

Appendix A

Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences - Definitive Guideline

1. Background

The Sentencing Council (SC) began the development of a guideline for health and safety, corporate manslaughter and food safety and hygiene offences following on from the environmental offences guideline, which was published in February 2014.

The SC is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. The SC also identified a number of issues with sentencing practice, including inconsistency in how various factors were weighted and applied, and the fact that sentences in some cases were not fulfilling the purposes of sentencing.

The SC's stated intention is to increase the level of fines for serious offences, particularly for larger companies; whilst reserving prison sentences for very serious offences.

2. Sentencing guidelines

The new sentencing guidelines apply to health and safety offences committed by organisations and individuals, as well as to corporate manslaughter and food safety/hygiene offences. They introduce a structured nine step approach that the Court should follow, so as to calculate sentences. This involves identifying culpability and harm factors and placing them into a series of tables to reach recommended starting point fines, as well as ranges of fines above and below the starting points.

The new regime has been carefully calculated and will certainly improve consistency across England and Wales. These will apply to sentences handed down from 1 February 2016, which make the guidelines retrospective in the sense that they apply to offences that have already been committed and have not yet come up for sentencing.

3. Observations on the new guidelines are as follows:

The first step of the process is to allocate a culpability factor, ranging from 'very high' to 'low', which in turn will drive the allocation of a recommended fine. The 'very high' category is triggered if there has been a 'deliberate breach of or flagrant disregard for the law'. Although that

sounds very serious, it may be all too easy for breaches to fall into this category.

It is not uncommon for employers to identify a safety problem and know they are non-compliant; this then becomes a 'deliberate breach'.

Breaches causing serious injuries and death have until now been much more likely to be prosecuted than mere exposure to risk; and the sentences have also been much heavier. So, exposing someone to a high risk of death should warrant almost the same sentence regardless of whether there is a fatality or merely an exposure to risk without any injury.

4. Summary

A tougher line is being taken for breaches of health and safety law, higher fines not just against organisations, but also against individuals where it is being suggested that imprisonment will become more frequent.

MJ Hosker BEM

Health & Safety Manager