

2016 Health & Safety Sentencing Guidelines

On 1 February 2016, new sentencing guidelines came into force for Health & Safety offences. Under the sentencing guidelines, large businesses found guilty of the most serious health and safety offences could face significantly increased sentences. For example, fines for corporate manslaughter could be as high as £20million for a business with a turnover in excess of £50million, while for fatal health and safety offences they could reach up to £10million.

The aim of the guidelines is to promote a consistent approach to sentencing for health and safety, corporate manslaughter and food offences and to ensure all sentences are proportionate to the offence committed and in relation to other offences. It is proposed the courts will adopt the following structure when sentencing businesses and individuals.

Step one: determining the offence category

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

- How foreseeable was serious injury? The more foreseeable it was, the more grave 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 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 two: 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 range for the appropriate level of fine.

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

Step three: 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 four: other factors that warrant adjusting the proposed fine

The court should consider any wider impacts the proposed fine may have on innocent third parties, such as employees and service users. Where necessary, the fine should be adjusted to avoid unjustifiable wider consequences.

Steps five through to nine are standard steps in Sentencing Council guidelines, including factors to be considered for the reduction of a penalty. These include an early guilty plea and previous good record.

These guidelines are serious for businesses and they should be alert to the fact that tougher sentencing is definitely on its way. The new sentencing landscape will align the sentencing for serious health and safety offences with a defendant's financial means, culpability and likelihood of harm.

Experts are predicting that this will result in increased sentences and fines. The Council has said that fines should be big enough to have a real economic impact "which will bring home to the offending organisation the importance of achieving a safe environment for those affected by its activities".

Sentencing in relation to low-level offences is unlikely to change as they are viewed as being proportionate.

Culpability

Levels of culpability will fall into four categories: very high, high, medium and low. These are defined as follows.

Very high. This involves a deliberate breach of or flagrant disregard for the law.

High. In this category the offender fell far short of the appropriate standard. Typical examples: failing to put in place measures that are recognised standards in the industry; ignoring concerns raised by employees or others; failing to make appropriate changes following prior incident(s); exposing risks to health and safety; allowing breaches to subsist over a long period of time.

Evidence of serious, systematic failings within the organisation to address risks to health and safety will lead to high culpability.

Medium. This applies when the offender fell short of the appropriate standard in a manner that falls between descriptions in 'high' and 'low' culpability categories

Low. Here the offender did not fall far short of appropriate standard. This could be because significant efforts were made to address the risk although they were inadequate on this occasion, or there was no prior event or warning indicating a risk to health and safety.

For individuals, levels of culpability will fall into four categories: deliberate, reckless, negligent and low. These are defined as follows.

Deliberate. Where the offender intentionally breached or flagrantly disregarded the law.

Reckless. Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken.

Negligent. Offence committed through act or omission, which a person exercising reasonable care would not commit.

Low. Offence committed with little fault. This could be because significant efforts were made to address the risk although they were inadequate on this occasion, or there was no prior event or warning indicating a risk to health and safety, or failings were minor and not systemic.

Aggravating and mitigating factors

A statutory aggravating factor is previous convictions. This takes into account the nature of the offence to which the conviction relates, its relevance to the current offence and the time that has elapsed since the conviction.

Other aggravating factors include:

- Cost-cutting at the expense of safety.
- Deliberate concealment of illegal nature of activity.
- Breach of any court order.
- Obstruction of justice.
- Poor health and safety record.
- Falsification of documentation or licenses.
- Deliberate failure to obtain or comply with relevant licenses in order to avoid scrutiny by authorities.

Mitigating factors:

- No previous convictions or no relevant/recent convictions.
- Evidence of steps taken to remedy problem.
- High level of co-operation with the investigation, beyond that which will always be expected.
- Good health and safety record.
- Effective health and safety procedures in place.
- Self-reporting, co-operation and acceptance of responsibility.

Corporate Manslaughter

When considering levels of sentencing the courts should take the following into account.

How foreseeable was serious injury?

Usually, the more foreseeable it was, the more grave the offence. Failure to heed warnings or advice from the authorities, employees or others or to respond appropriately to 'near misses' arising in similar circumstances may be factors indicating greater foreseeability of serious injury.

How far short of the appropriate standard did the offender fall?

Where an offender falls far short of the appropriate standard, the level of culpability is likely to be high. Lack of adherence to recognised standards in the industry or the inadequacy of training, supervision and reporting arrangements may be relevant factors to consider.

How common is this kind of breach in this organisation?

How widespread was the non-compliance? Was it isolated in extent or, for example, indicative of a systematic departure from good practice across the offender's operations or representative of systemic failings? Widespread non-compliance is likely to indicate a more serious offence.

Was there more than one death, or a high risk of further deaths, or serious personal injury in addition to death?

The greater the number of deaths, very serious personal injuries or people put at high risk of death, then the more serious the offence.

Take action to protect you and your business:

Businesses should concentrate on implementing adequate health and safety measures that both protect their workers and the public from injury, and their business from exposure to financial and custodial penalties. Businesses should also ensure they have adequate liability insurance in place, including Directors & Officers cover.

For more information visit www.sentencingcouncil.org.uk

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