premises

e) accumulations or deposits

f) animals

g) noise from premises

  ga) noise from vehicles or equipment in a street

h) other matters declared by other Acts to be statutory nuisances.

Under the EPA, a local authority has a duty to inspect its area and to take ‘such steps as are reasonably practicable’ to investigate a complaint by a person living in the area. If it is satisfied that a complaint exists, the local authority must issue an Abatement Notice. Breach of that notice is a criminal offence. The legislation also provides that someone aggrieved may apply to the magistrates court to issue a summons in relation to a statutory nuisance.

Out of all the categories of statutory nuisance, the most common problem is noise. Noise is defined as a sound that is loud, unpleasant or that causes a disturbance; and it appears to be on the rise. Certainly the levels of complaints about noise have increased dramatically over the last 15 years. Typically, 3 people are reported murdered every

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year in England as the result of a dispute of neighbourhood noise.¹ However, the only national measure of noise is of the number of complaints received by local authority Environmental Health Officers. While this does not directly mean that the overall noise levels have increased, the likelihood is that the significant increase in road and air travel in recent years will be generating corresponding increases in noise. One of the difficulties with noise is that it is very subjective and something that disturbs one person may not do so to another. Further, it can be a source of anxiety and stress for many people. It is a pollutant because it can seriously damage the quality of life and often the physical, psychological and social circumstances of those exposed to it.

¹ The Independent, 18 December 1994 documented 17 fatalities over the previous 6 year period.
14.1 Dust

Legislation

Section 79(1)(d) of the Environmental Protection Act 1990 (EPA): dust which is prejudicial to health or a nuisance, constitutes a statutory nuisance.

Section 80(1) of the EPA: where a local authority is satisfied that a statutory nuisance exists, it shall serve an abatement notice.

Section 80(4) of the EPA: if a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition he shall be guilty of an offence.

Maximum penalty: section 80(6) of the EPA: £20,000 fine on summary conviction.

Facts of the case

Mr Smith, who runs a local business, contacted the Commercial Standards team of the local council and complained about dust coming from the wood chipping activities of a neighbour; Wood Chips Ltd (WCL). A council Environmental Health Officer (EHO) visited Mr Smith and saw accumulations of wood dust in his office and outside his building. The EHO then visited another local businessman who had also complained. He too had layers of wood dust in his warehouse and believed it to be coming from WCL. There did not appear to be any other premises in the locality which could have given rise to the wood dust.

The EHO visited WCL. On the premises, there was a wood-chipping machine with a homemade dust suppression unit attached. The EHO spoke with the Director of WCL who was advised that the most appropriate course of action would be to house the processes.

The findings led the EHO to serve an abatement notice under section 80 of the EPA on WCL in order to prevent further occurrences of wood dust nuisance. However, a few days later, the EHO visited yet another complainant about wood dust nuisance. The EHO noted that wood dust was being emitted from the premises of WCL from other activities of the wood chipping process, rather than the wood-chipping machine itself. Consequently, the EHO served another abatement notice to incorporate all of the wood chipping activities and retracted the previous notice.
Following this, the EHO visited a previous complainant, following another complaint of wood dust nuisance from WCL. The EHO witnessed a statutory nuisance, and consequently, a breach of the abatement notice. On a further 3 occasions within the next month, the EHO witnessed breaches of the abatement notice. The EHO witnessed another breach 2 months later. The Director of WCL attended a formal interview concerning the breach of the abatement notice and had many discussions with the EHO concerning the emissions of wood dust from the WCL premises and the nuisance it was causing.

Unfortunately, WCL continued the wood chipping activities without controlling the emissions of wood dust. This led to complaints from 9 separate complainants. The cost of the visits by the EHO amounted to £1,215.

WCL was prosecuted and pleaded guilty to the nuisance. At court, a doctor gave evidence that the dust could lead to respiratory problems. After conviction, the council continued to receive complaints regarding wood dust emissions from WCL and they were again taken to court regarding the nuisance.

Assessing seriousness

- The council received many complaints on a number of occasions regarding the nuisance of dust. WCL had total disregard for the warnings and advice from the council.
- WCL was advised right from the beginning that the most appropriate cause of action would be to house the processes.
- After an abatement notice was served they breached it a number of times and made no effort to abate the nuisance. The disregard of the abatement notice initiated court proceedings.
- The repeated visits by the EHO as a result of the complaints increased the costs incurred by the enforcing authority.
- Local businesses were affected by the problem of the dust.
- WCL was benefiting financially by non-compliance with the abatement notice and not altering their wood chipping process.
A doctor testified that the dust had the potential to lead to respiratory problems. Therefore the actual health problems of their employees and those in neighbouring premises must be considered as well as the potential health problems that the dust could cause.

**Sentencing criteria**

The level of the fine should reflect the economic gain by not abating the nuisance and the ongoing current practice.

**Questions**

1. What is the most appropriate sentence for WCL?
2. What would be the likely sentence for another conviction for a similar offence?
3. What are the broad adverse environmental, social and economic impacts of the nuisance?
14.2 Poor housing

Legislation
Section 79(1)(a) of the Environmental Protection Act 1990 (EPA): premises which are prejudicial to health or a nuisance, constitute a statutory nuisance.
Section 80(1) of the EPA: where a local authority is satisfied that a statutory nuisance exists, it shall serve an abatement notice.
Section 80(4) of the EPA: if a person on whom an abatement notice is service, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition he shall be guilty of an offence.
Maximum penalty: section 80(6) of the EPA: £20,000 fine on summary conviction.

Facts of the case
A complaint was received from a member of the public (a tenant) regarding their flat being in a state of disrepair. The complaint details included:

1. Peeling ceiling paper to one area of the living room ceiling
2. Wall affected by penetrating damp
3. Mould growth on bedroom walls and in bathroom
4. Kitchen sink unit saturated with dampness and incapable of being cleaned

These were felt by the local council Environmental Health Officer (EHO) to be sufficient to serve an abatement notice under section 80 the EPA.

The owner (LL) was identified and the EHO notified her of the work required. LL informed the EHO of the builder that she was employing to carry out the work. In the circumstances a notice was not immediately served but a letter sent. However, 1 month later the works needed to repair the flat and remove the nuisance had not occurred. An abatement notice was therefore served. LL stated that it was difficult getting access to the property.

2 months later work had still not started and the tenant complained of water dripping from the ceiling due to a defective roof. Another notice was served by the EHO in which the existing previously notified defects plus the leaking roof were included. A period of 2 months was given for all works to be carried out. After 2 months the notice
expired, work had not started and discussions took place between the EHO and LL. LL requested a further 7 days. After 7 days, the EHO rang LL because work still had not been carried out. LL claimed that the builder could not access the property. Christmas then intervened and the builder made a start in the New Year. However apart from fitting a vent in the bedroom and cleaning off the mould on the walls and putting plastic containers under the sink no building works had taken place.

The council prosecuted for non-compliance with the abatement notice and LL pleaded not guilty blaming the occupier for the delay and produced the builder as a witness. The court found her guilty of non-compliance with the notice. It was not until 7 months after the expiration of the notice that the works were fully complied with.

**Assessing seriousness**
- Damp and mould in the home can cause ill health of residents. Damp homes increase the risk of asthma and leave occupants with a greater chance of repeated colds and skin allergies. Mould releases tiny spores into the air that may trigger asthma.
- A study has also revealed that people living in damp houses were more likely to suffer from pneumonia, bronchitis, tonsillitis or sinusitis.
- Aesthetic value of house: the tenant has to live in poor conditions.
- Loss of work due to ill health: the tenant could have lost earnings.
- The owner seemed to disregard the notice and had to apply for an extension. The work was still not carried out within the extended time.

**Sentencing criteria**
The sentence should reflect cost savings of LL and economic loss of the tenant.

**Question**
What is the most appropriate sentence for LL?
14.3 Noise

**Legislation**
Section 79(1)(g) of the Environmental Protection Act 1990 (EPA): noise emitted from premises so as to be prejudicial to health or a nuisance, constitutes a statutory nuisance.
Section 80(1) of the EPA: where a local authority is satisfied that a statutory nuisance exists, it shall serve an abatement notice.
Section 80(4) of the EPA: if a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition he shall be guilty of an offence.
*Maximum penalty:* section 80(6) of the EPA: £20,000 fine on summary conviction.

**Related legislation**
Section 10 of the Noise Act 1996: Powers of entry and seizure etc, of equipment used to make noise unlawfully.
Paragraph 3 of the Schedule to the Noise Act 1996: Where a court is convicted of a noise offence the court may make a forfeiture order of any related equipment.

**Facts of the case**
Mrs A lives on the second floor of a detached three storey Victorian house, the other two floors are unoccupied. Her rooms face what has been for many years a relatively quiet minor road. Despite the presence of a nearby pub and a certain amount of vehicle and pedestrian traffic she has never, until recently, been troubled by noise.

However, things have now changed. The pub changed hands and is now owned by Noisy Pubs Ltd (NPL). An ambitious young licensee (L) obtained a public entertainment licence following which he introduced several forms of noisy entertainment including karaoke, live bands and wide screen sports TV and the pub clientele changed. Mrs A began to experience many hours of amplified music, singing, clapping and cheering many nights of the week. On several occasions she asked the manager to keep the noise down and in particular to ensure that the doors and windows of the pub were kept shut. L, however, made no effort to co-operate.

Having complained to the local authority, Mrs A was asked by the local Environmental Health Officer (EHO) to keep a diary of noise events. The EHO also visited Mrs A's flat
to monitor noise levels. Shortly afterwards, L was reminded that doors and windows should remain shut during periods when music was being played or TV sports events were being viewed. L failed to comply with this request and the authority issued an abatement notice under section 80(1) of the EPA 1990; a copy of this being sent to NPL.

The notice had no effect. During the summer the doors and windows of the pub were frequently left open. On being prosecuted for breach of the abatement notice L stated in NPL’s defence that they were doing their best but they had a business to run and that Mrs A was a difficult woman. L explained that they had offered to pay for Mrs A to have air conditioning and double glazing but that she had refused. In L’s opinion Mrs A had an obsession about noise and was making a fuss about nothing. Despite the defence, NPL were found guilty of failing to comply with an abatement notice.

Assessing seriousness

Overall impact of the environmental problem includes noise as unwanted sound causing distress to neighbours.

Wider effects include the shift in the character of the neighbourhood.

Economic gain was the key motivation for the activities that resulted in the noise.

L and NPL failed to implement preventative measures such as keeping doors and windows closed to minimise any adverse impacts.

State of mind of the Defendant: there was an intentional breach of an abatement notice with a failure to take notice of earlier warnings from the local authority EHO.

Sentencing criteria

Economic gain: revenue gain from change in activities should be reflected in sentence.

Polluter pays principle: the level of fine should reflect the time taken in negotiation and discussion - an uncooperative defendant increases local authority costs.

Questions

1. What is the most appropriate sentence for L?

2. Is NPL liable?

3. Does the court have any other sentencing powers other than a fine?
15 Waste

The total waste produced in the UK is estimated to be about 434 million tonnes per year. Around 8% is municipal waste which includes household waste and 20% is from agriculture. The largest single source of waste is from mining and quarrying which generates about 27%. The remaining 45% comes from a variety of sources including; sewage sludge, dredged spoils, commercial, industrial, demolition and construction.¹

Waste disposal is now one of the most serious environmental problems in the UK, made worse by a year on year increase in household waste. In 2002, each household generated over half a tonne of waste. One of the difficulties with waste is that for every one tonne of consumer goods or products, around 10 tonnes of waste is generated.¹

The vast majority of household waste is disposed of in landfill: on average only 10% is recycled and a further 5% incinerated. The present disposal situation is critical with pressure from local communities concerned about disposal of waste nearby, an increasing lack of usable landfill sites, and pressure from the EU stating that the UK must significantly reduce its level of landfill and increase its recycling rates. To comply with EU legislation, most notably the Landfill Directive 1999, the UK has targets to recover 40% of municipal waste by 2005.

There has been a steady increase in the costs of disposing of waste and create a financial incentive to find alternative, less polluting ways, of disposing or reusing waste. While this pressure may be encouraging and may be regarded as implementing the polluter pays principle it is also resulting in an increase in fly tipping and abandonment of vehicles and other rubbish. In 2000/01, over 238,000 vehicles were abandoned in England and Wales being left to be dealt with at the expense of local authorities. Further, 25% of farms in England and Wales have experienced fly tipping in the last 5 years (equivalent to around 44,000 farms).²

Waste also covers litter and general refuse. There has been an increase in litter, particularly near fast-food and late night take-away outlets, and this has, in turn, resulted in an increase in the rat population in the UK to the point where it is greater than the

¹ Defra, e-digest of environmental statistics 28.10.03.
² Waste Management Division, Defra
human population. Weil’s disease, affecting the liver, kidneys and less often causing meningitis, is spread by the urine of rats and is a recurrent threat.³

An application of the polluter pays principle are the regulations that place the onus of the recovery and recycling of packaging onto the producer; the Producer Responsibility Obligations (Packaging Waste) Regulations 1997. An example of this was where a company which had an annual turnover in 2001 of £36 million, saved up to £7,600 by ignoring packaging regulations between 1998 and 2001. The company was fined £36,000.⁴

³ The Times, 26 September 2002.
⁴ The Environment Times.
15.1 Avoiding trade waste contract

Legislation

Section 33(1) of the Environmental Protection Act 1990 (EPA): a person shall not treat, keep, dispose of or deposit controlled waste except under and in accordance with a waste management licence.

Section 33(6) of the EPA: a person who contravenes section 33(1) or any condition of a waste management licence commits an offence.

*Maximum penalty:* Section 33(8) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Section 34(1) of the EPA: it shall be the duty of any person who imports, produces, carries, keeps, treats or disposes of controlled waste to prevent any contravention by any person of section 33.

*Maximum penalty:* Section 34(6) of the EPA: £5,000 fine on summary conviction, an unlimited fine on indictment.

Facts of the case

Mr Jackson (J), the owner of the Bar and Grill café was regularly leaving plastic bags containing food remains and empty bottles in the alley behind the café. J had no trade waste agreement. With food in the bags it was very likely that they would be ripped open by animals and rubbish strewn around the alley. Rats would be attracted to these conditions. The area is also where full bottles are left on delivery for the café and it is therefore a possibility that vermin, such as rats, would leave faeces and urine on the bottles delivered to the Bar and Grill. All businesses have a duty of care to legally dispose of their waste. They can enter into a Trade Waste Contract. Enforcement action can be taken against those businesses that do not dispose of their waste lawfully.

