



**THE LAWYER**  
**AWARDS 2018**  
**LAW FIRM OF THE YEAR**

**BHSEA / WWT**

**Temporary Works –  
Penalties / Recent  
Cases**

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Pinsent Masons

# Penalties - Sentencing Guidelines

- Determine the offence category – Culpability

## Very high

Deliberate breach of or flagrant disregard for the law

## High

Offender fell far short of the appropriate standard; for example, by:

- failing to put in place measures that are recognised standards in the industry
- ignoring concerns raised by employees or others
- failing to make appropriate changes following prior incident(s) exposing risks to health and safety
- allowing breaches to subsist over a long period of time

Serious and/or systemic failure within the organisation to address risks to health and safety

## Medium

Offender fell short of the appropriate standard in a manner that falls between descriptions in 'high' and 'low' culpability categories

Systems were in place but these were not sufficiently adhered to or implemented

## Low

Offender did not fall far short of the appropriate standard; for example, because:

- significant efforts were made to address the risk although they were inadequate on this occasion
- there was no warning/circumstance indicating a risk to health and safety

Failings were minor and occurred as an isolated incident



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# Penalties - Sentencing Guidelines

Seriousness of harm risked			
	<b>Level A</b> <ul style="list-style-type: none"> <li>• Death</li> <li>• Physical or mental impairment resulting in lifelong dependency on third party care for basic needs</li> <li>• Significantly reduced life expectancy</li> </ul>	<b>Level B</b> <ul style="list-style-type: none"> <li>• Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer's ability to carry out normal day-to-day activities or on their ability to return to work</li> <li>• A progressive, permanent or irreversible condition</li> </ul>	<b>Level C</b> <ul style="list-style-type: none"> <li>• All other cases not falling within Level A or Level B</li> </ul>
<b>High likelihood of harm</b>	Harm category 1	Harm category 2	Harm category 3
<b>Medium likelihood of harm</b>	Harm category 2	Harm category 3	Harm category 4
<b>Low likelihood of harm</b>	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)



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# Penalties - Sentencing Guidelines

- Starting point fine and category range
- Large (£50m+ turnover)

<b>High culpability</b>		
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	£120,000 – £700,000

- Medium (£10-£50m turnover)

<b>High culpability</b>		
Harm category 1	£950,000	£600,000 – £2,500,000
Harm category 2	£450,000	£220,000 – £1,200,000
Harm category 3	£210,000	£100,000 – £550,000
Harm category 4	£100,000	£50,000 – £250,000

- Small (£2-10m turnover)

<b>High culpability</b>		
Harm category 1	£250,000	£170,000 – £1,000,000
Harm category 2	£100,000	£50,000 – £450,000
Harm category 3	£54,000	£25,000 – £210,000
Harm category 4	£24,000	£12,000 – £100,000



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# Penalties - Sentencing Guidelines

## Factors increasing seriousness

### *Statutory aggravating factor:*

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

### *Other aggravating factors include:*

Cost-cutting at the expense of safety

Deliberate concealment of illegal nature of activity

Breach of any court order

Obstruction of justice

Poor health and safety record

## Factors reducing seriousness or reflecting mitigation

No previous convictions or no relevant/recent convictions

Evidence of steps taken voluntarily to remedy problem

High level of co-operation with the investigation, beyond that which will always be expected

Good health and safety record

Effective health and safety procedures in place

Self-reporting, co-operation and acceptance of responsibility



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# Statistics

- 70% of site accidents are related to TW's



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# Oliver Connell and Son Ltd and Rydon Construction Ltd

- Two construction companies have been fined after a worker fell to his death when a temporary platform collapsed in July 2015
- Oliver Connell and Son Ltd:
  - failed to ensure that work at height was properly planned, appropriately supervised and carried out in a safe and practicable manner. T
  - there was no temporary works design for the platform and the company's system for installing and inspecting it was inadequate.
- Rydon Construction Ltd:
  - failed to plan, manage and monitor the work involving the temporary platform to ensure that, construction work is carried out without risks to health or safety.
  - they failed to identify the lack of design drawings and carry out suitable checks on the platform.
- The companies were fined £360,000 and £500,000 respectively and were ordered to pay costs of £48,000 and £41,000 – February 2019



