

## **September 2015 – new health and safety sentencing guidelines**



In February 2015, the Sentencing Council's consultation on proposed changes to the sentencing guidelines for health and safety, corporate manslaughter and food safety offences closed. It is anticipated that their proposals will come into force in late 2015.

The aim of the guidelines is to promote a consistent approach for health and safety, corporate manslaughter and food safety offences and to ensure all sentences are proportionate to the offence and in relation to other offences. It is anticipated the new guidelines will be consistent with the environmental guidelines that have been in force since July 2014 and presumed they will be retrospective in application, meaning they will apply to cases involving incidents that occurred before the date on which the guidelines come into force.

What do the proposed changes mean for businesses?

The new guidelines will see tougher sentences and larger fines imposed on businesses with the aim to use these as a blunt tool to improve health and safety performance. There are arguments on both sides whether this will drive a behaviour change and lead to better health and safety assurance and performance.

A recent Court of Appeal judgement (June 2015), where Thames Water's appeal against a £250,000 fine for an environmental breach was declined, contains some interesting messages when the proposed approach for health and safety fines is similar to those that exist for environmental offences.

How will the new sentencing structure work?

It is proposed the courts will adopt the following structure when sentencing businesses and individuals:

Step 1 – determining the offence category:

The court should consider the harm and culpability factors to identify the seriousness of the offence:

- How foreseeable was serious injury? The more foreseeable, the graver the offence
- Did the defendant fail to comply with advice from regulators, authorities or employees?
- Did the defendant fail to comply with industry standards?
- How adequate was training, supervision or reporting (inc hazard and near misses) / investigation arrangements?
- How widespread was non-compliance?
- Was there more than one death or a high risk of further deaths, or serious personal injury in addition to death?

Step 2 – starting point and category range

The court should obtain the business's financial turnover to determine whether the organisation is: micro, small, medium, large or very large. The court will then identify a starting point and a range for

the appropriate level of fine. The court will also consider aggravating and mitigating factors to make adjustments from the starting point.

Step 3 – is the proposed fine proportionate to the defendant's means?

The court should consider whether the suggested fine is proportionate to the means of the defendant.

Step 4 – other factors that warrant adjustment of the proposed fine

The court should consider any wider impacts the proposed fine may have on innocent third parties (eg employees)

Steps 5-9

These are standard steps and include factors of mitigation, such as:

- reduction for guilty pleas
- high level of cooperation
- a good health and safety record

There is also consideration of totality if sentencing an offender for more than one offence. Step 7 of the guidelines relate to consideration of compensation and ancillary orders.

Businesses and individuals need to be proactive when managing health and safety. The basic building blocks must be in-place and positive assurance of compliance with them delivered on a consistent basis:

- a safety management system
- competent people with suitable skills, knowledge and experience
- visible leadership
- great communication and cooperation

More than ever before, organisations need to ensure access to competent health and safety advice and training in health and safety law for senior executives so that they understand what the law requires each of them to do and the criticality of leadership in health and safety to lead by example and set consistent high standards.

To evidence this compliance, records should be kept of procedural compliance, training, etc as well as levels of supervision, monitoring, audit and the close-out of actions arising from these processes.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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