Following a complaint, the local council Environmental Health Officer (EHO) investigated the matter and concluded that the rubbish found at the back of the Bar and Grill belonged to those premises. There was also evidence of the presence of rats. J was taken to court under sections 33 and 34 of the EPA and found guilty. The cost of a contract for a 1,100 litre commercial waste bin with one collection per week was about
£500 per annum. By the time of J’s court appearance, he still did not have a contract to deal with his commercial waste.

Assessing seriousness

- Rats contaminate food and cause extensive damage to buildings and equipment in warehouses, granaries, restaurants, bakeries and anywhere food is handled or stored. Rats will gnaw through wood and enlarge masonry openings to gain entrance into buildings. In the construction of their nests, rats destroy all types of materials and can cause fires by chewing through insulation cables.
- Rats are a serious hazard to public health. Aside from contaminating food with their droppings and urine, fleas from rats were responsible for spreading the bubonic plague. Today, such diseases as salmonella bacteria (food poisoning), leptospira (jaundice), and typhus are commonly spread by rats. Rat urine is also responsible for transmitting Weil’s disease. Because of their unsanitary habits, secondary infections from rat bites can be serious and sometimes fatal.
- Rats can breed rapidly leading to a rat problem in the neighbourhood. The costs of clean-up and pest controllers mean the use of extra resources.
- Avoiding the cost of £500 for an annual trade waste permit.
- Advice of enforcing authority was ignored.
- Failed to get a contract once notice had been served; it is quite easy to contact the local authority to obtain a trade waste contract.
- Potential harm; a rat problem in the neighbourhood and potential for transmitting a variety of diseases as mentioned above.

Sentencing criteria

- Cost avoidance: commercial advantage to other businesses. Commercial standards are there to ensure a level playing field between businesses and protect other traders from an economic disadvantage. Commercial standards are also there to protect the residents from rats.
- Lack of co-operation with the enforcing authority increased the costs of the investigation and prosecution.

Question

What is the most appropriate sentence for J?
15.2 Fly tipping: branches and concrete

Legislation
Section 33(1) of the Environmental Protection Act 1990 (EPA): a person shall not treat, keep, dispose of or deposit controlled waste except under and in accordance with a waste management licence.
Section 33(6) of the EPA: a person who contravenes section 33(1) or any condition of a waste management licence commits an offence.
Maximum penalty: Section 33(8) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Facts of the case
A district council was experiencing a large number of fly-tipping incidents and it was becoming a problem. The fly-tips were averaging one per night and the cost of clearing each tip was in the region of £300. A council Environmental Health Officer (EHO) received complaints from residents of flats that a vehicle was using up their parking spaces and that it was leaving at 11.00 pm loaded with waste and returning 10-15 minutes later without waste.

The EHO noticed that the vehicle was parked in the communal parking area. The back was loaded with a large quantity of garden waste including concrete and a large quantity of tree branches. He approached the vehicle and marked the cut surfaces of the tree branches with a permanent marker. A couple of days later the EHO drove past the vehicle and noticed that there were no branches or other garden waste in the back of the vehicle. The EHO was unable to observe the fly-tipping taking place and so had marked a load whilst they were on the back of the truck. Hence, when the loads were dumped they could be positively identified.

On the same day that the EHO noticed the vehicle was empty the council was notified of a fly-tip on a country lane. The EHO drove to the scene and found a large pile of tree branches and concrete dumped on the road. There was just enough room for a car to pass. In the middle of the pile, a couple of the branches that had the marks left by the EHO were visible.
Information received from the Driver and Vehicle Licensing Agency (DVLA) named the owner of the vehicle seen in the communal parking space as Mr Brown (B). B was subsequently interviewed and confirmed under caution that he owned the vehicle.

Section 33 of the EPA makes it an offence to knowingly allow waste to be deposited on land without the benefit of a waste management licence or a registered exemption from licensing. Section 33(5) of the EPA provides that where a vehicle is used to transport the waste, the person in control, or in a position to control, the vehicle shall be considered to have knowingly caused the deposit of waste.

The council took Mr Brown to court for knowingly causing the deposit of waste. He pleaded not guilty and stated that he always left his keys in the vehicle and that anyone who needed to use it could do so and therefore he could not be considered in control of the vehicle. B was found guilty of the offence. The council asked for costs of £1,600 to cover the cost of the investigation. This included the clearance cost of the fly-tipped waste.

B’s means and previous convictions were looked at in court. It was submitted B was unfit to work and received housing benefit, while his wife worked part time. B had previous convictions for fraud and obtaining goods by deception. B stated in a pre-sentence review that fly-tipping was not a serious offence and that he would not pay a fine or do community work.

Assessing seriousness

- Fly-tipping is a known problem in the area.
- It takes a lot of resources for the council to clear up and investigate this kind of environmental problem.
- Court action and sentencing is one of a number of tools used to tackle the problem of illegal dumping of waste.
- A cumulative effect could be that others are encouraged to leave their waste instead of disposing of it legally.
- B’s act was a deliberate breach of the law.
- Dumping on a road was not only a nuisance and inconvenience to drivers but also dangerous because the road was not well lit so the potential harm was serious.
• B was either gaining economically by disposing of waste for someone else in this manner or avoiding disposal costs himself.
• B did not seem to acknowledge the seriousness of the crime.
• B had previous convictions for other unrelated crimes.

Sentencing criteria
The level of the fine should reflect the economic gain of Mr Brown and the inconvenience to the local authorities.

Questions
1. What is the most appropriate sentence for B?
2. Should sentencing be used to act as a deterrent in resolving environmental problems? If appropriate how can this tool be used more effectively?
15.3 Fly tipping: children’s party waste

Legislation
Section 33(1) of the Environmental Protection Act 1990 (EPA): a person shall not treat, keep, dispose of or deposit controlled waste except under and in accordance with a waste management licence.
Section 33(6) of the EPA: a person who contravenes section 33(1) or any condition of a waste management licence commits an offence.
Maximum penalty: Section 33(8) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Facts of the case
Mr Taylor (T) deposited waste from his children’s party held at a village hall in the village hall car park. Council officers managed to trace the waste back to T from information found in the rubbish. The council interviewed T concerning the dumping of the rubbish and he admitted that he had left it in the car park.

The council clean up costs amounted to £200. The Environment Agency led the prosecution and supplied the legal representation in court. T had not been convicted of fly-tipping before and entered a timely guilty plea.

Fly-tipping is a problem in the area. There are posters around the district offering a reward to anyone who provides information on fly-tipping that leads to a successful prosecution.

Assessing seriousness
- Fly-tipping is known as a problem in the area and the public are made aware of this. Fly-tipping in areas encourages more dumping of waste and therefore a cumulative effect.
- A large amount of resources are used by the district council to prevent, clear up and investigate this problem.
- T’s circumstances are mitigated by the timely plea of guilty and that was his first offence.
Sentencing criteria
The cost of £200 was incurred by the council to clean up the rubbish that T deposited.

Question
What is the most appropriate sentence for T?
15.4 Dumping from skips

Legislation
Section 33(1) of the Environmental Protection Act 1990 (EPA): a person shall not treat, keep, dispose of or deposit controlled waste except under and in accordance with a waste management licence.
Section 33(6) of the EPA: a person who contravenes section 33(1) or any condition of a waste management licence commits an offence.
Maximum penalty: Sections 33(8)(9) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment (5 years if special waste).
Sections 34(1)(c)(ii) & (5) of the EPA: failing to prepare a written description of the waste that was removed (fly-tipping).
Maximum penalty: Section 34(6) of the EPA: £5,000 fine on summary conviction, an unlimited fine on indictment.
Section 71(2) of the EPA: failure to respond to a notice requiring information
Maximum penalty: Section 71(3) of the EPA: £5,000 fine on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Regulation 5(2) of the Special Waste Regulations 1996 (SWR): before a consignment of special waste is removed the Environment Agency must be notified and provided with a consignment note.
Regulation 18(1) of the SWR: it shall be an offence not to comply with any of the regulations.
Maximum penalty: Regulation 18(9) of the SWR: £5,000 fine on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Section 1(1) of the Control of Pollution (Amendment) Act 1989 (COPAA): it is an offence to transport controlled waste without being a registered carrier.
Maximum penalty: Section 1(5) of COPAA: £5,000 fine on summary conviction.

Section 143(1) and (3) of the Powers of Criminal Courts (Sentencing) Act 2000 (PCCA): where a person is convicted of an offence and any property lawfully seized from him has been used for the purpose of committing any offence, the court may make an order depriving the offender of his rights in the property to which it relates.
Facts of the case

On a late Saturday afternoon a lorry with a demountable skip was seen to reverse into the gateway to a farmer’s field and dump the contents of the skip. The field itself was close to a new estate that was the home for many young families and has a stream running close to where the refuse is deposited. The lorry then moved off, but not before a witness noted the lettering on the side of the lorry and its registration number. The Environment Agency (EA) was contacted. The deposited material comprised a mixture of builders’ rubble, including drums and tins. These were subsequently found to be old paints, creosote and other liquids which fell into the category of special waste, putrescible food and also some documentation.

Details of the keeper of the lorry are obtained from the DVLA and a Notice under Section 71(2) of the EPA asking for information concerning details of the driver (D) and the source of the dumped materials is sent. There is no reply to that letter. From a scrutiny of the correspondence however, it was discovered that the foodstuffs were from a local cafe, the building material from a demolition site and the correspondence from a flat which was being cleared out and renovated. Those locations were visited and it was established that the same waste removal company was involved having been selected from an advertisement in the local paper.

From the description, the same man had driven the lorry on each occasion when the waste had been removed. No documentation however, was supplied by the company or signed by the persons disposing of the waste. EA investigations disclosed the small office premises of the firm and an officer visited them. He met a man who fitted the description given by the 3 witnesses who used the disposal services but that man refused to answer any questions other than to confirm his name and that the lorry parked outside with details on the side and with the registration number supplied to the EA is used by him.

The EA charged D with the following offences:

- Depositing waste on land not covered by a waste management licence under section 33 of EPA.
- 3 counts of failing to prepare a written description of the waste that was removed under section 34 of the EPA.
• Failing to respond to a notice requiring information under section 71 of EPA.
• Failing to pre-notify the EA of the movement of waste under regulation 18 of the SWR.
• Carrying waste in the course of a trade or business without being registered with the EA under section 1 of COPAA.

D subsequently appeared in Court and was found guilty after a trial. By way of explanation he said that business was extremely poor and that he had no accounts as he had only just started in the business and did not realise that he had to register as a carrier; no one had told him.

The prosecution applied for forfeiture of the lorry under the PCCA.

Assessing seriousness

• D made no effort to co-operate or assist the Agency in its enquiries.
• The deposit was close to houses and would have attracted vermin over a period. There was small stream nearby with a risk that the paints and other liquids could have made their way into that particular watercourse; children were known to use it for paddling.
• The material comprised special waste, which by definition is hazardous to humans and the environment eg, contamination of soil, in respect of the paints and creosotes they would have caused considerable skin irritation if coming into contact with unprotected skin.
• No effort was made by D to clean up and remove the waste: the EA would have to do this itself which would have cost them in the region of £2,000.
• Although not admitted there is a reasonable assumption that the deposit was made for the purpose of avoiding tipping fees and landfill tax: it is estimated that due to the nature of the deposited materials, the fees and tax avoided would be in the region of £200.
• Profiting from crime by illegally disposing waste of other businesses.
• D had no previous convictions and there is no indication that this was more than an isolated incident, despite suspicions by the EA.
**Sentencing criteria**

- What is the size of the business?
- Have any accounts been produced? If not, why not?
- What are D’s personal circumstances?
- If an application for forfeiture of the lorry is granted what will the effect be on the defendant’s business?
- The costs of clean up and economic gain should be reflected in the level of the fine.

**Questions**

1. What is the most appropriate sentence for D?
2. Would it be appropriate to grant the application for forfeiture?
15.5 Dumping on farmland

Legislation
Section 33(1) of the Environmental Protection Act 1990 (EPA): a person shall not treat, keep, dispose of or deposit controlled waste except under and in accordance with a waste management licence.
Section 33(6) of the EPA: a person who contravenes section 33(1) or any condition of a waste management licence commits an offence.
*Maximum penalty:* Section 33(8) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Facts of the case
Mr Clark (C) was seen dumping kitchen fittings and cardboard packaging in a field by a farmer (the landowner) who reported the incident to the Environment Agency (EA). The EA began an investigation during which C failed to respond to correspondence from the EA asking him for information and inviting him to a formal interview.

C was summoned to appear in court for illegally depositing the rubbish on the farm land and failed to turn up. A warrant was issued for his arrest. He finally appeared in court and pleaded guilty to allowing the waste to be left in the field, although he denied dumping the waste himself. The waste came from his home.

C had previously been convicted of dumping rubbish illegally and had received a £50 fine and ordered to pay £100 prosecution costs.

Assessing seriousness
- Fly-tipping in an area could encourage more illegal dumping of rubbish and could therefore have a cumulative effect.
- C did not co-operate with the enforcing authority.
- The lack of co-operation led to extra resources needed in the investigation amounting to an estimated £750.
- C is a re-offender; he had previously been convicted of a fly-tipping offence.
- This was an intentional breach of regulation.
C was dumping the waste to save himself the time and cost of a journey to the civic amenity site which will accept bulky household items free of charge.

**Sentencing criteria**
The level of the fine should reflect the inconvenience to the competent authority, the cost of clean up incurred by them and the costs being avoided by C in not taking a trip to the civic amenity site.

**Question**
What is the most appropriate sentence for C?
15.6 Landfill site odours

Legislation
Section 33(1) of the Environmental Protection Act 1990 (EPA): a person shall not treat, keep, dispose of or deposit controlled waste except under and in accordance with a waste management licence.
Section 33(6) of the EPA: a person who contravenes section 33(1) or any condition of a waste management licence commits an offence.
Maximum penalty: Section 33(8) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Facts of the case
Sandford Limited (SL) operates the Sandford landfill site and holds a waste management licence issued 7 years ago. The site must be operated in accordance with the conditions attached to that licence.

In October, SL began work to improve the gas management system on the site. Later that month however, local residents complained to the Environment Agency (EA) about odours from the site. Two residents in particular told the EA that they felt physically sick due to the smell and had to leave their homes for a drive around to escape the effects. They also stopped inviting relatives to the house because of the unpleasantness.
Due to the number of complaints, an EA officer spoke to company representatives and asked that careful attention be taken to minimise any possible escape of gas whilst drilling works were being undertaken on the site.

