

Getting serious

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Mike Appleby reviews the tougher new sentencing guidelines for health and safety and corporate manslaughter offences

The Sentencing Council guidelines [Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences](#) that came into force on 1 February apply to England and Wales and will probably be followed in Scotland. As with other recent guidelines, including those for environmental offences, sentences are based on categories of culpability and levels of harm.

As a consequence of these new guidelines, fines will rise dramatically: it seems just a matter of time before the record fine of ?15m, imposed on gas network operator Transco in 2005 for an explosion killing a family of 4, will be exceeded. However, lowering the custody threshold for convicted individuals is also a matter of concern.

Sentencing companies

When sentencing companies for health and safety offences, the court first considers culpability, categorised as very high, high, medium or low. It then assesses harm by assigning a 'harm category' ranging from 1 (highest) to 4 (lowest). The harm category is determined by reference to the potential level of harm ? which may be higher than the harm actually caused ? compared with the likelihood of harm occurring, whether high, medium or low.

The culpability finding and harm category are then applied to a table that classifies companies according to 4 categories of turnover: micro (under ?2m turnover), small (?2m??10m), medium (?10m??50m) and large (?50m and above). This table gives a starting point and sentencing range. Listed aggravating and mitigating factors are then applied, increasing or decreasing the fine. The resulting amount can then be reduced by up to a 1/3 if the company has pleaded guilty.

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A similar approach is taken for convictions under the [Corporate Manslaughter and Corporate Homicide Act 2007](#) . An offence category ? either A for the more serious or B for less ? is determined by reference to factors such as how foreseeable serious injury was and how far short of the appropriate standard the company fell, and this category is then applied to a table of sentencing ranges using the same turnover classifications. Aggravating and mitigating factors and reduction for a guilty plea are subsequently considered.

The maximum fine for a health and safety offence given in the tables for a large company with very high culpability is ?10m, and for corporate manslaughter ?20m. But these should not be seen as a ceiling. The guidelines say that for companies with a turnover significantly more than ?50m, the court may move outside the suggested ranges.

In the environmental case [R v Thames Water \[2015\] EWCA Crim 960](#) , where the defendant's turnover amounted to ?1.9bn, the Court of Appeal warned: "In the worst cases ? [t]his may well result in a fine equal to a substantial percentage, up to 100% of the company's pre-tax net profit for the year[,] ? even if this results in fines in excess of ?100m."

Sentencing individuals

The guidelines also apply to individuals convicted of health and safety offences. Under the [Health and Safety Offences\) Act 2008](#) , if convicted in the Crown court the individual faces a maximum sentence of 2 years? imprisonment.

As for companies, the guidelines require the same approach of determining culpability and assigning a harm category then applying these to a table of sentencing ranges. In the past it has been rare for a prison sentence to be handed down. However, where there has been a fatality and the court finds high culpability, custody will now be a real possibility.

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In December 2014, a health and safety advisor was convicted of breaching section 7 of the [Health and Safety at Work etc. Act 1974](#) and sentenced to 9 months' imprisonment. This followed a trench collapse at a residential property killing a construction worker involved in ground excavation works. The advisor was contracted to attend site once a month and last visited 9 days before.

At the time of the fatality, the method statement drafted by the advisor was not being followed. During the sentencing hearing, the judge made specific reference to the then recently published draft proposals that have led to the new guidelines.

Given the high stakes, we can expect more trials and fact-finding hearings to determine the level of guilt or 'Newton hearings'. Companies wanting to challenge any resulting prosecution will need to think carefully at the outset of the investigation about their tactics and preparation. For individuals, they need to consider how they would obtain independent specialist legal advice: if they are not covered by their employers' insurance, then they should give serious consideration to investing in their own.

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Further information

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