

Show trial

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A mock hearing offered a valuable illustration of the need to prevent health and safety risks on site, Tom Walker reports

On 30 January, a company director who had ignored site health and safety responsibilities was sentenced in Newport by a group of lawyers from [Blake Morgan](#). Fortunately for the 'director', he was participating in a mock hearing at the Riverfront Arts Centre as part of the [South Wales Working Well Together](#) project. Jointly run by the [Health and Safety Executive](#) and the construction industry, the Working Well Together initiative was set up in 1998 to promote a positive health and safety culture by providing information and advice, often in the form of events.

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The hearing was staged in full Crown court attire, using photographs of a fictitious site where the breach of regulations had supposedly taken place. The Blake Morgan team consisted of partner Robin Havard in the role of judge, and paralegal Steve Parish as clerk. Partner Claire Rawle was the prosecution advocate, while I acted for the fictional defendant company and director.

It tends to be forgotten that health and safety enforcement forms part of the criminal law. Civil claims for compensation may be brought by injured parties, but when companies, directors or employees are found guilty of health and safety offences, they stand convicted as criminals. In addition, a health and safety offence can be committed by creation of a risk alone, and there is no need for anyone to have been injured.

Penalties

The Sentencing Council's 2016 health and safety [Sentencing guidelines](#) crystallise this by focusing on the risk of harm as opposed to any actual harm caused, and the 30 January event was designed to illustrate this emphasis. However, we also wanted to show how the guidelines have led to sharp increases in penalties by linking fines to company turnover rather than profitability, and fixing the amounts by reference to categories of culpability and harm risked.

The guidelines refer to 'very high', 'high', 'medium' and 'low' culpability:

- 'very high' signifies flagrant disregard for the law, for example being aware of failures but proceeding anyway;
- 'medium' would be having some health and safety measures in place, but ones that are inadequate; and

- 'low' would mean that good measures are in place but not followed.

The fictional scenario related to a deficient construction site that had been visited by the Health and Safety Executive and was then subject to enforcement action that the defendants had ignored. While no injuries had resulted, the enforcement had focused on the risk of harm from poor:

- site organisation and planning of logistics and deliveries;
- traffic management; and
- fire risk controls.

The case was novel in so far as previous mock hearings had used scenarios where harm had occurred.

As a result of the failures, the defendants were prosecuted under the Construction (Design and Management) Regulations, or [CDM Regulations 2015](#) . Indeed, one of the purposes of the updated regulations is to bring an holistic approach to health and safety management - so they were ideally suited to deal with the failures in question, as the prosecution advocate made clear in her opening address.

I made representations as best I could, but my mitigation rang hollow as pictures of the shambolic site were shown. With the help of a panto audience-style 'jury', our judge imposed a fine of more than £50,000 on the company and a suspended jail sentence on the director.

Holistic enforcement

A key message for surveyors is to appreciate that enforcement, particularly under the CDM Regulations, is increasingly holistic, taking into account the way health and safety risks can be created at the inception of a project as well as during construction itself.

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A prosecution can be brought for design and organisational failures at this early stage if they lead to a material risk of harm; for example, inaccurate calculations at the design stage could result in risks created during construction. Similarly, over-ordering of stock and not making suitable storage arrangements on site could also create a risk.

Another factor to appreciate is how the guidelines have radically increased the levels of fines. For example, a business with a £5m turnover convicted of an offence that creates a high risk of serious harm, and found to be in the medium range of culpability, could face a fine of up to £600,000.

Since the event, we have been asked to repeat the exercise for a number of organisations. By all means get in touch if you would like us to provide a similar session for you.

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Further information

- Related competencies include [Health and safety](#) and [Legal/regulatory compliance](#)
- This feature is taken from the [RICS Building surveying journal](#) (October/November 2018)
- Related categories include: [Building surveying](#) , [Fire and life safety](#) , [Health and safety](#) , [Health and safety in construction](#)