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# Swain Scaffolding Limited

- Scaffolding company has been fined after scaffolding it had erected collapsed onto a neighbouring primary school
- Investigation found that:
  - the scaffolding was not designed or installed to withstand foreseeable loads.
  - It was not tied to the adjacent building, nor did it have adequate buttressing or rakers and was essentially a freestanding structure.
- Fined £24,000 and ordered to pay £3452.50 in costs - February 2019



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# St James' Contractors (part of the Berkeley Group), Michelson Formwork and Civil Engineering and RGF Construction

- Wooden platform gave way, causing two men who were standing on it to fall 16m onto a partially constructed staircase. One of the Men (a carpenter) died from the injuries he sustained whilst the other (a steel fixer) sustained injuries serious enough to keep him from working for three years. An engineer's assistant was also injured due to falling debris.
- Similar platforms were constructed on other floors throughout the construction site using timber joists supported by unsuitable joist hangers with plywood fixed on top.
- The platforms were not built to an agreed safe design or quality checked.
- December 2016:
  - St James (Principal Contractor) - Pleaded guilty to breaching regulation 22 of the CDM and were fined £600,00
  - Michelson Formwork and Civil Engineering (responsible for building the platforms) - Pleaded guilty to breaching regulation 13 of the CDM (2007) and were fined £400,000
  - RGF Construction (site agent which assisted with management) - Found guilty of breaching regulations 13 and 28 of the CDM, it was fined £20,000.



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# Frazer Stannard Limited

- Construction company near Cambridge has been fined £100,000 after temporary hoarding from one of its sites fell onto a member of public.
- 10m long hoarding, which was used to shield the site from the public, had been inadequately constructed.
- Workers had been given no details, design or instruction on how to build the hoarding and it was left entirely to the team on the site how to construct.
- There was no supervision and the hoarding had not been adequately supported, tied back or inspected.



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# Meldrum Construction Services

- Worker stepped on a temporary wooden floor and fell 4.5m down a service riser shaft spraining both his ankle
- Pleaded guilty to breaching CDM Reg 13 (requires temporary platforms to be installed in the service riser to provide a safe workspace)
- MCS, as principal contractor, failed to properly manage and plan the temporary works within the service riser.
- Temporary floors were installed to specifications they had not been designed for.
- Fined £120,000 (July 2016)



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# Balfour Beatty Utility Solutions

- Prosecuted after a sub-contractor was killed when a 2.4m-deep unshored trench collapsed on him while he was laying cable ducting
- Trench on made up ground and inherently unsafe
- The HSE found that BBUS's assessment for the project failed to consider the risk of a trench collapse. The company did not provide the dig team with any materials to shore the trench and shoring was not mentioned in the method statement for the work.
- The engineer who wrote the risk assessment and method statement for the project was not sufficiently qualified or trained to do so, nor was he properly supervised because his manager was away at the time.
- The judge concluded that the offence category was high culpability, harm category one (level A seriousness of harm risked with a high likelihood of harm).
- The starting point for the fine was £5m, lowered to £4m with the company's mitigation. The final fine was £2.6m when the early guilty plea discount was applied.



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# Bellway Homes

- Bricklayer sustained deep lacerations and fractured vertebra after falling from a platform loaded with seventy concrete blocks.
- The platform on which he was standing (which was over a stairway) was not properly reinforced.
- HSE inspectors established that the platform was not built to an approved design or checked for stability prior to being used. It was structurally unsound and the weight of the blocks combined with the employees weight was too much, causing it to fail.
- Fined £35,000 (May 2015)
- This was the second fine Bellway had been forced to pay due to a breach of CDM, with the first instance arising in North Tyneside after a subcontractor fell through a stairwell due to the failure of a temporary handrail at a Shiremor site.



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# Construction worker

- Construction worker given 6 month suspended sentence
- Balanced on scaffolding 90ft in air
- Working to hammer steel beams into position as quicker than asking scaffolder to do so



MEN Media / Daily Mail



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# Questions?



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