

Corporate Manslaughter - New sentencing guidelines 2 November 2009

The Sentencing Guidelines Council (SGC) have this week issued a second consultation on draft sentencing guidelines for Corporate Manslaughter and Health and Safety Offences Causing Death. These come, coincidentally, at the same time as the HSE publishes statistics for the first year following the introduction of the Corporate Manslaughter and Corporate Homicide Act 2007.

Whilst the HSE rightly welcome the news that the number of work related fatalities has fallen to a record low of 180, they are keen to warn that, historically, a rise out of recession sees a corresponding increase in injuries. The full report can be located at: <http://www.hse.gov.uk/statistics/overall/hssh0809.pdf>

Whether the fall in fatal accidents has been in any way shaped by the introduction of the Corporate Manslaughter and Corporate Homicide Act 2007 is an interesting question, but one that cannot be easily answered. The new offence certainly helped move health and safety up the boardroom agendas and the first consultation exercise by the SGC worried many boards, suggesting fines as high as 10% of gross annual turnover.

Having considered the earlier responses the SGC have decided to move away from the formulaic approach it previously considered and have returned to a less controversial and more conventional analysis of the culpability of the organisation itself. It sets out several factors that the court can consider to assess the gravity of the offence before it and then produces a list of potentially aggravating and mitigating features that will be familiar to anyone used to dealing with Health and Safety at Work Act offences.

The only mention of specific figures comes in section D, stating simply that 'The appropriate fine [for manslaughter offences] will seldom be less than £500,000 and may be measured in millions of pounds' and in respect of Health and Safety offences fines should 'seldom be less than £100,000 and may be measured in hundreds of thousands of pounds or more.'

These words, in isolation, are difficult to fit with the many cases where firms have been fined millions of pounds under the Health and Safety at Work Act 1974. Few would measure Transco's £15 million fine for the gas explosion at Larkhill in hundreds of thousands.

The consequences of any fine must be taken into account by the Court, but the impact on innocent employees is of more relevance than the effect on shareholders and directors. Bankruptcy may be acceptable in some cases, although smaller organisations will be given time to pay. Public sector organisations should expect a punitive fine as the standards expected of a local authority, NHS trust or police force are the same as for the private sector. However, the impact on the provision of services must be considered by the court and a 'different approach' may well be justified. For that read 'smaller fine'.

The guidelines also set out the details of how those convicted of a corporate manslaughter offence may be required to publicise the fact. With an object of both deterrence and punishment, the organisation's own website will be required to publicise the conviction and details of the fine. Not the kind of 'news' the marketing staff would have been planning to include. Newspapers may also be used, but it is recognised that in many cases, that will be unnecessary. The front page of every national newspaper is likely to be free for the first household name convicted of the new offence.

Mills & Reeve LLP will be responding to the consultation and full details are available on the SCS's website: www.sentencing-guidelines.gov.uk

For more information, or to add your views to our submission, please contact:

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