In December, EA officers visited the site and inspected the gas abstraction scheme that was being installed. The officers could smell landfill gas and saw a number of broken or inadequately sealed pipes. The pipes had been sealed with plastic bags, some of which were split, others with tape and one with a plastic pop bottle. There was a strong smell of landfill gas. One of the leachate monitoring wells on the site was also producing odour as the plastic cover cap was cracked. When an EA officer drove past a farm which was located nearby, a strong smell of landfill gas odour could be detected.
SL representatives were interviewed under caution early in the New Year. They confirmed that they had started work on a gas abstraction system in October. The weather had been bad and there was a 4 week delay. They admitted that the wells had been temporarily sealed with tape, bags and the mineral bottle but the proper caps had been ordered in November. They disputed that the smell was as bad as that indicated by the EA officers.

The EA charged SL with breaching, between October and December, a condition of its waste management licence namely that ‘measures shall be taken to ensure that any unpleasant odours which may emanate from the site do not cause a nuisance.’ This was contrary to section 33(1) of the EPA and SL was found guilty of an offence under section 3(6) of the Act.

**Assessing seriousness**

- SL seemed to have made little effort to alleviate the local concerns and had been sloppy and negligent in the manner in which it has controlled its work.
- The physical affect on some of the residents, which although not leading to medical attention had caused considerable discomfort over a period of several months.
- It was thought that the smell would undoubtedly affect the desirability of the area as a place to live.
- SL had no previous convictions.
- This appeared to have been an isolated incident.

**Sentencing criteria**

- What was the size of the business?
- Any fine must be large enough to make the company fully appreciate the extent of its obligations.
- Had any accounts been produced, if not, why not? If, despite requests by the Court, none were produced, the Court could assume that it can pay any penalty imposed.

**Question**

What is the most appropriate sentence for SL?
15.7 Rubbish and rats in rear garden

Legislation
Section 3(1) of the Prevention of Damage by Pests Act 1949 (PDPA): an occupier of land must notify the authority in writing if he becomes aware of rats/mice infestation.
Section 3(4) of the PDPA: failure to give notice under section 3(1) is an offence
Maximum penalty: £250 fine on summary conviction.
Section 4(1) of the PDPA: if a local authority is of the view that steps must be taken to tackle or prevent rats/mice infestation they may service notice on the owner/occupier to take action.
Section 5(1) of the PDPA: the local authority can take action and recover the cost.
Section 5(2) failure to comply with a section 4 notice is an offence.
Maximum penalty: £1,000 fine on summary conviction.

Section 79(1)(e) of the Environmental Protection Act 1990 (EPA): accumulations or deposits which are prejudicial to health or a nuisance, constitute a statutory nuisance.
Section 80(1) of the EPA: where a local authority is satisfied that a statutory nuisance exists, it shall serve an abatement notice.
Section 80(4) of the EPA: if a person on whom an abatement notice is service, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition he shall be guilty of an offence.
Maximum penalty: section 80(6) of the EPA: £20,000 fine on summary conviction.

Facts of the case
Complaints were received by the local council about a resident who was throwing household rubbish and other items into his rear garden. There were also reports of rodents in the area. The local Environmental Health Officer (EHO) investigated and found a middle-aged man (R) living alone in the house. The council’s Pest Control Officer confirmed that rats were eating and nesting in the rubbish and particularly in some old settee cushions thrown out.

The EHO spoke to and then wrote to the occupant, who was also the owner of the property, asking him to clear the rubbish away. Although the rubbish was tidied up a little, it was not removed and the rat population increased. The EHO served a notice on the owner under section 4(1) of the PDPA and an abatement notice under section 80(1)
of the EPA requiring removal of the rubbish. The EHO also offered the occupant the use of the council’s refuse service to take away the rubbish. The notices expired and after 21 days the rubbish pile increased and the EHO arranged for the removal of rubbish. A bill was sent to R together with a summons for non-compliance of the Notices. After 2 adjournments and 1 non-appearance by R he was found guilty of both offences. The council pursued the cost of clearance through their debt recovery service.

Assessing seriousness

- Rats contaminate food and can cause extensive damage to buildings and equipment anywhere food is handled or stored. They will gnaw through wood and enlarge masonry openings to gain entrance into buildings. In the construction of their nests, rats destroy all types of materials and can cause fires by chewing through insulation cables.
- Rats are a serious hazard to public health. Aside from contaminating food with their droppings and urine, fleas from rats were responsible for spreading the bubonic plague. Today, such diseases as salmonella (food poisoning), leptospira (jaundice), and typhus are commonly spread by rats. Rat urine is also responsible for transmitting Weil’s disease. Because of their unsanitary habits, secondary infections from rat bites can be serious and sometimes fatal.
- Rats can breed rapidly leading to a rat problem in the neighbourhood. The costs of clean up and pest controllers mean the use of extra resources.
- Lack of co-operation with the council and the cost of clean up increased costs. R did not clear away the rubbish after being advised by the council authority to do so. A notice was subsequently served which expired after 21 days and the rubbish had not been cleared away. The owner failed to appear in court twice.

Sentencing criteria

- Prosecution costs and investigation costs were high due to the lack of co-operation and should be reflected in the fine.
- The cost of clean up by the council to try and prevent a bigger rat problem.

Questions

1. What is the most appropriate sentence for R?
2. Was pursuing the clean up costs through debt recovery the most effective way of recovering this expense?
15.8 Scrap in residential area

Legislation
Section 33(1) of the Environmental Protection Act 1990 (EPA): a person shall not treat, keep, dispose of or deposit controlled waste except under and in accordance with a waste management licence.
Section 33(6) of the EPA: a person who contravenes section 33(1) or any condition of a waste management licence commits an offence.
*Maximum penalty*: Section 33(8) of the EPA: £20,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Section 59(1) of the EPA: if any controlled waste is deposited in contravention of section 33(1), the waste authority may serve notice requiring removal of such waste and take remedial action.
Section 59(5) of the EPA: failure to comply, without reasonable excuse, with a section 59(1) notice is an offence.
*Maximum Penalty*: £5,000 fine and 1/10 of the imposed fine per day for each day the breach continues after conviction on summary conviction.

**Facts of the case**
Mr Kensington (K) lived in a semi-detached house in a residential area. He had been repairing and storing cars for some time and as a result had stored large quantities of metal, both on his driveway and at the side and rear of his house. He did not have a waste management licence authorising the keeping of scrap metal at this location. Nor did he hold planning permission for storing scrap metal at the location. The local planning authority (LPA) had warned the K on several occasions about his breaches of planning legislation.

As a result of a number of complaints from the public about the storage of the scrap metal, Environment Agency (EA) officers visited the K. On arrival, they noted a large quantity of scrap including car mudguards and other parts of vehicles along with corrugated sheeting, a pedal cycle, a moped, car batteries, car tyres, gas bottles, tin cans and wood and plastic. These were on the driveway of the house and also further large quantities were seen at the side and the rear. On speaking to K, he said that he would
remove the waste. 2 days later the EA sent a Notice under section 59(1) of the EPA to K explaining that the material must be removed within 21 days.

A month later, EA officers returned to the address and found that there was still a large quantity of scrap and other waste materials on the drive and piled along the side of the house. K was interviewed under caution and said that he had removed materials from the drive and that what was left was simply spare parts. It was clear that some of the larger items had been removed. Again, he was warned to remove the remaining material.

On a third visit 2 weeks later; scrap metal was again found stored in the driveway and at the side and rear of the house.

The EA charged K and he pleaded guilty to the following offences:

- Contrary to sections 33(1)(b) and 33(6) of the EPA for keeping controlled waste on land at K’s address when a waste management licence authorising the keeping of such material was not in force. The 3 offences were dated for the 3 occasions when EA officers had visited and had seen the materials.
- Contrary to section 59(5) of the EPA, for failing to remove waste within a specified period of not less than 21 days.

Assessing seriousness

- K was clearly aware of his obligations; the council had warned him about his breaches of planning legislation.
- K seemed determined to continue with his activities despite the inappropriateness of the location and the aggravation that was being caused to his neighbours.
- Only limited efforts have been made by K to clean up and remove waste.
- The storage of material was an eyesore and was thought to have a detrimental effect on saleability of other houses.
- The site was also attracting fly-tippers who were dumping their own waste metals onto the pile.
- If the EA has to remove the material then it will cost in the region of £500.
Sentencing criteria

- Account should be taken of the planning authority warning.
- K is unemployed with a wife and 3 children.
- K said that his ‘sideline’ of repairing cars was really done as a favour for friends and he made nothing from it.
- K has since stopped due to the attentions of the EA.
- K also stated however, that he could not afford to pay anyone to remove the remaining waste.

Question
What is the most appropriate sentence for K?
15.9 Litter abatement order

Legislation
Section 89(1) of the Environmental Protection Act 1990 (EPA): there is a duty on specified authorities and persons to ensure that their land is, so far as practicable, kept clear of litter and refuse.
Section 91(1) of the EPA: members of the public may take legal action to have litter removed from certain kinds of public areas.
Section 91(6) of the EPA: if the magistrates are satisfied that the complaint under section 91(1) is made out, they may make a litter abatement order.
Section 91(9) of the EPA: failure to comply, without reasonable excuse, with a section 91(6) notice is an offence.
Maximum penalty: £2,500 and 1/20 of the fine daily thereafter.

Facts of the case
Mr Jones (J) took his council to court for not carrying out its duty of keeping his street clean. J told the Magistrates Court that a pathway was badly littered.

J produced photographs of the litter and called two witnesses to confirm that the photographs were an accurate representation of the state of the footpath. The council employees and the council contractors for street cleaning said the area had been cleaned but they had no record of when this was done. The contract supervisor said that he had checked the work by driving along next to the pathway at about 25 mph. The council solicitor argued that the council had complied with the EPA by asking its contractors to carry out the work and said they couldn’t really do anything else to keep it clean.

The council had no convincing evidence that the cleaning had taken place and the court issued a litter abatement order under section 91(6) of the EPA against the council. The council then had 14 days in which to clean 300 metres of pathway on the east side of the road. 14 days later the pathway had not been cleared of the litter. The matter was referred back to court and the council found guilty.

Mr Jones said that the order only requires the council to do what the law requires it to do anyway.
Assessing seriousness

- The Council are well aware of their duties to keep the pathway free of litter.
- The Council ignored the litter abatement order issued by the court which illustrated a lack of co-operation.
- The loss of amenity value is a considerable social impact.
- Litter also attracts rats. Encouraging rats can lead to a rat problem in the neighbourhood. Rats contaminate food and cause extensive damage to buildings and equipment in warehouses, granaries, restaurants, bakeries and anywhere food is handled or stored. Rats will gnaw through wood and enlarge masonry openings to gain entrance into buildings. In the construction of their nests, rats destroy all types of materials and can cause fires by chewing through insulation cables.
- Rats are a serious hazard to public health. Aside from contaminating food with their droppings and urine, fleas from rats were responsible for spreading the bubonic plague. Today, such diseases as salmonella (food poisoning), leptospira (jaundice), and typhus are commonly spread by rats. Rat urine is also responsible for transmitting Weil’s disease. Because of their unsanitary habits, secondary infections from rat bites can be serious and sometimes fatal.

Question
What is the most appropriate sentence for the council?
15.10 Producer responsibility for packaging

Legislation
Regulation 3(5) of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (PROR): a producer has, in respect of any year, obligations to take reasonable steps to recover and recycle packaging waste and furnish a certificate of compliance. He must be registered and, in the case of a seller of goods, he must inform the consumer(s) of his goods about his recycling provisions.
Regulation 34(1) of PROR: it is an offence to contravene regulation 3(5).
*Maximum penalty:* £5,000 fine on summary conviction, unlimited fine on indictment.

Facts of the case
The Environment Agency (EA) is responsible for ensuring compliance with the PROR. As part of its compliance monitoring programme it identified a company, Seasonal Plc (SP), which did not appear to be in compliance. The EA attempted to make contact with the SP but no response was received.

The EA issued SP with a notice under Regulation 25 of the PRO Regs requiring that SP provide information and asking:

- What business activities did SP conduct?
- What was SP’s turnover for the previous year?
- What tonnage of packaging and packaging waste did SP handle for the previous calendar year?

SP replied:

- It was the packer and wholesaler of Easter eggs and other seasonal goods
- Its turnover for the year 2001 exceeded £5 million.
- It handled well in excess of 200 tonnes of packaging waste the previous year.

Any business handling more than 50 tonnes of packaging and with a financial turnover of more than £2 million in a year will be obligated if it performs one or more of the following activities: manufacturing raw materials for packaging; converting materials into packaging; filling packaging; selling packaging to the final user; importing packaging or packaging materials into the UK.
A formal interview was conducted. During the interview it became apparent that:

1. SP performed a relevant activity ie, it was a packer/filler using packaging for the purposes of the Regulations.
2. SP satisfied both threshold tests ie, it produced more than 50 tonnes of packaging per annum and had an annual turnover exceeding £2 million and had done so since the Regulations came into force in 1997.
3. That SP was aware of its liability but deliberately chose not to fulfil its obligations in order to save money which could be spent on upgrading plant.
4. That SP had, for the current year, joined a compliance scheme and was satisfying its obligations for the present year, 2002.

SP later appeared in court, charged and found guilty of the following offences:


Consideration of data submitted by SP suggested that it avoided compliance costs of around £18,000 each year from 1998 to 2001, a total of £72,000.

**Assessing seriousness**

- SP knew of the Regulations and deliberately chose not to comply
- SP only came to the attention of the EA as a result of enquiries; it did not voluntarily step forward.
- A cost totalling £72,000 was avoided from 1998 to 2001.
- SP had advantageous commercial standards to other companies who were complying with the regulation. Complying with the regulation ensures a level playing field throughout the European Union.
- It is essential that firms comply with regulations as non-compliance means that the problem of the increase in waste and its disposal/recycling cannot be contained or reduced. The environmental benefits of reducing waste include the reduction in use of natural resources and indirectly mitigating climate change by a reduction in greenhouse gas emissions generated in using up those natural resources.
- There was no acknowledgement of the EA effort to contact SP until the notice was served.
Sentencing criteria

- The produced accounts indicated a turnover of £5 million and pre-tax profits of £500,000.
- Avoidance costs of £72,000.

Questions

1. What is the most appropriate sentence for SP?
2. How would the court approach this case, had the company come forward voluntarily?
15.11 Fly-posting

Legislation
Section 224(3) of the Town & Country Planning Act 1990 (TCPA): if any person displays an advertisement in contravention of any regulations made under section 220 of the TCPA to restrict the display of advertisements he shall be guilty of an offence. *Maximum penalty: £1,000 on summary conviction.*
For continuing offences - 1/10 of the maximum penalty for each day the offence continues after conviction.

Facts of the Case
A City Council’s Environmental Services officers (ESOs) carried out routine inspections of their areas for evidence of environmental offences including fly-posting.
During one inspection in the city centre officers noticed that two large posters measuring approximately 1.2 metres by 0.8 metres were pasted to upright columns along the main ring road.

