



Further consultation on Sentencing Guidelines for Corporate Manslaughter

On 27 October 2009 the Sentencing Guidelines Council (the "Council"), which is responsible for advising on sentencing for England and Wales, published a second consultation paper on proposed sentences for Corporate Manslaughter and health and safety offences causing death. The first consultation published by the Sentencing Advisory Panel (the "Panel") in November 2007, recommended that fines be calculated with reference to a defendant's turnover which could have resulted in significant fines far in excess of any fines under the Health & Safety at Work Act ("HSWA") ordered to date. The Council has however proposed a much more flexible approach and started a new consultation on that basis.

Level of Fines

In November 2007, the Panel issued the first consultation paper leading to its advice to the Council. The key recommendation in that advice, which has only now been published as part of the second consultation paper, was that fines for these offences should be based on the defendant's annual turnover (averaged over a three year period). The Panel proposed different starting points depending on the risk of death involved ranging from 2% to 5% of turnover. They went on to suggest that the actual range of fines (once aggravating and mitigating factors have been taken into account) should range from 1% to 10% of turnover. On that basis, the most serious offence with significant aggravating features could have attracted a fine of 10% of turnover.

The Council has however rejected this approach. Whilst agreeing in principle that aggravating and mitigating factors and the ability of the defendant to pay should have a considerable influence on the fine, the Council felt that a fixed correlation between the fine and either turnover or profit would not be appropriate. The Council does propose however that the Courts look at both factors in order to assess appropriate level of fine.

The Council did not ignore the question of the level of fines. Whilst leaving the figures to the court's discretion, they say that fines for Corporate Manslaughter will seldom be less than £500k and may be measured in millions. Health and safety fines resulting from a fatality are expected to span a range with a lower bottom end, but will seldom be less than £100k.

Compensation

The Council has also differed in its view of how compensation should be dealt with from the option put forward by the Panel. The Panel's view was that those affected should not lose out (if for example, the fine left the defendant unable to pay compensation) and therefore proposed that the criminal court should deal with compensation and fines at the same time. The Council's view is that the civil courts are better equipped to deal with such claims and it therefore recommends that in all but the most pressing cases, the matters should be dealt with separately.

Publicity Orders

The Corporate Manslaughter & Corporate Homicide Act 2007 (the "Act") gives the Court the power to order a defendant guilty of an offence under the Act to publicise the fact of its conviction including the level of its fine. The Council takes a strong line on the use of publicity orders and recommends that following a conviction, publicity should be ordered as a matter of course. It should however be noted that the relevant provision of the Act is not yet in force.

Conclusion

Given the pressure from some influential lobby groups, it is perhaps surprising that the Council has decided not to accept the recommendations of the Panel in respect of a fixed correlation between a defendant's turnover and the size of a fine. However, this approach is likely to find favour with large employers and corporations, particularly high risk businesses with low profitability who could have been hardest hit. The Council invites responses to its consultation after which a definitive guideline will be published. Responses should be received by 5 January 2010 and for further information on the consultation or responding to it, please contact Ann Metherall or Catherine Gilbert.

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