

## New sentencing guidelines--corporate manslaughter

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**Corporate Crime analysis: Revised sentencing guidelines for corporate manslaughter, health and safety and food safety were recently published by the Sentencing Council. David Travers QC and Nicholas Ostrowski at 6 Pump Court take a look at the changes, with a focus on corporate manslaughter.**

### 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, food safety, and hygiene offences, and aim to ensure a consistent, fair and proportionate approach. The guidelines will result, in some cases, in offenders receiving 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.*

### What is the overall approach the courts are to take to sentencing in this area? Are there any particular points of interest?

The most striking feature of the guidelines is the departure from the Court of Appeal's view in *R v Jarvis Facilities Ltd* [2005] EWCA Crim 1409, [2005] All ER (D) 429 (May) that 'consistency of level of fine may not therefore be a primary aim of sentencing in these cases', to a much more formulaic approach. The guidelines, following the method pioneered in the sentencing guidelines for environmental offences, is to introduce a step-by-step approach to sentencing defendants with the aim of increasing the certainty and consistency of sentence for these types of offences.

For corporate manslaughter, for example, the sentencing judge will have to consider a series of questions which determine whether the corporate defendant is guilty of a high level of harm and culpability (offence category A) or a lower level of harm and culpability (offence category B).

The financial information of the defendant is then considered and particular reference is made to how the sentencing body should consider the financial position of companies, partnerships, local authorities, health trusts and charities.

The final stage in the process is to cross reference the offence category on a prescribed scale. For offence category A where the defendant is a large organisation, the starting point will be £7.5m with a range of £4.8m to £20m. For offence category B where the defendant is a 'micro organisation' (less the £2m turnover) the starting point is £300,000 with a range from £180,000 to £540,000.

### What is the significance of these new guidelines? What impact will they have in practice?

The guidelines reflect a view held by many that defendants, especially large corporations, have been treated too leniently in the past. The new guidelines will substantially increase the fines.

For all the offences covered by the guidelines the first step is to determine the culpability of the defendant and allocate it to an appropriate category, then to consider the harm caused by the offence, including both the 'seriousness of harm risked' and the 'likelihood of harm'.

The second step is to consider the starting point and range of fine for the offence. This is informed by the size of the organisation being sentenced, ranging from 'micro' companies to 'large' ones. This generates a starting point for offences of serious harm where there is very high culpability of £4m with a range from £2.6m to £10m.

Many defendants will find that convictions will now attract much more substantial fines.

### What steps should practitioners be taking when dealing with cases falling under these guidelines?

The guidelines come into force on 1 February 2016. Many defendants who have been convicted but are awaiting sentence may think it of benefit to be dealt with before that date.

Much more care will need to be taken with the attempt to agree a basic plea and it is likely there will be many more Newton Hearings.

Currently, defendants will typically shy away from such hearings, where the judge hears evidence to determine the factual basis upon which the defendant will be sentenced, lest they lose credit for their early guilty plea if the judge finds against them. However, now that the discretion of the judge is subordinated to the more formulaic approach in the guidelines this may be a risk worth taking. For example the difference between a starting point for an offence category A and for an offence category B is the difference between £7.5m and £5m. The basis of plea is more important than ever.

### Do you have any predictions for future developments?

There is little doubt that the common law penalties are becoming higher and higher and the guidelines are in tune with that. Further the guidelines explicitly say that where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

Recent experience of the environmental sentencing guidelines, where a similar caveat applies for 'very large organisations', suggest that courts will struggle to fix the correct amount of fine in such cases. In September 2015 HHJ Christopher Parker QC in *R v Southern Water Services Ltd* [2014] EWCA Crim 120 in Chichester Crown Court recently imposed a fine of £180,000 on the company for pumping untreated sewage into the sea in Margate. The judge went on to observe:

'I am bound to say that in the absence of any clear guidelines in respect of very large organisations it is exceptionally difficult to light upon an appropriate scale of fine in a case such as this and taking into account all the very many considerations which I have had to draw together for the purpose of this sentencing exercise.'

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*Interviewed by Alex Heshmaty.*

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