



Beyond Dispute

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Corporate Manslaughter guidelines published

Definitive guidelines have been published to help courts deal with organisations that cause death through a gross breach of care, or where a health and safety offence is a significant cause of a death.

Organisations guilty of corporate manslaughter can be given up to a seven-figure fine, and rarely less than £500,000, states the Sentencing Guidelines Council. For other health and safety offences that result in death, convicted companies can expect a six-figure penalty.

Issuing its long-awaited guidelines on 9 February, the Sentencing Guidelines Council underlined that “punitive and significant fines should be imposed both to deter and to reflect public concern at avoidable loss of life”.

As stated in the draft guidelines, issued in October last year, the level of penalty should not be linked to company turnover or profit. However, account must be taken of the financial circumstances of the offending organisation, as well as the impact on employment of innocent parties, and the extent to which the fine could inhibit the delivery of services to the public – for example, in the case of a local authority, health trust, or police force.

For the guidelines to apply, a significant causative link between the conduct of the offending body and the death that occurred must be established. Some respondents to the Council’s consultation on the guidelines raised concern that many cases proceed as guilty pleas with limited opportunity to assess evidence of causation, and that the requirement could lead to lengthy argument in court as to whether or not the guideline applied.

Alison Gray, partner at Dickinson Dees law firm, suggested that the issue of whether the organisation’s actions or inaction constitute a significant cause of death will be the subject of much legal argument. However, Henry Kirkup, a partner in the safety, health and environment group at Berryman Lacey LLP, remarked: “I can’t see how the prosecution could accept a guilty plea on the basis of a breach not causing a death and then reintroduce an argument that it did cause the death during any hearing or sentencing.”

Factors increasing the seriousness of the offence include the foreseeability of serious injury, whether non-compliance was common and widespread across the organisation, and how high up the organisation’s chain of command responsibility for the breach lay.

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Other aggravating offences include the number of deaths and serious injuries caused, injury to vulnerable persons, failure to heed warnings or respond to near-misses of a similar nature, cost-cutting, and deliberate failure to obtain or comply with relevant licences.

Publicity orders will only be an option in the case of corporate manslaughter convictions, but should “ordinarily be imposed” in such cases. These may require offending organisations to publicise, in a specified manner: the fact of conviction; particulars of the offence; the level of fine; and the terms of any remedial order.

The publicity order should normally specify the place where public announcement is to be made, e.g. newspapers, company websites, and give guidance on the size of the notice or advertisement required. However, the guidelines also suggest that a newspaper announcement may be unnecessary if the proceedings are ‘certain’ to receive news coverage in any event. It will also be up to the court to determine the specific terms of an order.

Alison Gray said the orders would have a huge impact. “Organisations are not used to publicly advertising their failings. I think it will hit them quite hard. . . and the court and prosecution will get a say in what is publicised, so it will not be an easy time for them.”

The Council’s decision not to go down the route of linking fines to profit or turnover was broadly welcomed by Henry Kirkup, who said: “There would have been the scope for astronomical fines if based on turnover, and there would have also been scope for huge variations in fines for the same offence for different-sized companies.”

However, Thompsons Solicitors’ Mick Antoniw described the approach taken by the Council as “a sledgehammer”. He said: “This positively encourages the small employer who is cavalier about health and safety and would be bust by a £500,000 fine to carry on regardless, and won’t put a dent in the profits of a big company that doesn’t care.”

Tim Hill, health and safety partner at law firm Eversheds argued that the most significant aspect of the guidelines is that they take effect so soon. He explained: “Unlike changes in legislation, which are rarely retrospective, and only apply to incidents that occur after a new Act or set of Regulations come into force – as these guidelines apply only to sentencing then they will apply to all cases which appear before the courts after 15 February – even if the incident occurred a number of months, or even years ago.”

The first prosecution under the Corporate Manslaughter and Corporate Homicide Act, involving Cotswold Geotechnical Holdings Ltd, is due to commence in the next couple of weeks.