

Health and Safety Bulletin

New sentencing guidelines – the effects so far

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From 1st February 2016 new Sentencing Council Guidelines for breaches of health and safety legislation (including corporate manslaughter) came into force. Since the guidelines apply from the date of sentencing (rather than the date of the offence), it is already possible to see that their application has, in certain cases, increased fines dramatically.

Why was the change needed?

The average fine for a health and safety offence successfully prosecuted in 2014/15 was just over £18,000. There has been concern for some time that fines are too low and that many of them do not reflect the size of the organisation being prosecuted. The Criminal Justice Act 2003 requires that fines must reflect the seriousness of the offence and take into account the financial circumstances of the offender and under the new guidelines – “particular attention should be paid to turnover; profit before tax; directors’ remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet” when determining the level of the fine.

The new guidelines

The guidelines (applied to employers) follow a nine step process. The initial steps involve determining the offence category – for example, the culpability of the organisation (e.g. did they deliberately breach the legislation or was it an isolated incident?) and the seriousness and likelihood of harm risked. The Court then considers the size of the organisation (based on turnover) and identifies a starting point and category range for the fine. The fine may be adjusted within this range, depending upon aggravating factors (e.g. evidence of cost cutting, poor health and safety record) and mitigating factors (e.g. high level of cooperation, acceptance of responsibility).

There are similar guidelines for the prosecution of individuals, with additional guidance about the use of custodial sentences.

The Sentencing Council Guidelines state that fines must be “sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with health and safety regulation”.

The affects so far?

In January 2016 a Port Operator in Purfleet was fined **£1.8million** (with additional costs of **£14,300**) after one of their employees suffered multiple fractures and permanent ligament and nerve damage to his arm. The judge calculated the fine based on the new Sentencing Guidelines based on the company’s turnover of £25.1million - this equated to 23% of their pre-tax profit. A similar injury in the food industry in December 2015 resulted in a **£13,500** fine with **£1,452** costs.

Conclusion

The changes to the guidelines highlight how important it is for both companies and managers within any organisation to understand the health and safety law that applies to them and whether they are meeting the standards – from both the point of view of minimising risk of harm and financial liabilities.

Clwyd Associates can help by auditing your health and safety management system to identify any gaps and the pragmatic actions that can be taken to improve compliance. We can also facilitate training, so that employees understand their responsibilities whatever their role.

Recently issued health and safety information:

- HSE's Plastics processing information sheets <http://www.hse.gov.uk/pubns/plasindx.htm>
- Health in construction video <https://player.vimeo.com/video/151709341>
- Hand held device posture guidance http://osmondgroup.co.uk/res/Handheld_Devices_Posture_Guidance.pdf
- IOSH No Time to Lose – silica training resources http://www.notimetolose.org.uk/providers?sc_camp=5741BD62DA8D4A81BF6F48E1C130536A
- IOSH CDM webinar <https://iosh.adobeconnect.com/p72kv9qyb96/?launcher=false&fcContent=true&pbMode=normal>
- Sentencing Council Guidelines <https://www.sentencingcouncil.org.uk/wp-content/uploads/HS-offences-definitive-guideline-FINAL-web1.pdf>

Focus on occupational health

The inclusion of work-related ill-health as one of the themes of the HSE's new five year strategy, has been reinforced by remarks made recently by Anne Raynal, an independent occupational physician writing in the British Medical Journal (BMJ).

She highlighted that:-

- There are around 500,000 new work-related illnesses every year
- More than 13,000 deaths are caused each year by occupational exposure, mostly from

cancers related to asbestos and respiratory diseases from dust and chemicals

- Fewer than 15% of workers in Britain have access to adequate occupational health services
- Only 0.3% of the estimated 500,000 new work-related illnesses are reported to the HSE

The number of ill-health RIDDOR reportable incidents investigated by the HSE was 466 in 2014/15 up from 258 in the previous financial year.

About Clwyd Associates...

We are a management consultancy, focusing on health and safety, and SAP based in the Midlands.

We employ consultants with at least 15 years practical experience backed up by recognised professional and academic qualifications - ensuring our clients receive first class service.



Case Law update

This issue focuses on recent cases involving the prosecution of individuals under health and safety law. All of these cases were tried before the Sentencing Guidelines were updated

A Technical Director was fined **£25,000** and sentenced to **nine months in prison suspended for two years** following the death of an employee in an oven that the Director had designed. The worker had been cleaning the oven when another employee turned it on without realising he was inside – the oven did not contain an escape hatch, there were no risk

assessments for its operation, and none of the workers had been trained in how to clean and maintain it.

A Director who removed a protective guard from a tyre shredding machine was sentenced to a **four-month prison sentence suspended for 12 months**. He was also made to observe a home **curfew between 8pm and 6am and wear an electronic tag**. In addition, the judge imposed a **£5,000 compensation order**. An employee using the equipment caught his jacket sleeve on the

metal teeth of the equipment and his fingers and then his forearm were dragged into the running shredder – he lost his arm up to his elbow

A Sales Director was fined after he suggested raising a metal stillage on the forks of a forklift truck to provide a work platform. An employee using the stillage fell 4m and fractured his right wrist and right eye socket and also suffered severe internal bruising during the incident. The Director was fined **£3,000** and ordered to pay **£1,315** in costs

IOSH Safety for Senior Executives – public course

Clwyd Associates is running a one-day public IOSH Safety for Senior Executives training course at Coalville on Wednesday 4th May.

The course will cover the health and safety issues that any manager who might affect the health and safety strategy within their organisation needs to know such as:-

- The key health and

safety legislation they need to comply with – and practical guidance on how to comply

- HSE's current health and safety strategy in terms of inspections and Fees For Intervention (FFI)
- The new sentencing guidelines on fines for breaches of health and safety legislation
- What practical action individual managers can

take to improve health and safety performance in their organisation

The course costs £250 plus VAT per person (includes light refreshments, handouts and IOSH fees).

Please contact Clwyd Associates on 01530 837477 or at enquiries@clwydassociates.co.uk to book your place



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