

Sentenced to health

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Subcontractor management has never been more important, says Rhian Greaves

Since the [Sentencing Council's](#) reform of the penalties courts may impose in health and safety cases, which came into effect in February 2016, the new sentencing regime has been biting hard in construction. Already subject to heavy enforcement, the sector saw fines rise by 89% in the 6 months following the guideline's implementation, when compared to the same period in 2015.

For large companies, the new guideline makes potentially frightening reading. Courts are now primarily working on the basis of offenders' turnover, arriving at fines in prescribed ranges that can exceed ?10m in the worst cases.

Out of proportion

The [Health & Safety Executive \(HSE\)](#) acknowledges that large contractors are generally good at managing safety. Yet with an estimated 89% of construction businesses consisting of fewer than 10 employees, the approach to safety among the wider industry is concerning. Sites where fewer than 15 people work also account for more than 2/3rds of fatal accidents in the industry ? a disproportionate figure by any assessment.

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The [Construction \(Design and Management\) Regulations 2015](#) seek to address this trend. But how can you secure your own position when working on projects that involve the management of smaller businesses?

Reliance on subcontractors is common in the industry and, if carried out properly, is perfectly acceptable; after all, no business can possibly resource every aspect of a project. The key consideration, then, is the way in which those subcontractors are chosen and managed. Failure to comply with safety legislation in this respect is just as likely to lead to prosecution as is an incident that involves your own employees: a worrying prospect.

Managing the risk

- Vet potential subcontractors: evaluate their credentials, both those related to their specialism and those specific to health and safety. You need to know how they will approach the job, where they see the risks, how they will manage them, and how the work will be carried out. You should validate individuals and ask questions about who will actually be undertaking the work. What training,

- experience and certification do they have?
- Check their competency: this is essential as far as the HSE is concerned; you can only rely on subcontractors if they are competent. Competence is a combination of experience, qualifications, training, knowledge of the task, the ability to prevent risky situations arising, the acknowledgment of limitations, and organisational capability.
 - Give them time: be realistic about what is required and estimate how long this will take. This means balancing the commercial pressures of scheduling with maintaining a safe method of working. Little aggravates a health and safety prosecution as much as the perception that corners were cut for financial gain.
 - Keep talking: communication before, during and after a project is vital. Your subcontractor needs to know precisely what is expected at each stage, how their work fits into the overall project, and what the wider risk profile of the site is as well as their part in it. At the end of a project, consider what worked well and what did not. How will you change things next time? Learn from each job and apply that wisdom on future projects.
 - Monitor throughout: you cannot simply award a works package and then take a hands-off approach. Although it may be tempting to do so, legal duties cannot be discharged in this way. You do not have to supervise, but you must actively monitor the work. At a very basic level, how else will you know your subcontractor is doing what they promised to do in the manner they agreed to execute it?

The cost

Comprising 6% of the national workforce but accountable for 33% of work-related deaths, the construction industry remains a key enforcement target for the HSE. As if to accentuate the point, the HSE's inspection charges in construction have increased by 26% in the past year. And while enforcement notices appear to be declining in number, construction businesses cannot afford to ignore the courts' new-found sentencing might.

Sentencing on environmental matters has long adopted the approach taken in health and safety matters and vice versa due to the similar nature of the respective regulatory regimes. The words of Mr Justice Mitting in a recent water pollution case in the Court of Appeal have a particular resonance here.

"Starting with turnover but having regard to all the financial circumstances, including profitability ? the objectives of punishment, deterrence and the removal of gain must be achieved. ?This may well result in a fine equal to a substantial percentage, up to 100%, of the company's pre-tax net profit ? even if this results in fines of ?100m. Fines of such magnitude are [already] imposed in the financial services market for breach of regulations."

A rather sobering thought.

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Further information

An earlier version of material in this article appeared on the [Construction News](#) site.

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