



December 2015

New sentencing guidelines published for Health and Safety offences

Potentially significant increases to fines are expected, as Courts are told to impose sentences that have a “real economic impact” on offenders.

Following publication of sentencing guidelines on 'environmental offences' in July 2014, new guidelines issued by the Sentencing Council last month allow for a potentially dramatic increase in the fines for offences related to 'health and safety', 'food safety and hygiene' and 'corporate manslaughter'.

The Guidelines

The guidelines apply to all organisations and offenders aged 18 or older who are sentenced after 1 February 2016, regardless of when the offence took place.

Under previous guidance, the "*appropriate fines were seldom less than £500,000*" for corporate manslaughter and "*seldom less than £100,000*" for corporate health and safety offences causing death.

Now, larger companies (those with a turnover of £50 million or more) may face fines of up to £20

million for more serious forms of corporate manslaughter. The smallest companies (with a turnover of up to £2 million) who show lower culpability for corporate manslaughter may be liable for fines at a starting point of £300,000.

The scope of the guidelines is also wider than before, incorporating offences in new areas such as food safety and hygiene, in addition to the more established health and safety offences.

"Increased penalties are a means to ensure that companies and individuals take their obligations seriously."

Determining the Appropriate Fine

Firstly, the guidelines use the degree of culpability and the risk of harm to determine the category of the offence. The Courts are then required to assess the company's annual accounts to reach a starting point for the fine. Particular attention will be paid to turnover, pre-tax profits, assets and directors' remuneration, loan accounts and pension provisions. If no accounts are provided, it will be

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assumed that the company can pay any appropriate fine.

Mitigating and aggravating factors are then considered, which may increase or decrease the level of penalty. Courts are given considerable flexibility and may, if the circumstances warrant, adjust the fine above or below the recommended financial range.

This approach seeks to ensure that fines are "fair and proportionate", while still having "a real economic impact" on offenders.

Regulatory Trends

These changes reflect a growing trend towards increased penalties for serious regulatory offences as a means to ensure that companies and individuals take their obligations seriously.

This is already clear from the approach taken towards environmental offences under the July 2014 guidelines and relevant case law. For example, according to a recent decision of the Court of Appeal in R v Thames Water, committing a serious environmental offence may result in "a fine equal to a substantial percentage, up to 100%, of the company's pre-tax net profit for the year in question, even if that results in fines in excess of £100 million". Such fines are the "necessary and proper consequence of the

importance to be attached to environmental protection."

The health and safety guidelines are specifically intended to be consistent with and proportionate to those for environmental offences, so we should expect that fines for health and safety offences may be of a similar or larger scale.

Indeed, pressure from the Courts has fed into the approach taken in the guidelines. In R v Sellafield, for example, it was acknowledged that determining fines for very large companies should not be fixed, but will require consideration of complex financial issues in the round. As a result, there is no calculation for determining fines suitable for "very large" companies in the guidelines, ensuring the necessary flexibility to impose penalties that will have a real economic impact on offenders.

Next Steps

Travers Smith has a dedicated Operational Risk team with experience advising on Health and Safety concerns. We would be pleased to assist with any enquiries you may have on these new guidelines.

Please contact Douglas Bryden or another member of the Travers Smith team if you have any legal enquiries relating to the issues raised in this briefing.

FOR FURTHER INFORMATION, PLEASE CONTACT

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