The ESOs took photographs of the posters and then removed them. A Section 9 statement was sent to the Council’s Planning Team with the photographs in order to prosecute the licensee of the premises (L) mentioned on the poster. Following trial, L was found guilty by the District Judge.

When sentencing the Judge stated that:
“I cannot believe that you did not know fly-posting was illegal, you must have had your head in the sand for the last 10 years … as the licence holder you are responsible and intended your large night-club to benefit…. It is important that cases of this nature are prosecuted by the LA. … [This city] is short-listed for Capital of Culture and it is important that it is kept as clean as possible.”
Assessing seriousness

- Distraction for motorists travelling into the city.
- Avoidance of paying for legal advertising.
- Creates a litter problem, which the local authority then has to clean up.
- Detrimental effect to the appearance of the City.
- Fly-posting can create the effect of a run-down area which may indirectly increase the potential for crime such as vandalism and graffiti.

Sentencing criteria

Cost avoidance of paying for legal advertising.

The level of the fine should reflect the economic gain of the business and the cost to the local authority of removing the posters.

Question

What is the most appropriate sentence for L?
Most concerns about water pollution relate to contamination of inland and coastal waters. Pollutants include: toxic materials such as pesticides and nitrates; solid wastes and sewage which cause deoxygenation (arising from farm waste and sewage); tipping of rubbish and other material that prevents water flow and often creates an eyesore; and nutrient enrichment such as fertilisers which encourage algae and plant growth.

It has recently been noted that, in general, the rivers of England and Wales are the cleanest that they have been since before the Industrial Revolution. However, water pollution continues to be one of the most common forms of pollution subject to court proceedings. The Environment Agency in England and Wales are the public bodies responsible for dealing with water pollution and prosecuting offenders. The main legislation is the Water Resources Act 1991.
16.1 Human sewage

Legislation
Section 85(1) of the Water Resources Act 1991 (WRA): a person who knowingly permits or causes any polluting matter or solid waste to enter any controlled water shall be guilty of an offence.
Section 85(2) of the WRA: a person who causes or knowingly permits any matter other than trade effluent or sewage effluent to controlled water shall be guilty of an offence.
Maximum Penalty: section 85(6) of the WRA: £20,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Facts of the case
In August, a water company (WC) informed the Environment Agency (EA) that it had had an incident at a pumping station. EA officers carried out bathing water sampling of beaches at 2 locations on the coast. The samples were passed to the public health laboratory and it was discovered that both samples were above the threshold levels set for bathing water beaches. The standards were breached to a significant degree with one exceeding the faecal coliform limit of 2000 per 100ml litres by more than 17 times. The total coliform limit of 10,000 per 100ml was also exceeded by 3.5 times.

An expert biologist considering the results concluded that they could only have been caused by a large discharge of human sewage. WC confirmed that there had been a malfunction at a pumping station that had caused sewage to back up and then overflow into the sea. They stated that the fault that had not been reported by its telemetry alarm but that the fault had now been rectified.

WC was formally interviewed the following month. They confirmed what they had said initially, that there had been a discharge from the storm sewage overflow, which is adjacent to the pumping station, and that there had been a mechanical fault on the screen in the storm tunnel. The company received an alarm in its control centre to say that the overflow was in operation. However, there had been no telemetry alarm for the screen failure (which should have prevented the sewage from travelling down the tunnel) as the motor was inoperable. The company had concluded that the overflow had come into operation due to a blockage. The failure of the screen in the overflow tunnel however
was not a connected fault. Records revealed that the storm sewage overflow and the consequent discharge of raw human sewage from the screen were in operation for about 5 hours. WC had informed the EA as soon as it discovered the fault. WC was subsequently charged for causing polluting matter, namely raw sewage, to enter coastal waters of the North Sea contrary to Section 85(1) and (6) of the WRA. WC pleaded guilty at the first opportunity. WC had been prosecuted on 3 previous occasions for escapes of polluting matter into controlled waters but not previously at this site.

Assessing seriousness

- This was a serious discharge onto publicly used bathing beaches. It was at the height of the summer and undoubtedly health risks had been caused; there were higher than normal reports of incidents to local GPs of stomach upsets caused to children over the following week. Additionally, warning signs had to be replaced along the beach and the public warned off it for the following months until sampling indicated it to be back to normal.
- If the telemetry had not been checked on a regular basis and found to be satisfactory this would indicate a serious management failure although better equipment could have been used which would have cost WC around £10,000.
- WC had been prosecuted on 3 previous occasions for escapes of polluting matter into controlled waters, receiving fines of £7,000, £10,000, and £12,000.
- As soon as WC became aware of the problem they informed the EA and initiated a clean up exercise on the beach and in the coastal waters as far as they could. This involved using contract labour over several days to clean the foreshore at low tide over a distance of a mile. It cost them in the region of £20,000. The telemetry failure was also rectified immediately.
- Timely guilty plea by WC.

Sentencing criteria

The fine should be large enough to make the company aware of its responsibilities when being in control of such potentially polluting material.

Questions

1. What is the most appropriate sentence for WC?
2. Should the matter be referred to the Crown Court for sentencing/trial?
16.2 Pollution in surface drains

Legislation

Section 85(1) of the Water Resources Act 1991 (WRA): a person who knowingly permits or causes any polluting matter or solid waste to enter any controlled water shall be guilty of an offence.

Section 85(2) of the WRA: a person who causes or knowingly permits any matter other than trade effluent or sewage effluent to controlled water shall be guilty of an offence.

Maximum Penalty: section 85(6) of the WRA: £20,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Facts of the case

A large manufacturing company, Blue Chip (BC) had consent to discharge its waste liquids to the sewer. The discharge however, had to be carefully controlled and care taken that, as the discharges were potentially highly acidic, proper dilution was carried out first. However, a newly appointed employee made a mistake. He had undergone only a short training course and had allowed a build up of polluted liquid. This backed up to an extent that it overflowed through a manhole cover. It then found its way to a surface drain and from there into a stream and small river.

Due to its nature, the liquid had a devastating effect on the fish and invertebrates in the river over a 5 mile stretch. The escape was only discovered after several hours, as the telemetry at the discharge point was also faulty. Once discovered BC acted quickly and a boom was put in place. Tankers were hired to try and remove the polluting flow. Unfortunately, this failed to prevent the polluted water reaching an outflow point operated by a local water company supplying water to a nearby town. That outlet had to be closed for several hours until there was no risk of contamination to households. This led to loss of revenue for the water company.

Following enquiries, the Director in charge of Environmental Affairs at BC was interviewed and BC admitted the errors that were made. They offered to re-stock the stream when possible. BC had two previous convictions in the last 5 years for having caused unauthorised escapes into controlled waters but nothing on this scale. They were fined £5,000 and £7,000 for the previous incidents.
BC pleaded guilty of causing trade effluent to enter controlled waters contrary to section 85 under WRA.

Assessing seriousness

- The extent of the environmental impact on the fish population: it is predicted by the EA that it will take over twelve months for the river’s ecosystem to recover.
- The financial cost to the water company providing water to households: fortunately though the polluted water that reached the outflow point used by the local water company was sufficiently diluted to not cause any complaints or health problems to its users.
- The extent of culpability in not providing proper training to an employee engaged in such an important task: a training course of the appropriate standard would have cost in the region of £1,000.
- A failure to routinely check the operating efficiency of the telemetry in place. This would have revealed the fault. The equipment was not ‘state of the art’, If replaced it would have cost the company around £10,000.
- The effort put in to remediate once the fault was identified.
- BC had spent £20,000 restocking and restoring the stretch of river involved so far as possible.

Sentencing criteria

The fine must be large enough to make BC and its shareholders aware of its obligations: the company produced its last year’s accounts, which showed a profit of £30 million.

Questions

1. What is the most appropriate sentence for BC?
2. Should the matter be referred to the Crown Court for sentencing/trial?
16.3 Sheep dip contamination

Legislation

Section 85(1) of the Water Resources Act 1991 (WRA): a person who knowingly permits or causes any polluting matter or solid waste to enter any controlled water shall be guilty of an offence.

Section 85(2) of the WRA: a person who causes or knowingly permits any matter other than trade effluent or sewage effluent to controlled water shall be guilty of an offence.

Maximum Penalty: section 85(6) of the WRA: £20,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Facts of the case

In October, Environment Agency (EA) biologists were carrying out an investigation into the cause of pollution in a river which had killed fish. The source of the pollution was eventually traced to the farm of Mr McDonald (M) where he was seen in the process of dipping sheep. A film of liquid was noticed running from the dipping site across a road and towards a tributary stream. That tributary was then traced to a river.

An analysis of samples taken from the tributary and from the dipping trough itself confirmed that flumethran; a commonly used sheep dip had entered the watercourse from the trough. The biological quality of the watercourse upstream of the farm was good whereas downstream it was very poor and there were high levels of flumethran at the source of pollution.

On formal interview M agreed that the overflow from the sheep dip had escaped into the river but said that he had put up a temporary barrier to prevent it occurring once he became aware of the problem.

Dozens of fish were killed and the micro invertebrate population of the stream for approximately 200 yards had been seriously affected. It was anticipated by the EA that the river and its ecosystem would fully recover in around 18 months. In the meantime however, a local angling club, which used that stretch of the river, would be unable to do so. Warning signs would also have to be placed along the bank of the river and the stream, warning people not to paddle or use that stretch of watercourse.
M pleaded guilty to one offence of causing polluting matter, namely sheep dip, to enter controlled waters contrary to section 85(1) of the WRA.

Assessing seriousness

- The environmental impact on the watercourse was not insignificant.
- This was a careless operation where the farmer should have been aware of the hazards of the operation.
- Equipment was available to surround the dipping trough which would have prevented an escape. This would have cost in the region of £5,000. For a more permanent solution the trough would have to be relocated and consequently re-dug and protected costing around £20,000.
- An effort was made to prevent pollution once aware of it but this was not fully successful.
- There was no indication of this being anything other than an isolated occurrence.

Sentencing criteria

- The costs that were avoided should be reflected in the level of the fine.
- The level of fine should reflect the cost of clean up and the warning signs that will be needed for that stretch of the river.

Questions

1. What is the most appropriate sentence for M?
2. Should the matter be referred to the Crown Court for sentencing/trial?
17 Wildlife and nature conservation

Nature conservation includes the preservation of flora and fauna ie, all members of the plant kingdom including mosses, phytoplankton, lichen and fungi as well as all birds, mammals, fish and insects. It also considers the habitats of these various species. The Oxford Dictionary of English defines nature as ‘the phenomena of the physical world collectively, including plants, animals, the landscape, and other features and products of the earth, as opposed to humans or human creations’.

The intricate network of ecosystems, habitats and species comprising biodiversity provides the support systems that sustain human existence. It provides many of the essentials of life - our oxygen, water, food, clothing, health and relaxation. The value of biodiversity extends from the spiritual benefits to be gained from contact with nature, to the economic potential of wild species for new sources of food or medicines. This includes the potential for new products being produced through advances in biotechnology.

In recent years, the public has become increasingly aware of the importance of preventing further loss of wildlife and preserving our remaining biodiversity. After habitat destruction, illegal trade and conservation offences are among the most significant dangers faced by endangered species.

High financial rewards and low risk of detection can create an incentive to commit these crimes, and so there arises a need to use the range of appropriate penalties by way of counterbalance. Wildlife trade offenders have been shown to be involved in other types of crime and to be involved in organised networks as well as on an independent basis.

The Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) bans international trade in endangered species and regulates trade in species that could become endangered by trade and is implemented through European and domestic legislation. European Council Regulation 338/97 (as amended) on the protection of species of wild fauna and flora incorporates all of the provisions of CITES as well as additional stricter measures concerning European species and stricter import, housing, and transport conditions for live specimens; this has been transposed into the UK by the Customs and Excise Management Act 1979 (CEMA) and the Control of
Trade in Endangered Species (Enforcement) Regulations 1997 (COTES). Species native to the UK are protected under the Wildlife and Countryside Act 1981 (WCA). This was amended under the Countryside and Rights of Way Act 2000 (CRoW) specifically making some offences under the WCA arrestable.

Detailed guidance on sentencing for wildlife trade and conservation offences prepared for the Magistrates’ Association can be found in Section 20.
17.1 Bird dealers

Legislation
Section 6(1) of the Wildlife and Countryside Act 1981 (WCA) as amended by Schedule 12 of the Wildlife and Countryside Act 2000: any person who sells birds other than a bird included in Part 1 of Schedule 3 of the WCA shall be guilty of an offence.

Maximum penalty: Section 21(1) of the WCA: £5,000 and/or imprisonment for a term not exceeding 6 months on summary conviction.

Each specimen can be treated as if it were the subject of a separate offence.

Facts of the case
Mr Twill (T), a well-known bird-breeder and dealer, was known to be selling large numbers of finches. He was importing a large number of consignments, principally from Hungary, and had been doing so for a number of years, to supply demand. Most of the species he sold were listed in Part 1 of Schedule 3 to the WCA, which allowed them to be sold alive without the need for a specific licence under section 6(1) of the WCA provided they were ringed and had been bred in captivity.

A police investigation found that the imported birds were not in good health and that in each consignment, a number of birds had died in transit. There was also strong evidence that the finches were being fitted with oversized rings and openly advertised and sold throughout the UK.

Closed rings can only be fitted to birds at an early infant stage. With small British finches, rings would need to be applied to the baby bird at between five and seven days old. With larger birds, the rings may be fitted up to two weeks of age, after which the ankle joint becomes too large for the correct sized ring to pass on or off. The rings are designed to fit in such a way as to be able to freely rotate without undue slack. Therefore an oversized ring, capable of being fitted to an adult bird becomes obvious once a small degree of experience has been obtained. The oversized rings fitted in this case suggest they were fitted when the bird was older and therefore not bred in captivity. The finches sold for between £80 and £180 a pair and, over the years, the shipments would have been worth £10,000s.
T was charged and found guilty of selling species listed in Part 1 of Schedule 3 to the WCA that had not been bred in captivity. It was clear that he knew that his activities were illegal and contrary to legislation but that he had persisted with them for financial gain. T had no previous convictions.

**Assessing seriousness**
- Deliberate breach of the law
- Economic gain: profited by £10,000s
- Cruelty

**Sentencing criteria**
The type of sentence should reflect the profits made.

**Questions**
1. What is the most appropriate sentence for T?
2. Can the case be referred to Crown Court for sentencing?
17.2 Birds of prey: captive breeding

Legislation
Sections 1(2) and 7(1) of the Wildlife and Countryside Act 1981 (WCA): taking, keeping and possessing wild-caught birds is an offence.
Section 6(1)(a) of the WCA as amended by the Countryside and Rights of Way Act 2000 (CRoW): any person that sells any live wild bird other than a bird included in Part 1 of Schedule 3 of the WCA, or an egg of a wild bird (whether whole or in part) shall be guilty of an offence.
Section 6(1)(b) of the WCA as amended by CRoW: publishing or causing to be published adverts that are likely to be understood as conveying an intention to buy or to sell any birds not included in Part 1 of Schedule 3 is an offence.
*Maximum penalty:* Section 21(1) of the WCA as amended by CRoW: £5,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction.
Section 21(5) of the WCA as amended by CRoW: where an offence under sections 1 to 13 or 17 is committed in respect of more than one bird, next, egg, other animal, plant or other thing the total fine shall be calculated as if each offence was committed separately.

