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Safety fine levels set to skyrocket

1. NEW SENTENCING GUIDELINES FOR SAFETY OFFENCES

- 1.1 Any food safety, health and safety or corporate manslaughter case sentenced after 1 February will face much higher fines than has ever been the case before. This is a change that you cannot afford to ignore.
- 1.2 Under the current guidelines the starting point for causative fatal safety offences is a £100,000 fine and £500,000 for corporate manslaughter. Under this new guideline the same fatal safety offence for a large business would result in a fine starting at £2.4m if the company has a high level of culpability; 24 times higher than before.
- 1.3 This represents one of the biggest shake ups to health and safety offences since the 1970s, bringing fines on a par with those imposed by regulators such as the Competition and Markets Authority.

2. HOW THE GUIDELINES WORK

- 2.1 In the case of safety offences, the guidelines create a nine stage process for sentencing, which sets out a clear and formulaic approach to sentencing.
- 2.2 That process now requires the judge to determine, using criteria set out in tables, the culpability of the defendant from low to very high and then determine the harm *risks* by the breach from one of three categories. These two factors are then plotted on a grid to determine a starting point of the fine and the fine range. Food Safety and corporate manslaughter offences follow a similar process.
- 2.3 It was always an important part of the process to make submissions as to the appropriate culpability or harm level associated with the offence. Under the new guidelines the significance is underlined as the relationship between each place on the matrix is clear to see. For instance moving from one harm level the next one up typically increases the starting point by over 100%. The position between culpability levels is even more stark with fines for safety offences jumping from a maximum starting point of £300,000 at low culpability to £1.3m if it is medium culpability, £2.4m at high culpability and £4m at very high culpability. The stakes are now higher and much more obvious and therefore this is an area requiring considerable focus.

3. HEALTH AND SAFETY OFFENCES

- 3.1 The Guidelines apply to the main health and safety offences for companies and individuals under the Health and Safety at Work etc. Act 1974 (“**HSWA**”), as well as the large number of health and safety regulations covered by HSWA. The

Very large organisation Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.		
Large Turnover or equivalent: £50 million and over		
	Starting point	Category range
Very high culpability		
Harm category 1	£4,000,000	£2,600,000 – £10,000,000
Harm category 2	£2,000,000	£1,000,000 – £3,250,000
Harm category 3	£1,000,000	£500,000 – £2,700,000
Harm category 4	£500,000	£240,000 – £1,300,000
High culpability		
Harm category 1	£2,400,000	£1,500,000 – £6,000,000
Harm category 2	£1,100,000	£550,000 – £2,900,000
Harm category 3	£540,000	£250,000 – £1,450,000
Harm category 4	£240,000	£130,000 – £700,000
Medium culpability		
Harm category 1	£1,300,000	£800,000 – £3,250,000
Harm category 2	£600,000	£300,000 – £1,500,000
Harm category 3	£300,000	£130,000 – £750,000
Harm category 4	£130,000	£50,000 – £350,000
Low culpability		
Harm category 1	£300,000	£180,000 – £700,000
Harm category 2	£100,000	£35,000 – £250,000
Harm category 3	£35,000	£10,000 – £140,000
Harm category 4	£10,000	£3,000 – £60,000

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Guidelines cover organisations as well individuals in varying capacities including directors and employees.

- 3.2 For large businesses, fines range from £3,000 to £10 million, see table right. For those companies with turn-over more than £50 million and make it clear that the fines may be significantly higher.
- 3.3 There are also tables that apply to individuals who have been prosecuted and also see the starting point significantly raised, for instance, other than at low culpability any offence with the risk of death has a **starting point** of 6 months imprisonment and up to 2 years for very high culpability cases.

4. CORPORATE MANSLAUGHTER

- 4.1 The Guidelines cover corporate manslaughter and replace the existing sentencing guidance and see the starting point increasing by at least tenfold.

Large organisation Turnover more than £50 million		
Offence category	Starting point	Category range
A	£7,500,000	£4,800,000 – £20,000,000
B	£5,000,000	£3,000,000 – £12,500,000

5. FOOD SAFETY AND HYGIENE OFFENCES

- 5.1 Previously, there is very little specific guidance for sentencing food safety offences and often in such cases the courts extract applicable principles from sentencing in cases involving health and safety.

