

Health and Safety Bulletin

Punishment for health and safety offences

Articles in this newsletter:

- Punishment for health and safety offences
- MPs recommend extending FFI to local authorities
- Case law update
- HSE statistic update

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In February 2016 the sentencing guidelines for health and safety offences in England and Wales was changed following 12 months of consultation. In November 2018, a new guideline for the punishment of any individual found guilty of gross negligence manslaughter (not just for health and safety cases) was implemented. How has the system changed?

Health and safety offences

There is now a nine step process that the courts have to follow when deciding a sentence for a health and safety offence, determining the:-

- culpability of the offender
- harm category (a combination of likelihood and seriousness of harm risked)
- starting point and range of the fine based on the organisations turnover
- adjustment of the fine due to other factors (e.g. early guilty plea, history of previous convictions etc.)

Do your senior managers understand the potential implications of the decisions they make daily?

Senior managers make decisions daily that could have an impact on health and safety – they need to understand the context in which those decisions are being made from a health and safety point of view.

Clwyd Associates' IOSH Safety for Executives and Directors provides this underpinning knowledge. A one day course, it explains the moral, legal and financial implications and also outlines the standards the HSE expect organisations (through their managers) to maintain in the workplace.

Are fines limited to the corporate entity in which they occurred?

Poundworld pleaded guilty to five food safety offences and two health and safety offences but when the court asked for the financial details of the business' owners **TPG Capital**, the request was "respectfully declined." The court therefore concluded that Poundworld could pay any fine and set it at **£1.16million** with an additional **£30k** costs

Gross negligence manslaughter offences

Individuals can be charged with this offence if the Corporate Prosecution Service believes there is enough evidence to show that their gross breach of a duty of care resulted in a fatality (either of an employee or someone else).

The sentence will be decided based on the level of culpability – for example, if the individual was negligent in order to achieve financial gain or avoid cost or was in a leading role with others during the offence, this would be regarded as high culpability. The Sentencing Guidelines indicate that the sentencing range for these circumstances is 6 – 12 years custody.

Have the new guidelines had an effect?

It's a little too early to review the effect of the new gross negligence manslaughter guidelines. However, the health and safety offences guidelines have been in use for over two and a half years. In summary, these have resulted in:-

- total fines for health and safety cases rose from £38.8 million in 2015/16 to £69.9million in 2016/17
- The average fine in 2016/17 was £126,000 compared to £61,000 in 2015/16

Conclusion

The aim of Guidelines is to ensure punishment is "sufficiently substantial to have real economic impact" – the evidence appears to indicate they are capable of achieving that.

Recently issued health and safety information:

- HSE Stress Talking Toolkit
<http://www.hse.gov.uk/gohomehealthy/assets/docs/StressTalkingToolkit.pdf>
- Updated HSE guidance on mental health
<http://www.hse.gov.uk/stress/mental-health.htmk>
- 1st aid mental health
<http://www.hse.gov.uk/firstaid/needs-assessment.htm>
- Welding fume control selector tool
<http://www.breathefreely.org.uk/wst/>
- Get a grip ladder safety pack
<https://ladderassociation.org.uk/infopack/>
- Poster showing difference between cardiac arrest and heart attack
https://www.zoll.com/-/media/uploadedfiles/public_site/core_technologies/cpr/HeartAttackvsSCA_Poster

MPs recommend extending FFI to local authorities

Fees For Intervention (FFI), the policy that allows the HSE to charge organisations £129 per hour to businesses that are found to be in material breach of health and safety legislation for the work associated with notifying them of the breach, should be extended to local authorities. This suggestion has been published in a report issued by the All-Party Parliamentary Group on Occupational Safety and Health.

The Group believe that this will act as an incentive to improve health and safety standards in businesses that are regarded as having lower risk such as retail, offices, logistics and leisure. The report indicates that there has been a decline in health and safety legislation enforcement in councils following budget cuts – this is demonstrated by a 64% reduction in enforcement notices issued by EHOs between 2010 and 2016.

Case Law update

This issue focuses on cases which have resulted in significant fines following the introduction of the new sentencing health and safety guidelines in February 2016

A Director was jailed and a recycling company fined **£700,000** with **£99,886.57** costs after a worker was crushed in a baler. The baler interlock had been defeated so that workers could get into the machine while it was still energised. When the worker cleared the blockage that had stopped the machine it automatically restarted. When HSE Inspectors visited the site five years after the worker's death, they found the baler was still being operated without safety devices being fully functional and this information was taken into consideration during sentencing. The Director was sentenced to **eight months**

in prison

A furnace relining company based in Leeds exposed its workers to Hand Arm Vibration Syndrome (HAVS) risks and failed to control exposure to respirable crystalline silica. They also failed to implement health surveillance, despite having received advice from the HSE. The company had to report two cases of HAVS under RIDDOR and the prosecution followed the investigation following this report. The company was fined **£60,000** with **£4,864** costs

Interserve Facilities Management have been fined **£93,600** with **£32,056** costs after being found guilty of failing to carry out maintenance activities for equipment that contained high hazard biological agents in

microbiological containment laboratories. The consequences of the equipment failure was only limited by the timing of the incident and the type of laboratory studies being taken at the time

A bakery was fined **£159,080** with **£4,594** costs after employees were found to be suffering from occupational asthma. The HSE investigation found that the company had not installed an effective method to prevent the dust becoming airborne and employees being exposed to

HSE statistic update

The HSE has released the latest injury and ill-health statistics for Great Britain – these show that in 2017/18 there were

- 144 fatal workplace accidents
- 1.4 million people suffering from a work-related illness
- 30.7 million lost work days due to work-related illness and injury
- 493 successful convictions prosecuted by the HSE

The HSE estimates that workplace injuries and ill-health costs £15 billion

About Clwyd Associates...

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

In business since 2000, we employ consultants with at least 15 years practical experience backed up by recognized professional and academic qualifications - ensuring our clients receive first class service.

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