Section 15 of the Theft Act 1968 (TA): a person who by any deception dishonestly obtains property belonging to another with the intention of permanently depriving the other of it, shall on conviction on indictment be liable to imprisonment for a term not exceeding 10 years.
*Maximum penalty:* 10 years imprisonment on indictment.

Facts of the case
Mr Nother (N), a well-known birds of prey dealer, was selling comparatively large numbers of captive-bred peregrine falcon chicks. His alleged captive-breeding success rate appeared to exceed what was biologically possible given the number of adult birds in his possession (specimens of these species are required to be registered with DEFRA under section 7 and Schedule 4 of the WCA).

Police officers were suspicious that he was taking chicks from the wild and laundering them for profit onto the captive-bred market.
Police officers searched N’s premises, where they found 14 young peregrine falcons. 6 more juvenile peregrine falcons had been sold and were also traced and seized. The Police organised a series of DNA tests, which showed that the seized birds had probably originated from 5 or 6 different parents; the dealer had only 4 birds available for breeding.

N tried to frustrate the investigation and prosecuting authorities by trapping 2 birds from the wild and claiming that they were the parent birds, having originally claimed that the parents had been stolen.

N was charged and found guilty of:

- Selling and offering to sell specimens listed on Annex A of EU Regulation 338/97 on the protection of species of wild fauna and flora by regulating trade therein, contrary to the provisions of Regulation 8 of the Control of Trade in Endangered Species (Enforcement) Regulations 1997. The EU Regulation lists species of conservation concern in 1 of 4 Annexes depending on how endangered the species is. Species listed in Annex A are critically endangered and normally banned from trade, and cannot be sold unless an Article 10 certificate (of exemption) has been issued.
- Criminal deception under section 15 of the TA because he deceived the purchasers into buying the birds claiming they had been bred in captivity.
- Possessing and selling wild-caught birds under sections 1 and 7 of the WCA.

N had a history of previous offences including convictions under the WCA for the illegal possession of 2 wild peregrine falcons and for publishing advertisements to sell wild birds of prey.

Peregrine falcon chicks can sell for up to £700 each, and N made £1,000s from his illegal activities. He used considerable deception in order to obtain and sell the birds, and went to great lengths to take eggs and chicks from nests in the wild, in some cases preventing pairs of birds from rearing any young at all in one or more breeding seasons. This had a consequential effect on local populations of the species as well as having a potentially negative effect on the conservation status of a species already listed in European Regulations and international treaties for this reason.
Assessing seriousness

- Profiting by £1,000s.
- Deliberate breach of the law. N was well aware that he was breaking the law. Considerable deception in order to obtain and sell the birds, and went to great lengths to take chicks and eggs from nests in the wild.
- Lack of co-operation: N tried to mislead the Police.
- Preventing these birds from rearing any young at all in one or more breeding seasons could have a serious impact on local populations of the species. This could have a consequent knock-on effect for the subspecies as a whole and the balance of the ecosystem.
- Negative effect on the conservation status of the species already listed as critically endangered in European Regulations and International Treaties. Could potentially lead to extinction and therefore the irretrievable loss of a species.
- Re-offender of related offences.

Sentencing Criteria

The level of the fine should reflect the gain in monetary terms from the crime.

Questions

1. What is the most appropriate sentence for N?
2. Should the case be referred to Crown Court for sentencing?
17.3 Geese shooting

Legislation
Sections 1(2) and 7(1) of the Wildlife and Countryside Act 1981 (WCA): taking, keeping and possessing wild-caught birds is an offence.
Section 5(1)(d) of the Wildlife and Countryside Act 1981 (WCA): using a sound recording device for the purpose of killing or taking geese is an offence.
Section 18(2) of the WCA: being in possession of items which could be used to commit an offence under the Act is an offence, punishable in like manner as for the said offence.
Maximum penalty: Section 21(1) of the WCA as amended by CRoW: £5,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction.

Facts of the case
Mr Bloggs (B), from Malta, was enjoying a shooting holiday in the UK. He used a tape player of geese sounds as a decoy, something prohibited under the WCA. This activity was close to a goose-shooting party and B did not realise that the party could hear his tape of goose calls. Members of the party contacted their goose guide. The party took possession of the tape player and contacted the police. B admitted to police officers that it was his tape recorder and that he had been using it.

B was charged with using a sound recording device for the purpose of killing or taking geese contrary to section 5(1)(d) of the WCA. He was also charged with being in possession of items (tape player and tape) which could be used to commit an offence under the WCA, contrary to section 18(2). B entered a guilty plea and claimed in mitigation that he did not realise that using the recording was an offence and that he had used it in Malta without being questioned. During the hearing he was found to have misled the court and was well aware that it is illegal to use decoy geese or ducks in other countries, including Malta.

Assessing seriousness
- B misled the court by claiming he didn’t know that using a decoy was illegal.
- Deliberate breach of the law for personal enjoyment.

Question
What is the most appropriate sentence for B?
17.4 Herbal medicines

Legislation
Regulation 8(1) of the Control of Trade in Endangered Species (Enforcement) Regulations SI 1997 No.1372 (COTES): selling and offering for sale specimens in Annex A without an Article 10 certificate.

Maximum penalty: Regulation 8(8) COTES: £5,000 fine and/or 3 months imprisonment on summary conviction, unlimited fine and 2 years imprisonment on indictment.

Facts of the case
Mr Shooze (S), a local chemist in a London Chinese community, was known to be selling herbal medicines and preparations quite legitimately alongside the more typical goods usually found in chemist outlets.

Following a tip-off, police had reason to believe that some of the goods being sold either contained, or claimed to contain, wildlife species’ derivatives such as tiger, rhinoceros and bear. These species have been used in traditional medicines for thousands of years and are dispensed in the form of wines, tonics, pills and plasters.

A number of these species are listed in Annex A to Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein. The Regulation lists species of conservation concern in 1 of 4 annexes, depending on the extent to which they are endangered. Species of greatest concern are listed in Annex A: they are critically endangered and are normally banned from trade. Annex A specimens are also prohibited from being sold or purchased in EU countries, unless an exemption certificate has been issued.

Police officers searched S’s home and business premises and a number of wildlife derivatives were found, including unprocessed rhinoceros horn and tiger bone and bear gall bladders in a refrigerator. S cooperated fully with the Police.

S was subsequently charged with selling and offering for sale specimens, without an Article 10 certificate under Regulation 8(1) of the Control of Trade in Endangered Species (Enforcement) Regulations 1997. He entered a guilty plea.
Assessing seriousness

*The Importance of Biodiversity:* The intricate network of ecosystems, habitats and species comprising biodiversity provides the support systems that sustain human existence. It provides many of the essentials of life - our oxygen, water, food, clothing, health and relaxation. The value of biodiversity extends from the spiritual benefits to be gained from contact with nature, to the economic potential of wild species for new sources of food or medicines. This includes the potential for new products being produced through advances in biotechnology.

- S made profit from the sales of the medicine. For an idea of the revenue, tiger bone can sell for as much as £1,100 each.
- Trading in species from Annex A. These are critically endangered and the loss of each species can seriously effect the local and global population. This will also have a knock-on effect on subspecies.
- Long term impacts: loss can lead to an unsustainable population which in turn will lead to extinction; the irretrievable loss of a species.
- Even though S had no previous convictions: the law-breaking had been going on for sometime.
- In mitigation S co-operated with the police and entered a timely plea of guilt.

**Sentencing criteria**

The polluter should pay: the environmental, social and economic cost includes the potential loss of biodiversity

S was profiting from the crime and this should be reflected in the level of the sentence.

**Question**

What is the most appropriate sentence for S?
17.5 Illegal trade in birds

Legislation
Regulation 8(1) of the Control of Trade in Endangered Species (Enforcement) Regulations SI 1997 No.1372 (COTES): selling and offering for sale specimens in Annex A without an Article 10 certificate.

Maximum penalty: Regulation 8(8) COTES: £5,000 fine and/or 3 months imprisonment on summary conviction, unlimited fine and 2 years imprisonment on indictment.

Section 170(1) of the Customs and Excise Management Act 1979 (CEMA): It is an offence for any person in any way to knowingly be concerned in the fraudulent carrying, removing, concealing or in any manner fraudulently dealing with goods which are subject to prohibition/restriction on importation/exportation under or by virtue of any enactment.

Maximum penalty: the prescribed sum or 3 times the value of the goods, whichever is the greater and/or imprisonment for 6 months on summary conviction, unlimited fine and/or imprisonment for 7 years on indictment.

Facts of the case
Mr Brown (B) and Mr Jones (J) arrived at Heathrow airport from Thailand. They were stopped by Customs officers and found to have 23 birds of prey concealed in tubes in their luggage, 7 had died during the journey and the others were in poor health.

Neither B nor J had obtained export permits allowing them to remove the birds from Thailand, or import permits for the UK. Virtually all species of birds of prey are given protection by Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein. The Regulation lists species of conservation concern in 1 of 4 annexes, depending on the extent to which they are endangered. Birds of prey are listed in Annex A, for species of greatest concern, and are normally banned from international trade, save in exceptional circumstances and only when both exporting and importing countries have given permission through issuing permits.

Customs officers decided to arrest B and J for illegally importing specimens prohibited or restricted by other enactments under section 170 of CEMA. Customs officers then carried out a search of both B and J’s premises, with no assistance or cooperation from
the two men. They found a number of live animals and birds of suspect origin, together
with tubes and specially adapted luggage, which suggested that the same method had
been used to illegally import wildlife before.

A Golden Cheeked Gibbon was also found on the premises. The species is listed in
Annex A to the European Regulation and expert advice suggests that only about 1,500
of this subspecies are surviving in the wild. There was a real risk that the loss of this
specimen could have a serious impact on its native local population and its
sustainability and breeding potential, with a consequent knock-on for the subspecies as
a whole. The long-term effect of the trade may be the extinction of the subspecies
concerned. This irretrievable loss and reduction of global biodiversity is impossible to
quantify in financial terms.

Other paper work found on the premises provided evidence that wildlife specimens had
been obtained to fulfil orders, and that they involved a chain of people from the original
trapper through to the point of sale. The papers also showed the amount of money that
had changed hands at each stage, and gave an indication of the levels of deception and
organisation that had taken place to ensure that the activities had gone undetected.

J was prepared to sell the Gibbon for £1,500. However experts declined to give a ‘black
market’ value for the specimen because of its critically endangered status. The birds of
prey were being offered for sale for anything between £1,000 and £1,500 depending on
the species and the state of health of the specimens concerned. Although difficult to
quantify, it was believed that over the years, Mr Jones and Mr Brown had profited by
£10,000s.

Charges of the illegal import of the birds of prey were brought CEMA and the illegal
sale and offering for sale of species listed in Annex A to the EU Regulation, contrary to
the provisions of Regulation 8 of COTES. B and J were found guilty.

Assessing seriousness

*The Importance of Biodiversity.* The intricate network of ecosystems, habitats and
species comprising biodiversity provides the support systems that sustain human
existence. It provides many of the essentials of life - our oxygen, water, food, clothing,
health and relaxation. The value of biodiversity extends from the spiritual benefits to be
gained from contact with nature, to the economic potential of wild species for new sources of food or medicines. This includes the potential for new products being produced through advances in biotechnology.

- Death of endangered species
- Nature of smuggling – cruelty
- Lack of co-operation from both defendants
- Disrupt and abuse of legal system. Repeat offender – evidence showed that Mr Brown and Mr Jones had broken the law at least once before
- Golden Cheeked Gibbon found. Loss of this specimen could lead to serious impact on the local population and breeding potential since experts suggest 1,500 left in the wild. This can also have a consequent knock on effect for subspecies as a whole.
- The long term effect may be extinction. Irretrievable loss of biodiversity is impossible to quantify in financial terms.
- Economic gain: profit making - orders and papers showed that B and J had made £10,000s.

**Sentencing criteria**

- The level of the fine should reflect the economic gain from the crime.
- Polluter Pays Principle – there is an economic, social and environment cost that should be reflected in the level of the fine.

**Questions**

1. What is the most appropriate sentence for both B and J?
2. Should the case be referred to Crown Court for either trial or sentencing?
17.6 Illegal trade in reptiles

Legislation
Regulation 8(2) of the COTES: It is an offence for any person to purchase, acquire, sell, or keep for commercial purposes any specimen of species listed in Annex B to the Council Regulation (EC) No 338/97.
Regulation 8(4) of the COTES: Lack of knowledge, at the time of the commission of the alleged offence, of the fact that the relevant specimen was that which is listed in Annex A or B to the Council Regulation (EC) No 338/97 is a defence.

Section 170(1) of the Customs and Excise Management Act 1979 (CEMA): It is an offence for any person in any way to knowingly be concerned in the fraudulent carrying, removing, concealing or in any manner fraudulently dealing with goods which are subject to prohibition/restriction on importation/exportation under or by virtue of any enactment.
Maximum penalty: the prescribed sum or 3 times the value of the goods, whichever is the greater and/or imprisonment for 6 months on summary conviction, unlimited fine and/or imprisonment for 7 years on indictment.

Facts of the case
Mr Smith (S) arrived at Gatwick Airport from the USA. He was stopped and challenged as he walked through the ‘Nothing to Declare’ channel because his rucksack appeared to be moving. His rucksack was searched and live reptiles of species listed in Annex B to Council Regulation (EC) No 338/97 were discovered.

The Regulation lists species of conservation concern in one of four annexes, depending on the extent to which they are endangered. Species are listed in Annex B because there are serious, science-based, concerns about their conservation status, and trade in them is regulated by a system of permits to ensure that population levels can be kept under review.
S was unable to present import permits allowing the specimens to be brought into the UK, and had no evidence that the reptiles had been legally taken from the wild in their country of origin, or any other evidence of their legal status. Customs officers seized the specimens which were prohibited or restricted by other enactments under section 170 of CEMA.

S’s house was later searched with his full cooperation. Several other Annex B species, which had also been illegally imported, were found. He explained that his visits to the USA were infrequent, and that he took the opportunity to bring back specimens from time to time to supplement his own personal collection. He had no plans to sell the specimens or any offspring that they might produce, and he claimed that he was unaware that the specimens were protected.