- 5.2 Whilst the Council does not intend that its Guidance will mean an increase in fines on larger organisations committing lower culpability offences, it anticipates that it will result in higher starting points for more serious offences committed by larger organisations. The range of fines suggested is £6,000 and £3m for these types of offences and are likely to be higher for companies with turn over more than £50 million. To put this in context, there has only ever been one case resulting in a

Very large organisation Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.		
Large Turnover or equivalent: £50 million and over		
	Starting point	Range
Very high culpability		
Harm category 1	£1,200,000	£500,000 – £3,000,000
Harm category 2	£500,000	£200,000 – £1,400,000
Harm category 3	£200,000	£90,000 – £500,000
High culpability		
Harm category 1	£500,000	£200,000 – £1,400,000
Harm category 2	£230,000	£90,000 – £600,000
Harm category 3	£90,000	£50,000 – £240,000
Medium culpability		
Harm category 1	£200,000	£80,000 – £500,000
Harm category 2	£90,000	£35,000 – £220,000
Harm category 3	£35,000	£20,000 – £100,000
Low culpability		
Harm category 1	£35,000	£18,000 – £90,000
Harm category 2	£18,000	£9,000 – £50,000
Harm category 3	£10,000	£6,000 – £25,000



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penalty of over £1m for single offence in history. This means that it is more important than ever that due diligence systems are robust particularly for those high risk and difficult to guard against issues.

- 5.3 In food safety and hygiene cases, the accused is often charged with a number of offences. The Guidelines reinforce the need for the court to consider whether the total sentence is just and proportionate.

FREQUENTLY ASKED QUESTIONS

6. WHAT DOES THIS MEAN IN PRACTICE?

- 6.1 The Guidelines focus on offenders' financial circumstances which means that:

- (a) Fines will be substantially higher amounting to millions of pounds;
- (b) It will be necessary to explore the impact that the fine will have on employees and others;
- (c) Which 'box' on the matrix the case falls into will be an area of huge argument – moving one box up or down can change the fine starting point by over 100%; and
- (d) For companies with turnover greater than £50 million the fines may be tens of millions – where turnover is in the billions a £40-50m provision for a fine in a fatal case is not unrealistic.

- 6.2 This will mean a longer and more formulaic sentencing process which will increase the cost of this element as well as delay.

7. DOES THIS MEAN THE LAW HAS CHANGED?

- 7.1 No, the laws which govern health & safety and food safety remain the same.

- 7.2 What has changed is the 'guidance' to the Court regarding the level of fine which the courts have to impose for breaches of those laws.

8. IS SENTENCING BASED ON GROSS TURNOVER OR PROFIT?

- 8.1 Unfortunately it uses turnover as the starting point, it will then be for the business to demonstrate why it cannot pay a large fine and explain the impact of the sentence.

9. DO THE GUIDELINES APPLY TO INDIVIDUALS WHO ARE CONVICTED?

- 9.1 Yes, the Guidelines also set out fine and imprisonment levels for individuals, but we have not included them in detail in this note.



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10. **WE HAVE A GROUP OF COMPANIES / HAVE FRANCHISEES, WHICH COMPANY DOES THIS APPLY TO?**

10.1 The legal duty applies to the company whose undertaking was being conducted when the offence took place. It will be that company which commits the offence and that the court will want to explore the financial circumstances of during the sentencing process. There are however certain circumstances in which the Court can consider the assets of the parent company.

11. **DO THE GUIDELINES APPLY IN SCOTLAND?**

11.1 Whilst the Guidelines would not cover Scotland, they are likely to be taken into consideration by Scottish courts especially in the case of health and safety as the legislation is UK wide and our experience is that the Scottish Courts follow the trends of the English Courts.

12. **WHAT SHOULD YOU DO DIFFERENTLY NOW?**

12.1 The short answer is to make sure you are complying with the law – that will avoid these fines. However, for large businesses this is often easier said than done and little offences will now result in substantial fines.

12.2 This means that it is critical to ensure that company procedures are followed. These have been developed to protect the company and if followed will prevent the company being convicted.

12.3 Take the time between now and February to make sure that your house is in order - now is a good time to kick start that audit process you have been putting off.

12.4 It is also a great time to ensure your crisis plan and response are in place to ensure that should the worst happen you are in the best place to manage and mitigate the consequences.

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

<https://www.sentencingcouncil.org.uk/wp-content/uploads/HS-offences-definitive-guideline-FINAL-web.pdf>

For more information please contact: Pete Wells at petewells@ukactive.org.uk or 020 7400 8630