

The final countdown—new sentencing guidelines to come into force

20/01/2016

Corporate Crime analysis: A new guideline will come into force on 1 February 2016 for the sentencing of offences relating to health and safety, corporate manslaughter and food safety and hygiene. Ian Thomas, a barrister at 6 Pump Court, explains its significance and potential impact.

Original news

New definitive guidelines for safety offences, LNB News 03/11/2015 102

New sentencing guidelines from the Sentencing Council cover the sentencing of organisations or individuals convicted of corporate manslaughter, health and safety and food safety and hygiene offences, and aim to ensure a consistent, fair and proportionate approach. The guidelines will result, in some cases, in offenders receive higher penalties than previously, particularly large organisations convicted of deliberately breaking the law and creating a high risk of death or serious injury. The guidelines will come into force in courts on 1 February 2016.

Briefly, what will change on 1 February 2016? What are the main changes coming into force?

1 February 2016 sees the introduction of the Sentencing Council's definitive guideline for the sentencing of offences relating to health and safety, corporate manslaughter and food safety and hygiene.

The guideline applies to all cases being sentenced on or after 1 February 2016, regardless of the date of the offence, and it will undoubtedly introduce changes to the way in which these types of cases are dealt with by lawyers and by judges.

The immediate impact of the guideline, particularly on larger organisations, is likely to be a significant increase in fines.

The guideline is intended to remedy a perceived view that fines, perhaps particularly in food law cases, have been too low relative to the harm caused, the culpability of the offender and, on occasions, to the means of the offender.

As these cases come before the courts relatively infrequently there is a lack of familiarity of the issues which has led to inconsistencies in sentencing.

The guideline introduces a step-by-step approach in which step one requires the court to determine the offence category by assessing culpability and harm. Having done so, the court refers to the sentencing tables to arrive at a starting point fine which is based on the organisation's annual turnover, or equivalent.

The fine can then be increased or decreased by reference to aggravating and mitigating factors, some of which mirror those found in the traditional approach to sentencing in these cases derived from *R v Howe and Son (Engineers) Limited* [1999] 2 All ER 249 and subsequent cases.

By way of example and applying the guideline in a food case—a large organisation, defined as one with a turnover of £50m and over, where the offence has been classified as high culpability and harm category 2, faces a starting point fine of £230,000.00 (with a range between £90,000.00 and £600,000.00 having regard to aggravating and mitigating features).

Steps three and four require the court to step back and consider wider sentencing principles such as proportionality, deterrence and the removal of financial gain derived from the offending.

The guideline also applies to individuals and a similar approach to sentencing is prescribed. In the worst case food case scenario, very high culpability and harm category 1, the starting point is a custodial sentence of nine months.

Are there any parts of the new guidelines that you think could cause problems/initial confusion?

In the first instance, lawyers will focus on issues of culpability and harm as this will have a significant impact on the starting point fine. This is likely to be a fruitful area for debate and discussion during the sentencing process. Greater scrutiny will be given to the financial information provided by organisations.

How long do you think until we'll see the first sentences under the new guidelines?

The first sentences under the new regime are likely to be given within weeks, if not days, of 1 February 2016. Although the level of fines will be important to assess the real impact of the guideline, the more interesting issue from a practitioner's perspective will be the sentencer's reasons for, and explanation of, the sentence imposed.

How do you see all of these changes working out?

The fear is that a rigid application of the guideline will lead to 'sentencing by numbers' where seeking consistency may result in the specific facts and issues pertaining to an offence and to an offender not being fully taken into account.

As the parties try to manoeuvre their cases into the offence category that best suits their client we may see more fact-finding sentencing exercises (*Newton* hearings (*R v Newton* [1983] Crim LR 198)). This will make cases more costly and they will take up more court time than at present.

Will the guideline improve levels of compliance? Only time will tell.

Ian Thomas practices in the full range of regulatory law with particular focus on food and beverages, health and safety, product safety, trading standards and consumer protection.

Interviewed by Alex Heshmaty.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor



CLICK HERE FOR
A FREE TRIAL OF
LEXIS®PSL

About LexisNexis | Terms & Conditions | Privacy & Cookies Policy
Copyright © 2015 LexisNexis. All rights reserved.