12 Annex B specimens were seized under section 49(1)(b) of CEMA, and 6 charges relating to import offences under section 170 of the CEMA were brought against S.

Assessing seriousness

The Importance of Biodiversity. The intricate network of ecosystems, habitats and species comprising biodiversity provides the support systems that sustain human existence. It provides many of the essentials of life - our oxygen, water, food, clothing, health and relaxation. The value of biodiversity extends from the spiritual benefits to be gained from contact with nature, to the economic potential of wild species for new sources of food or medicines. This includes the potential for new products being produced through advances in biotechnology.

- Threatened species. Species are placed on Annex B because there are serious science based concerns about their conservation status and trade in them is therefore regulated.
- The nature of the smuggling aggravates the crime.
- This is a deliberate breach of the law for personal benefit.
- S claimed he had no plans to sell the specimens or any offspring that they might produce and that they were for his own personal collection. He also claimed that he was unaware that the specimens were protected.
- In mitigation, S did fully co-operate with the investigating officers.
Sentencing criteria
Polluter Pays Principle: the cost of loss of biodiversity should be reflected in the level of the fine.

Question
What is the most appropriate sentence for S?
17.7 Illegal trade: taxidermy

Legislation
Section 1 of the Forgery and Counterfeiting Act 1981 (FCA): a person is guilty of forgery if he makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine.

*Maximum penalty*: £5,000 fine and/or imprisonment for a term not exceeding 6 months on summary conviction, 10 years imprisonment on indictment.

Regulation 8(1) of the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES): a person who sells or offers for sale any specimen of a species listed in Annex A of Council Regulation 338/97 shall be guilty of an offence.

*Maximum penalty*: Regulation 8(8) of COTES £5,000 fine and/or imprisonment for a term not exceeding 3 months on summary conviction, an unlimited fine and/or imprisonment for a term not exceeding 2 years on indictment.

Facts of the case
Mr Stevens (S) was the owner of a taxidermy shop in London. Following a report by a member of the public, the police had reason to believe that some of the taxidermy specimens on sale in the shop were of endangered species. These included tiger, gorilla, chimpanzee and leopard.

A number of these species are listed in Annex A to Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein. The Regulation lists species of conservation concern in 1 of 4 annexes, depending on the extent to which they are endangered by trade. Species of greatest concern are listed in Annex A and are critically endangered and are normally banned from commercial trade. Annex A specimens are also prohibited from being sold or purchased in EU countries, unless an exemption certificate has been issued.

Police officers searched the premises and home of S and found over 100 stuffed specimens including tigers, leopards, elephant tusk and birds of prey. He was subsequently charged with offences under Regulation 8(1) of COTES, for selling and offering for sale specimens on Annex A without an Article 10 certificate. He was also charged with offences of forgery under section 1 of the FCA.
Assessing seriousness

- Biodiversity provides the support systems that sustain human existence. It provides many of the essentials of life – our oxygen, water, food, clothing, health and relaxation. The value of biodiversity extends from the spiritual benefits to be gained from contact with nature, to the economic potential of wild species for new sources of food or medicines. This includes the potential for new products being produced through advances in biotechnology.

- Revenue from the sales of taxidermy specimens. Items sell from £100s to £1,000s per item eg, tiger skin rug can fetch £2,500.

- Trading in species from Annex A. These are critically endangered and the loss of each specimen can seriously effect the local and global populations. This will also have a knock-on effect on sub species.

- Misleading the licensing authorities by submitting forged applications.

- Long term: loss can lead to an unsustainable population, which in turn will lead to extinction and the irretrievable loss of a species.

- In mitigation, he entered a guilty plea and it was argued that there was no evidence that any of the specimens were wild taken and some were antique.

Sentencing criteria

- The polluter should pay: the environmental, social and economic cost is the potential loss of biodiversity and should be reflected in the penalty given.

- S is profiting from the crime and this should be reflected in the level of the sentence.

Question

What is the most appropriate sentence for S?
18 Further information

18.1 Quick reference guide

Each case study covers a range of issues in relation to sentencing. This quick reference guide provides, at a glance, which case studies relate to any given environmental impact or issue. This may assist in deciding which particular case study to cover.

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18.2 Judicial opinions

The following opinions have been provided, on the facts of each case study, by District Judges, who regularly work in the Magistrates Courts. They should only be consulted and discussed after full consideration of the case studies.

**Disclaimer**

The sentences proposed are based on the limited information available. Sentences may require major variation depending on additional facts and in each case will, of course, be sentenced on its individual merits. In particular, there is only limited information on defendants’ means. Where substantial fines are imposed it is essential that detailed and accurate information is obtained. Without that information collection and enforcement becomes increasingly difficult.

5.1 Black smoke
Treat as very serious. Numerous aggravating features set out in assessing seriousness plus repeat offence. Fine £12,000 - £15,000. Early guilty plea would reduce to £8,000 - £10,000 plus £3,000 costs.

5.2 Odour
NB: Triable either way. Add an indictment fine and up to two years imprisonment. This should be treated as very serious aggravating features as set out in assessing the seriousness. Plead not guilty and so no Section 152 early guilty plea credit. Fine £15,000 - £20,000 plus prosecution costs of £4,250. Might even consider committal for sentence to enable greater fine to be imposed.

6.1 Illegal meat imports
One question is whether Mrs Jones was part of a commercial enterprise or was she bringing the meat in for her own consumption? The seriousness will depend upon this. Either way three basic principles are to be borne in mind:
- Offender’s means
- Totality
- Credit for guilty plea.

If commercial: 3 x fines of £350 each plus £400 costs.
If for personal consumption: 3 x fines in the region of £125 plus £400 costs but could be greater depending on offender’s means.
7.1 **Poaching fish 1**
Treat as serious. Previous convictions plus assault on bail aggravates. Means will be all-important plus remember totality principle. If previous for violence consider custody for assault. Otherwise fines in the region of £1,000 plus costs (depending on means) and impose a tagged curfew order for assault on police officer. Confiscate fishing equipment.

7.2 **Poaching fish 2**
Consider means, totality and credit for early guilty plea. Although serious, very limited means. Fine plus costs to total £250 (repayable over a year at £5 per week). Order confiscation of equipment.

7.3 **Unlicensed fishing**

*Scenario 1*
Appears to be genuine oversight, if no previous convictions consider conditional discharge plus order for costs, otherwise small fine dependant on means.

*Scenario 2*
Treat more seriously, means again all-important issue, assume guilty plea so credit to be given. Fines totalling £500 plus order for prosecution costs.

7.4 **False landing declarations**

*DTAL:* Treat as extremely serious. Credit for guilty plea should be given. Company (assuming multiple offences) should produce accounts. Suggest £25,000 fine on each of 4 counts plus prosecution costs and no separate penalty on balance of charges.
However, consider the consequences, be cautious not to impose sentence which would result in closure of business.

*Owners* (same basis) £10,000 on each of four counts plus no separate penalty on balance plus prosecution costs.

*Skippers* (individual means highly relevant) £1000 - £3,000 on each of four counts plus prosecution costs with no separate penalty on balance.

8.1 **GMO Breach of Licence**
Treat as extremely serious. Fine in excess of £20,000 is appropriate because Seed GM Plc is multi-national multi-million pound company. Commit for sentence to the Crown Court.

9.1 **Asbestos**
This is a small company where, the employees having been exposed to danger of serious ill health are now exposed to the risk of redundancy if the company is fined to the point at which it has to cease trading. The company is entitled to credit for pleading guilty and the suggestion that they have been supplied with insufficient information will have to be further explored and tested. Fines and costs in the region of £3,000 will be appropriate, probably imposed on the first offence with no separate penalty on the second.
9.2 Chemical in eyes
This substantial company was operating an unsafe system of work over a lengthy period. The dangers were considerable, the injury serious and the commercial gain in operating this unsafe system considerable. The company is entitled to credit for its guilty plea and for the absence of any previous convictions. A fine of between £10,000 and £12,000 plus costs would be appropriate.

9.3 Timber preservative
In this case, it seems the company was fined a total of £24,000 and ordered to pay costs of £2,500. This is a small company, which initially failed to comply with enforcement notices. Provided the company has no previous convictions and that there is no evidence that the failure to comply did cause environmental damage, the suggested fines might be in the region of £12,000 plus costs.

10.1 Colourless gas charge
This was a company specialising in the handling of hazardous material and there is therefore a high degree of responsibility to reduce the risk of injury and pollution. The offences caused injury and ill health. The company has a good record, took remedial action and pleaded guilty. Fine and costs of £15,000 would seem appropriate.

10.2 Effluent into river
The offences arise out of breach of the conditions of the company’s licence and the defects appear to have been known to the company for many years. A fine of £7,500 for each of the three offences, making a total £22,500 plus costs.

10.3 Escape of acid gas
The escape of gas caused not only environmental damage but ill-health and discomfort to nearby residents. If the previous conviction was within recent years the maximum fine in the Magistrates’ Court is probably insufficient and the case should be committed to the Crown Court.

11.1 Dog Fouling
The suggested penalty upon conviction is £150 plus costs but reduced to £100 plus costs if the plea is guilty. The reason is as stated in the sentencing criteria: dog fouling is unpleasant and a health hazard particularly in an area where children play and there must be substantial increase over the fixed penalty to encourage compliance.

11.2 Breach of Tree Preservation Order
Serious impact upon the environment with a deliberate breach of TPO together with loss of amenity. With a late guilty plea, credit reduced to one fifth rather than one third. Starting point for each offence £3,000, reduce to £2,400 to reflect guilty plea. Credit under section 152: £2,400 x 8 = £19,200 plus £7,500 costs each defendant.
11.3 Planning enforcement
The assessing seriousness paragraph sets out a number of aggravating factors which
mount up to make this a very serious breach. The defendants pleaded not guilty so no
section 152 credit. Borderline for committal for sentence. Substantial economic gains
from non-compliance with planning requirements. Assuming each have been
prosecuted, I would retain sentence and impose fines in the region of £15,000 each and
half share of costs, which are likely to be substantial. If there were any previous similar
convictions, then Crown Court powers would be more appropriate.

12.1 Bees poisoned by spray
Although there are 2 charges there is one piece of conduct and it is suggested that any
penalty should be split equally. Compensation should be considered if it can be
quantified fairly and simply and the total penalty, including compensation, if
ascertainable, should be three times that amount plus costs on a not guilty plea.
However, if there is no information about the means of the farmer and as well as the
principle that the polluter should pay there is the very strong principle that fines and
compensation must be within the capacity of the offender to pay. A total figure of
£2,500 might be a realistic starting point on a guilty plea.

12.2 Conditions of use on pesticides
Here, there are 2 offences but one piece of conduct and the possible consequences are
difficult to assess. Assuming the offender to be of average means, fines totalling up to
£2,250, split equally might be appropriate with costs. On a plea of guilty fines of £1,500
would therefore be appropriate.

13.1 Lost radioactive source
It is difficult to see where the company is to blame. It was entirely the driver’s fault but
the facts remain that it had very serious potential consequences and there were no
company policies in force with regard to the movement of sources from site to site.
There should have been specific instructions even if they were stating the obvious. In
view of the potential danger there must be more than the nominal fine and for a first
offence of this type the suggested amount is £3,750 - £5,000 plus costs on a not guilty
plea, reduce to £2,500 on a prompt guilty plea.

13.2 Radioactivity in the laboratory
There is very strong mitigation in the fact that the company alerted the Environment
Agency and set the prosecution ball rolling. The company has no previous convictions
and there would have been possible discomfort rather than danger to anyone inhaling it.
The incident was a mistake by a temporary member of staff and therefore it may be felt
that there was inadequate supervision but the company acted responsibly once the
mistake occurred. Assuming a guilty plea, a fine of £2,000 plus costs seems appropriate.

13.3 Unregistered cobalt source
This is matter of omission rather than one of commission and the company has no
previous convictions although it had been warned recently of the need for tighter control
of its use of radioactive sources. There is no suggestion of any risk and it is highly
significant that the company later received registration of the fourth source. On a plea of
guilty, a fine of £1,500 plus costs is appropriate.
14.1 Dust
This company failed to accept advice and have breached the abatement notice on a number of occasions. It has a previous conviction in respect of this nuisance. Subject to the company’s financial position, fines of £7,500 and costs would seem appropriate.

14.2 Poor housing
These matters are frequently settled between the parties by securing completion of the remedial work and negotiating substantial sums by way of compensation and costs to the occupiers. If however that cannot be achieved it could be dealt with by way of a fine of approximately £1,000 on first conviction plus compensation and costs.

14.3 Noise
This case requires a significant financial penalty to reflect the seriousness of the failure to comply with the notice. We are not told if the licensee Defendant has any previous convictions, so assume that he has none. Apart from the offer of double glazing and air conditioning for Mrs A, the Defendant appears to have done little to control the level of noise. As a person convicted of breach of an abatement notice is not also liable to a civil action for damages for the same incident, the court will need to consider a compensation order in favour of Mrs A. In all, sentence of £10,000 plus £3,000 compensation plus costs.

15.1 Avoiding trade waste contract
The suggested sentence is a fine of is between £2,000 and £3,000 plus costs.

15.2 Fly-tipping: branches and concrete
The suggested sentence is a Community Service Order plus costs.

15.3 Fly-tipping: children's party waste
The suggested sentence is a fine of £500 plus £200 compensation plus costs.

15.4 Dumping from skips
The suggested sentence is a fine of £1,000 plus compensation of £2,000 plus costs and possible forfeiture of the D's lorry.

15.5 Dumping on farmland
The suggested sentence is a fine of between of £4,000 and £5,000. There should also be an inquiry about compensation.

15.6 Landfill site odours
The suggested sentence is a fine of £10,000 reduced to £6,500 for a guilty plea, plus costs.
15.7 Rubbish and rats in rear garden
The suggested sentence is a fine of £250.

15.8 Scrap in residential area
Compensation may be too difficult to assess in the magistrates court and therefore the suggested sentence is a fine of £200 fine plus £200 costs.

15.9 Litter abatement order
Probably unique on its facts; a litter abatement order is an order of the court and flouting it is a serious matter. However, the Council’s income, out of which a fine will have to be paid, is derived from its ratepayers. A fine of £1,000 and costs coupled with a warning that the Council would be incurring a daily penalty if it does not comply promptly.

15.10 Producer responsibility for packaging
Assuming the total of £72,000 is correct, the company has saved more than the maximum fine on summary conviction and for that reason the case should be sent to the Crown Court for sentence, even if the company had come forward voluntarily. The maximum fines in a Magistrates Court would be £60,000 (12 x £5,000).

15.11 Fly Posting
Blatant breach of the law – pleaded not guilty so no section 152 credit. Appears to be successful business as night club. Punish and deter – fine £750-£1000 plus costs. If no previous convictions fine, £750 plus costs.

