



Are sentences for Corporate Manslaughter and Health and Safety offences set to increase?

The Sentencing Council's consultation on *'Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines'* will seek to address the lack of specific guidance in these sectors currently available to the Courts. It will also bring sentencing practice in line with offenders' financial means, culpability and the likelihood of harm in such a way that will bring about substantial increases in sentences with fines.

The proposed guidance is that fines for large companies committing the most serious health and safety offences could reach up to £10m and up to £20m in respect of corporate manslaughter.

The consultation closes on 18 February 2015. Whilst some changes will be made, it is unlikely that the categorisations used to determine the range of fines or the parameters will be significantly altered.

Why the change?

Existing guidance on sentencing such offences covers predominantly corporate manslaughter and health and safety offences causing death committed by organisations as contained in the Sentencing Guidelines Council's 2010 guidelines.

Also there is a distinct lack of guidance for offences not causing death or committed by individuals as opposed to organisations. Such offences rely on what little guidance is contained in the Magistrates' Court Sentencing Guidelines and authorities from the Court of Appeal.

The new guidance is aimed at achieving a more consistent approach. This inconsistency in part stems from the relatively few health and safety and food offences heard. 2013 saw only 420 sentences passed for health and safety offences and 280 for food safety offences.

There has also been criticism towards the sentences passed. These are seen as not fulfilling the purpose of sentencing (which includes to punish, deter and protect members of the public), because fines are too low in relation to the harm caused, the culpability and the means of the offender.

What is changing?

The most significant change is the direct link between the level of fine and a defendant's turnover.

Companies will be categorised as micro (a turnover of less than £2m), small (a turnover of £2m to £10m), medium (a turnover of £10m to £50m) and large (a turnover of above £50m).

The guidelines will use a matrix system, categorising the offence and the defendant to produce a starting point for the fine on convictions. The more serious the harm caused or the potential to be caused and the defendant's culpability the higher the range. This range is then applied to the size of the defendant company to produce the starting point for the fine.

Whilst there remains a level of discretion to consider the wider circumstances and implications of the fine, Courts will be much more closely tied to a set range.

The result of the consultation is likely to see a substantial increase in potential fines and custodial sentences so as to 'bring home to both management and shareholders the need to comply with legislation and achieve a safe environment for workers and members of the public'.

What does it mean right now?

Nothing is changing for now. Further the consultation does not propose to change any existing legislation or nature of the offences. Its remit is to produce a set of guidelines which will be applied in assessing the appropriate sentence for offenders. The consultation in 2005 following the introduction of the Corporate Manslaughter Act proposed fines linked to turnover which were not adopted. It may be that with sufficient persuasive objection this time the consultation responses will change the Sentencing Council's current approach.

The consultation will last 14 weeks and closes on 18 February 2015. Responses to the consultation can be submitted at consult.justice.gov.uk/sentencing-council/health-and-safety-offences-guidelines.

What will it mean?

A significant increase in the level of fines will focus companies on their potential exposure for health and safety breaches. A good safety system must be a priority both to protect those affected by its activities and to guard against significant financial penalties.

Contacts

For further information, please contact:



Matt Kyle

Senior Associate

+44 (0)117 902 7215

matt.kyle@burges-salmon.com



Gavin Williams

Trainee Solicitor

+44 (0)117 939 2292

gavin.williams@burges-salmon.com

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
6 New Street Square, London EC4A 3BF Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7980 4966

www.burges-salmon.com

Burges Salmon LLP is a Limited Liability Partnership registered in England and Wales (LLP number OC307212) and is authorised and regulated by the Solicitors Regulation Authority. A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

© Burges Salmon LLP 2014. All rights reserved. Extracts may be reproduced with our prior consent, provided that the source is acknowledged. Disclaimer: This briefing gives general information only and is not intended to be an exhaustive statement of the law. Although we have taken care over the information, you should not rely on it as legal advice. We do not accept any liability to anyone who does rely on its content.

Data Protection: Your details are processed and kept securely in accordance with the Data Protection Act 1998. We may use your personal information to send information to you about our products and services, newsletters and legal updates; to invite you to our training seminars and other events; and for analysis including generation of marketing reports. To help us keep our database up to date, please let us know if your contact details change or if you do not want to receive any further marketing material by contacting marketing@burges-salmon.com.