16.1 Human sewage
The suggested sentence is £20,000 having given credit for a guilty plea. Alternatively, commit the matter to the Crown Court for sentencing.

16.2 Pollution in surface drains
As with 16.1, the suggested sentence is £20,000 having given credit for a guilty plea. Alternatively, commit the matter to the Crown Court for sentencing.

16.3 Sheep dip contamination
The suggested sentence is a fine of £5,000 plus costs but this is variable depending on means.

17.1 Bird dealer
Treat as serious. Deliberate flouting of law over a prolonged period for high financial gain by professional dealers. Birds have died in transit. At first sight custody might be appropriate. However, previous good character and current views as to use of custodial sentences could lead to court considering as an alternative community sentences such as a community punishment order plus curfew order plus heavy financial penalty plus costs. Order forfeiture of birds (section 21 (6) (a) Wildlife and Countryside Act 1981).
Please note section 21 is the penalty section of the Wildlife and Countryside Act 1981. The offence of taking wild animals is under section 11. Offences under section 1-13 of the Wildlife and Countryside Act 1981 are summary offences only, thus question 2 referring to Crown Court is not an option.

17.2 Birds of Prey: captive breeding
Treat as serious having regard to matters noted in the paragraph ‘Assessing seriousness’. The Magistrates’ Courts total power to impose 12 months imprisonment is sufficient, therefore retain sentence in Magistrates’ Court: 6-9 months imprisonment appropriate.

17.3 Geese shooting
Assuming the defendant is a man of means, able to afford holiday, then a fine in region of £1,000 for each offence plus costs. Order forfeiture of tape player and tape: Section 21(6)(b) of the 1981 Act. Forfeiture of defendant’s gun could be out of proportion to offence see: R v Highbury Corner Metropolitan Stipendiary Magistrates ex parte Di Matteo (1992)

17.4 Herbal medicines
Treat as really serious. Involving trade in critically endangered species listed in Annex A, possibility of long term extinction, importance of bio diversity, high profits, deliberate law breaking for some time. Custodial sentence in a Magistrates’ Court a possibility but previous good character, full co-operation and timely guilty plea in present climate would enable court to consider viable alternatives with combination of community sentence, high financial penalties and forfeiture under Regulation 11.

17.5 Illegal trade in birds
Transfer case to Crown Court, extremely serious, comparable to R v Sissen (2000) where 30 months imprisonment upheld by Court of Appeal.

17.6 Illegal trade in reptiles
Sentence in this case could remain in Magistrates’ Court. Not a professional enterprise for monetary gain. Not demonstrated that reptiles have suffered in transit. Could be short custodial sentence, say 3 months to send out deterrent message to others. However in present climate with prison over-crowding combination of community punishment order plus curfew order a realistic alternative. Pay full costs and forfeit reptiles.

17.7 Illegal trade: taxidermy
Defendant’s guilty plea, lack of evidence that any of the specimens were taken wild (so no evidence of animals suffering) and the fact that some of the specimens were antique could avoid an immediate custodial sentence instead a very heavy fine, full order for costs and forfeiture of the specimens, subject to: R v Highbury Corner Metropolitan Stipendiary Magistrates ex parte Di Matteo (1992). The scenario does not make clear the nature of the forgery other than as stated in assessing seriousness. More information would be helpful.
19 Relevant organisations

The Magistrates’ Association
28 Fitzroy Square, London W1T 6DD
tel. 020 7387 2353, website: www.magistrates-association.org.uk

The Magistrates Association represents lay magistrates who deal with over 96% of all criminal cases in England and Wales. The Association consults and represents its members, promotes good practice, delivers and supports training and provides information, advice and assistance to its members and the general public.

Environmental Law Foundation
Suite 309, 16 Baldwin Gardens, London EC1N 7RJ
tel. 020 7404 1030, website: www.elflaw.org

The Environmental Law Foundation is a UK wide charity whose primary purpose is to secure access to environmental justice for all. Through its network of members ELF links communities and individuals to legal and technical expertise to help prevent damage to the environment and to improve the quality of life for all.

Department of Environment Food and Rural Affairs (DEFRA)
Nobel House, 17 Smith Square, London SW1P 3JR
tel. 020 7238 5603, website: www.defra.gov.uk

The Government department that deals with food, air, land, water and people. It aims to bring sustainable development by providing a better environment at home and internationally, and sustainable use of natural resources. DEFRA aims to bring economic prosperity through sustainable farming, fishing, food, water and other industries that meet consumers’ requirements.
The Environment Agency
Rio House, Waterside Drive, Aztec West, Almondsbury, Bristol BS32 4UD
tel. 01454 624 400, website: www.environment-agency.gov.uk

The Environment Agency was established by the Environment Act 1995 to protect or enhance the environment, taken as a whole so as to make the contribution towards attaining the objective of achieving sustainable development. The Environment Agency is the main prosecuting body for environmental crimes and covers the whole of England and Wales’s eight regional offices. The head legal team is at Bristol.

National Criminal Intelligence Service (NCIS)
PO Box 8000, London SE11 5EN
tel. 020 7238 8000, website: www.ncis.co.uk

NCIS works on behalf of all UK law enforcement agencies in the fight against serious and organised crime. They recently set up the National Wildlife Crime Intelligence Unit.

World Wide Fund for Nature (WWF)
Panda House, Weyside Park, Godalming, Surrey GU7 1XR
tel. 01483 426 444, website: www.WWF-uk.org

WWF is the largest and most experienced independent conservation organisation promoting the conservation and protection of endangered species.

School of Legal Studies, University of Wolverhampton
Molineux Street, Wolverhampton WV1 1SB
tel. 01902 321 058, website: www.wlv.ac.uk/sls

The School of Legal Studies at Wolverhampton is home to one of the largest and most comprehensive law schools in the country with a reputation for high quality provision, and is one of the few law schools to offer the whole range of academic and professional law courses.
20 Appendices

Appendix 1  Fining of companies for Environmental and Health and Safety Offences

Appendix 2  Sentencing for Wildlife Trade and Conservation Offences
In recent years the public has become increasingly concerned about dangers to the environment and the protection of employees’ health and safety at work. There have been a number of high profile incidents sometimes involving death and major pollution problems. These concerns have been reflected in the greatly increased maximum fines for related offences. For example, under the provisions of the Environmental Protection Act 1990 the maximum fines for some offences dealt with summarily are £20,000 – far in excess of the financial penalties normally imposed by magistrates – while fines in the Crown Court are unlimited.

Defendants in such cases are frequently companies and sometimes multi-national companies with huge annual turnovers. We need to be reminded of the Magistrates’ Court Sentencing Guidelines advice that our aim should be for any fine to have equal impact on rich or poor. This is true of companies as well as individuals.

Environmental and health and safety offences to be encountered in the magistrates’ court include air or water pollution, the illegal deposit, recovery or disposal of waste, fly-tipping, the illegal extraction of water, failure to meet packaging, recycling and recovery obligations as well as a range of matters relating to the protection of the employee in the work place. A list of the main offences is set out on Page 78 of the Magistrates’ Court Sentencing Guidelines.

It is essential that the public feels confident that convicted companies receive proper and meaningful penalties. The financial penalties must relate to the companies’ means and we should accustom ourselves, in appropriate cases to imposing far greater financial penalties than have generally been imposed in the past.

The Lord Chancellor in 1998 spoke to the Magistrates’ Association about the disquiet being expressed about the level of sentences for these offences. He particularly suggested the maximum penalties were there to be used in appropriate cases. He said, “You should not flinch from using them if you believe that are deserved.”

New Guidance

Some important guidance regarding the sentencing of companies for both categories of offence has now been given in the judgement in R v F Howe and Son (Engineers) Ltd, R v Friskies Petcare UK Ltd and in the Sentencing Advisory Panel’s recent advice to the Court of Appeal on environment offences.

R v Howe relates to health and safety matters but the judgements can equally apply to environmental offences. Its main points are:

- Fines on companies need to be large enough to make an impact on shareholders – past fining levels were far too low
- A company is presumed to be able to pay any fine the court is minded to impose unless financial information to the contrary is available to the court before the hearing
- A deliberate breach of the legislation by a company or an individual with a view to profit seriously aggravates the offence
The judgement provides important guidance on the question of seriousness, in the factors we should take into account in deciding the sentence and in the reasons we give.

_R v Friskies Petcare UK Ltd_ sets out important guidelines for prosecutors, defendants and the sentencing court in the event of a plea of guilty. It strongly recommends that the salient facts of the case, together with aggravating and mitigating features, should be presented to the sentencing court in the form of schedules, which should if possible be agreed in advance. There will therefore be no doubt about the basis on which sentence is passed, and any Higher Court dealing with an appeal against sentence will have the relevant facts at its fingertips. The procedure could easily be adapted to assist magistrates’ courts which have to decide whether to commit for sentence following an indication of a guilty plea on plea before venue, or in cases involving a straightforward committal for sentence. The principles apply equally to environmental offences.

**Procedures**

When considering any of these cases one of the first questions to be asked if dealing with an either way offence is whether the seriousness of the offence is such that the sentencing powers of magistrates are inadequate. If so then the court should not deal with the case and commit to the Crown Court.

If the court is prepared to hear the case then the general procedure adopted in the *Magistrates’ Court Sentencing Guidelines* should be followed. After an initial consideration of the seriousness of the offence, an appropriate type of penalty should be considered.

The penalty in these cases is usually a fine. The offences are ‘non-violent’ – but can cause or risk death, serious injury or ill health – and usually have no continuing threat to persons because the regulator will have used enforcement powers to prevent any such threat. They are often committed in situations where the defendant company has failed to devote proper resources to prevent a breach of the law – hence a financial penalty would usually be the appropriate response.

**Seriousness – aggravating and mitigating**

As in the sentencing guidelines, having heard the evidence and considered the seriousness of the offence and an appropriate form of penalty, the court considers those factors which could aggravate or mitigate the offence. The Howe case and the Sentencing Advisory Panel advice do suggest what some of the factors could be.

These factors are deemed to aggravate the seriousness of the offence:

- a deliberate or reckless breach of the law rather than carelessness
- action or lack of action prompted by financial motives – profit or cost saving
- disregarding warnings from a regulatory authority or the workforce
- an awareness of the specific risks likely to arise from action taken
- lack of co-operation with a regulatory authority
- serious extent of damage resulting from offence (but lack of actual damage does not render the offence merely technical; it is still serious if there is risk)
- previous offences of a similar nature
- death or serious injury or ill health of humans has been a consequence of the offence
- animal health or flora affected
- expensive clean up operation required
- defendant carrying out operations without an appropriate licence
- other lawful activities interfered with
Other factors may provide some mitigation:

- the offender’s minor role with little personal responsibility
- genuine lack of awareness or understanding of specific regulations
- an isolated lapse

There may be some offender mitigation:

- prompt reporting
- ready co-operation with regulatory authority
- good previous record
- timely plea of guilt

Sometimes in a case much more damage has occurred than could have been reasonably anticipated. Any sentence should give weight to the environmental impact but should primarily reflect the culpability of the offender.

**The level of fines – general approach**

A fine is considered by the Sentencing Advisory Panel to be the appropriate form of penalty for both companies and individuals for these offences. The normal principles of the Criminal Justice Act 1991 should apply and the seriousness of the offence and the financial circumstances of the defendant should be taken into account. The level of fine should reflect the extent to which the defendant’s behaviour has fallen below the required standard. High culpability should be matched by a high fine even though actual damage turned out to be less than might reasonably have been anticipated.

In line with *R v Howe*, the level of the fine should reflect any economic gain from the offence by failure to take precautions. It has been said that a deliberate failure to take the necessary precautions can be a form of stealing commercial advantage from law-abiding competitors.

In all cases with corporate offenders the company’s financial circumstances must be carefully considered. No single measure of ability to pay can apply in all cases. Turnover, profitability and liquidity should all be considered. It is not usual for an expert accountant to be available in summary cases.

If a company does not produce its accounts the court can assume that the company can pay whatever fine the court imposes. In most cases it is hard to imagine a company failing to provide such information, although with large known companies of national or international standing this may not be a necessary requirement. Where necessary the payment of fines can be spread over a longer period than the usual twelve months, if payment in full would be unduly burdensome on say, a smaller company.

**Fining too little?**

A fine suited to the circumstances of a small local company would make no impact at all on a multi-national corporation with a huge turnover. The fine to any company should be substantial enough to have a real economic impact, which together with attendant bad publicity would pressure both management and shareholders to tighten their regulatory compliance. Such fines on large companies might often be beyond the summary fines limit and in such circumstances the case should be transferred to the Crown Court for trial or sentence. Where the court does not transfer
the case of a larger company to the higher court magistrates should look to a starting point near the maximum fine level then consider aggravating and mitigating factors.

**Fining too much?**
Care should be taken to ensure that fines imposed on smaller companies are not beyond their capability to pay. The court might not wish the payment of the fine to result in the company not being able to pay for improved procedures or cause the company to go into liquidation or make its employees redundant.

**Other sentencing options**
Whilst fines will be the usual outcome in proceedings of this sort, other sentencing options are available.

- A discharge will rarely be appropriate.
- Compensation should be considered if there is a specific victim who has suffered injury, loss or damage. You should give reasons if you decide not to make a compensation order. The current limit is £5,000 per offence, although substantial civil claims are often pending in such cases.
- The legislation provides for the possibility of directors and senior managers appearing before the courts, and custodial sentences are available in specific instances. The courts have power to disqualify directors under the Company Directors Disqualification Act 1986. This is important particularly in health and safety enforcement, and breach of an order is itself a criminal offence carrying a term of imprisonment for up to two years.

**Costs**
The prosecution will normally claim the costs of investigation and presentation. These may be substantial, and can incorporate time and activity expended on containing and making the area safe. Remediation costs for pollution offences may also be significant. For water pollution offences enforcing authorities are able to recover them through the criminal courts (Water Resources Act 1991, as amended). In other cases there are powers for the courts to order offenders to remedy the cause of the offence, or for the Environment Agency to require them to undertake clean-up at their own expense, or for the agency to carry out remedial costs and seek to recover them through the civil courts.

The enforcing authorities’ costs should be fully recouped form the offender.

The order for costs should not be disproportionate to the level of the fine imposed. The court should fix the level of the fine first, then consider awarding compensation, and then determine the costs. If the total sum exceeds the defendant’s means, the order for costs should be reduced rather than the fine. Compensation should take priority over both the fine and costs.

Whilst the article has focused on companies as defendants, the reader will appreciate that individuals may also be prosecuted under these provisions. Wider sentencing options are then available.

As always, magistrate should seek the advice of the court clerk on sentencing options and guidelines in all cases.
Sentencing for Wildlife Trade and Conservation Offences

Introduction
In recent years, the public has become increasingly aware of the importance of preventing further loss of wildlife and preserving our remaining biodiversity. After habitat destruction, illegal trade and conservation offences are among the most significant dangers faced by endangered species. The impact of this illegal trade on the survival of the species underlines the need for strong penalties, which reflect the harm caused, to be imposed at all levels within the judicial system for wildlife trade or conservation offences.

While the UK has developed a generally supportive legislative framework for prosecuting incidents of wildlife trade crime, in practice the majority of cases result in sentences that do not provide an appropriate deterrent to offenders or take account of the full range of sentencing options available to the magistrate or judge. It is important that the utility of the laws that exist to promote a specific conservation agenda are used and offer effective condemnation or deterrence to the perpetrators.

This is no reflection of a lack of effort on the part of enforcing authorities, but there are substantial difficulties encountered by prosecutors and magistrates when dealing with these cases. The precedent of low fines following a successful prosecution for illegal wildlife trade can be traced in part to the following factors:

- The lack of internal barriers within the EU, the expertise required in identifying species, and increasingly recognised links between illegal traders and organised crime, all contribute to the difficulty in detecting/prosecuting wildlife crimes. Consequently, very few illegal wildlife trade cases will come before magistrates, making it less likely that information regarding the wider environmental, social, and economic impacts of this illegal trade will be taken into account at sentencing.
- The laws that exist for some offences are perceived by defendants, prosecutors and the majority of the judiciary as ‘technical’ or ‘regulatory’ offences. These have been described by Viscount Dilhorne in *Alphacell Ltd v Woodward*¹ as acts which are not criminal in the true sense but are acts which in the public interest are prohibited under statute. Such a view undoubtedly affects perceptions of moral culpability, in terms of ‘real’ crime.
- The environmental and cultural impacts of the harm to rare species are difficult to quantify. The nature of environmental damage makes it more difficult to accurately assess the seriousness of an offence, appropriateness of the fine, or indeed, whether magistrates’ powers are adequate to hear the case. However, criteria such as the intrinsic value of species – not only its financial value but also its value as part of an ecosystem (ie that species are irreplaceable once extinct) as well as issues such as the species’ potential value as a resource to medical science will help assess/establish the ‘cost’ of the damage. While slightly more esoteric, these concepts are not beyond the wit of the legal system.

High financial rewards and low risk of detection can create an incentive to commit these crimes, and so there arises an immediate need for all levels of the judiciary to use the full range of sentencing options available to them.

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¹ *Alphacell Ltd v Woodward* [1972] AC 824
appropriate penalties by way of counterbalance. Wildlife trade offenders have been shown to be involved in other types of crime and to be involved in organised networks as well as on an independent basis.

These concerns have been reflected in some recent cases, as well as in the recent strengthening of some wildlife legislation. That there is a growing recognition of the nature and impact of these offences within the higher judiciary as seen through the judgements made in two contemporary cases that reached the Court of Appeal and the High Court respectively.

- In *R v Sissen* (2000) All ER (D) 2193 (8 December 2000, Court of Appeal), a case involving the illegal import into the EC of one of the most endangered birds in the world, the Lear's macaw (only 150 birds remain in the wild), the defendant was imprisoned for 30 months. Of as much interest as the jail term is the comment of Mr Justice Ouseley who stated that: "the law is clear as to where the interests of conservation lie. These are serious offences. An immediate custodial sentence is usually appropriate to mark their gravity and the need for deterrence"

- In *R v Secretary of State for the Environment, Food & Rural Affairs exp. White* (unreported) see Environmental Law and Management 14 (2001) 1 p.14, a case involving incongruity between CITES export permits and a shipment of caviar, where there was no criminal prosecution, but a challenge to the impounding of the imported but non-permitted caviar. Caviar comes from sturgeon whose populations have declined sharply in recent years due to illegal fishing for caviar. In giving judgement against the claimant, Justice Forbes referred to a: "fundamental public interest in the preservation of endangered species"

**Legislation covering wildlife trade and conservation offences**

The Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES), bans international trade in endangered species and regulates trade in species that could become endangered by trade and is implemented through European and domestic legislation.

European Council Regulation 338/97 (as amended) on the protection of species of wild fauna and flora incorporates all of the provisions of CITES as well as additional stricter measures concerning European species and stricter import, housing, and transport conditions for live specimens. The European Court of Justice in a recent case involving the interpretation of French law against the EC Treaty determined that the purpose of the Regulations was to "ensure the conservation of animal [and plant] species, and hence the protection of the life and health of those species".2 The specific implementing offences for violations of the EU Regulations are contained in provisions in the Customs and Excise Management Act 1979 (CEMA) and in the Control of Trade in Endangered Species (Enforcement) Regulations 1997 (COTES). The general CEMA provisions are used to cover the illegal import and export of CITES species as the prohibition or restrictions of these species is an ‘assigned matter’ for Customs. COTES is the national legislation which covers trade offences once the species has entered the UK.

Species native to the UK are protected under the Wildlife and Countryside Act 1981 (WCA). This was amended under the Countryside and Rights of Way Act 2000 (CRoW) specifically making some offences under the WCA arrestable. In doing so, CRoW has improved protection to native species that has not been given to non-native species that are equally or more endangered. While this

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2 Criminal Proceedings against Tridon (Federation Departementale des chasseurs de l’Isere & another) Case C-510/99, ECJ, 23 October 2001, not yet reported.
distinction is difficult to justify, especially given the EC 'equality principle', the meaningful increase in monetary and custodial sentences that have resulted from the amendments to CRoW offer some guidance in ascertaining the 'seriousness' of cases brought in trade in non-native endangered species.3

**Key provisions for enforcing wildlife trade and conservation offences**

- Relevant CEMA sections: s170(1), s170(2), s68
- COTES
- Relevant sections of WCA: s1(1), s1(2), s1(5), s6, s9, s13(1)(a) or (2), and s14
- CRoW amendments to WCA

As many of the offences above are classified as either way offences (other than offences under the WCA 1981, excluding s14) it is important for magistrates to consider whether the seriousness of the crime is such that the case is more appropriately tried/sentenced in Crown Courts.4

**New guidance**

In considering wildlife trade and conservation offences, magistrates should also have regard to general guidance on environmental offences due to similarities in quantifying the seriousness of the offence and evaluating the financial cost/value of the damage. The Sentencing Advisory Panel addressed many of these issues in their recommendations to the Court of Appeal on environmental offences. Additionally, the Magistrates' Association guidelines on *Fining of Companies for Environmental and Health and Safety Offences* covers similar concepts.

Some important new guidance regarding sentencing of companies for environmental offences has been given in *R v Friskies Petcare UK Ltd*, *R v Humphrey*, and *R v Sissen*.

- *R v Friskies Petcare UK Ltd* (2000) Cr. App. R (s) 410 sets out important guidelines for the sentencing court in the event of a plea of guilty. As guilty pleas seem to be common in wildlife trade cases, on the basis of the ‘regulatory offence’ position, the procedure set out in this case for aiding magistrates’ courts in deciding when to commit a case for sentencing could be useful.5
- In *R v Humphrey T* 2001/0105 Isleworth Crown Court, a case prosecuted under CEMA in January 2002, the court recognised the serious nature of damage in an illegal wildlife trade case. The offender was charged with trafficking in endangered birds of prey from Thailand – birds were packed in plastic tubes and many did not survive their journey. In addition, the defendant had also smuggled into the UK a golden-cheeked gibbon, which is endangered in the wild with fewer than 1000 individuals remaining. The trial resulted in a custodial sentence of 6½ years.
- In the *R v Sissen* (2000) All ER (D) 2193 (8 December 2000, Court of Appeal) case, Customs officials seized three Lear’s macaws (a CITES Appendix I /EU Annex A listed species) that had been smuggled into the UK. In April 2000, the Newcastle Crown Court sentenced the offender to a custodial sentence of 2½ years. In this case the judge looked beyond the price tag of the

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3 See *R v D’cruze*, a case prosecuted under the WCA after the CRoW amendments, in which the defendant was sentenced to six months in prison for the taking and possession of rare bird eggs.

4 Not all wildlife conservation offences involve species that are rare. Some offences are more serious than others and must be assessed on a case by case basis. However, as illustrated by CRoW even when a species isn’t of the highest conservation concern, it may still require heightened native legal protection.

5 *R v Friskies Petcare UK Ltd* was previously referenced in the *Fining of Companies for Environmental and Health and Safety Offences*, issued by the Magistrates’ Association as supplemental sentencing guidelines in May 2001.
animals (a breeding pair was worth over £50,000 on the black market) and considered the ecological value of the birds and the impact on the species. The trial judge’s approach was endorsed in the Court of Appeal where Mr Justice Ouseley stated that:

“There is nothing wrong in principle with a sentence of 30 months for an offence such as this. This was, as the sentencing judge put it, a devious and elaborate scheme to smuggle birds into the country, including critically endangered species.”

While magistrates must evaluate offences on a case-by-case basis, there is little doubt that a better understanding of the true environmental costs of these crimes should result in more cases reaching the Crown Courts. It was particularly notable in the *R v Sissen* case that the defendant’s excuse that he had merely erred in relation to the paperwork was rejected. The defendant was, after all an expert in his field and was well aware of the applicable law and perhaps more importantly, its rationale. In addition, he had concealed the birds during transit to avoid detection.

**Procedures**

When considering wildlife trade and conservation cases, one of the first questions to be asked when dealing with an either way offence, is whether the seriousness of the offence is such that the sentencing powers of the magistrates are inadequate. If so, then the court should not deal with the case and commit it to the Crown Court.

If the court is prepared to hear the case then the general procedure adopted in the *Magistrates’ Court Sentencing Guidelines* should be followed. After an initial consideration of the seriousness of the offence, an appropriate type of penalty should be considered. This could be a fine, a community sentence or custody. In coming to a provisional conclusion on this issue, courts should always consider the specific factors present in the case in question, including the true value of the species in question.

**Evaluating ‘seriousness’ – aggravating and mitigating factors**

When considering the seriousness of the offence magistrates should first take into account the ecological impact of the offence and the impact on the sustainability of the species. When endangered species are involved it will often be that the case is more appropriately tried/sentenced in the Crown Court – these species are referenced in the CITES Appendices and the EU Regulation Annexes.

As stated in the sentencing guidelines, having properly heard the evidence and considered the seriousness of the offence and an appropriate form of penalty, the court considers factors which could aggravate or mitigate the offence.

The Sentencing Advisory Panel’s advice on environmental offences – together with recent cases – suggest what some of those factors could be.

Those factors that have a bearing on wildlife trade and conservation offences and that can be considered to aggravate the seriousness of the offence are:

- the offence is shown to have been a deliberate or reckless breach of the law rather than the result of carelessness;
the species concerned is listed as an endangered/protected species on the CITES Appendices, the EU Regulation Annexes or the Schedules to the WCA;
- the conservation implications of the case in terms of the effect on the global or local population of that species;
- a high financial value of the specimens where it is known;
- the number of specimens/items involved;
- the defendant has acted from a financial motive or is a serious/persistent offender (e.g., has damaged a bat roost or a newt habitat in order to proceed with a building development);
- the defendant is shown to have knowledge of the specific risks involved (individual is aware that they are trafficking in an endangered/threatened species);
- the defendant’s attitude towards the environmental authorities was dismissive or obstructive (for example, defendant attempted to deceive Customs officials by smuggling species in specially manufactured concealments);
- human health, animal health, or flora were adversely affected, especially where a protected species was affected (animals were killed/injured during transit, cruelty was employed in treatment of animals, e.g., tail feathers pulled out of parrots or drugs administered);
- the defendant has evaded taxes and duties;
- the level of revenue from the illegal transactions carried out;
- the defendant has conspired to defraud buyers by selling them illegal goods;
- it is an organised activity;
- the defendant has previous convictions for like offences;
- there is evidence of prolonged activity;
- the defendant is a professional dealer;
- the conduct of the defendant after detection has led to the concealment of specimens or an increase in the harm caused to the species or population.

As explained in the Humphrey case, the value of the species and condition in which they were transported should also be a factor.

In evaluating the status of the species it may be helpful to refer to CITES Appendix listings and EU Regulation Annexes (www.unep-wcmc.org). If the species is listed on CITES or contained in the EU Annexes, depending on the other facts of the case (such as the crime being of an organised nature, involving high value specimens and perpetrated by a repeat/serious offender), the magistrates could consider committing the case to the Crown Courts for trial/sentencing.

Some mitigating factors may be:

- genuine lack of awareness that the animal was a threatened species;
- offender had minor role with little personal responsibility;
- co-operation with investigating authority;
- little financial gain;
- minimal conservation impact;
- timely plea of guilt.

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6 See R v Day a case in which the Melton and Belvoir magistrates’ court found a defendant guilty of intentional and reckless damage of a bat roost.
The level of fines – general approach

The normal principles of the Criminal Justice Act 1991 should apply and the seriousness of the offence and the financial circumstances of the defendant should be taken into account. The level of fine should reflect the extent to which the defendant’s behaviour has fallen below the required standard. High culpability should be matched by a high fine.

In line with *R v Howe*, the level of the fine should reflect any economic gain from the offence.7

In considering their approach to environmental offences, the Sentencing Advisory Panel considered financial penalties, which included an evaluation of the issues of costs and compensation. As to costs, it was reiterated that the prosecution authority should be awarded costs, for example reflecting the costs of the investigation, file preparation and presentation, subject to the caveat that they should remain within reasonable boundaries that have actually been incurred. The Court of Appeal set out principles in *R v Associated Octel Ltd* (1997) 1 Cr App R (S) 435, which have been approved and reviewed in *R v Northallerton Magistrates’ Court, Exp. Dove* (2000) 1 Cr Appp R (S) 136, which determines that costs should not be seen as disproportionate to the fine.

It is difficult to envisage a role for compensation in the majority of cases, other than where a proprietary interest could be proven in relation to a particular specimen that might have been illegally traded. The majority of illegally traded wildlife is ‘wild-caught’ and thus there is nobody to be compensated. That said, the lack of compensation as a tool of the sentencer’s armoury, albeit at a low level in the magistrates’ court, can be offset by greater use of the available fines and custodial/community sentences, as examined below.

Other sentencing options

As always, magistrates should seek the advice of the legal adviser on sentencing options and guidelines in all cases.

In regard to wildlife trade and conservation offences, where a fine alone would be inadequate, custodial sentences and community service should be given serious consideration where allowed by statute.

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7 *R v Howe* was previously referenced in the *Fining of Companies for Environmental and Health and Safety Offences*, issued by the Magistrates’ Association as supplemental sentencing guidelines in May 2001.