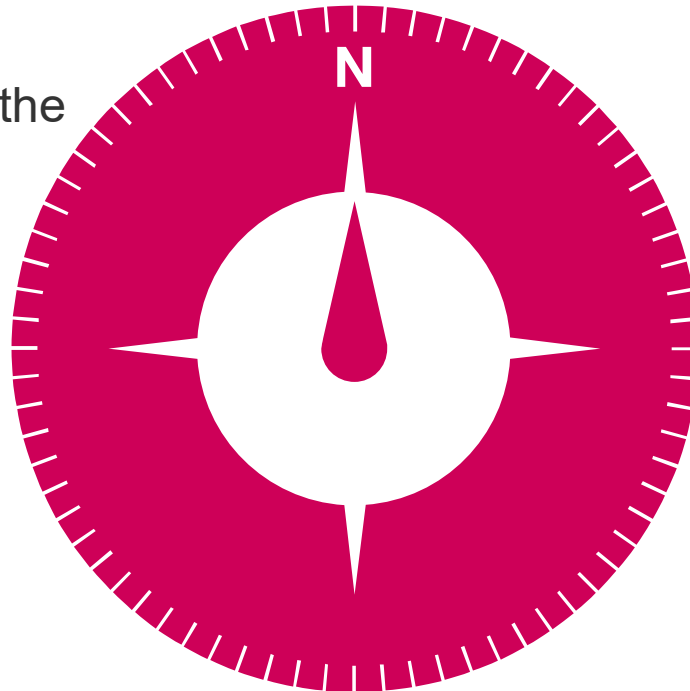


The New Health and Safety Sentencing Guidelines: 4 months in



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How can companies manage the corporate risk?



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Introduction



- The new Health and Safety and Corporate Manslaughter Sentencing Guidelines have now been in effect for over 4 months
- Trends beginning to emerge following their implementation – risk based approach
- Very Large Companies – how will the courts implement the ‘multiplier effect’?
- Companies are advised to prepare for multi-million pound fines for health and safety breaches even in cases not involving fatalities
- Importance of Risk and Crisis Management

Operation of the Guidelines



The Guidelines classify corporate entities according to their turnover, as follows:

- Micro: up to £2m
- Small: £2m - £10m
- Medium: £10m - £50m
- Large: more than £50m
- Very large: no specified bracket, however the Guidelines suggest this would include a company with a turnover of over £900m

A fine is then calculated based on turnover, risk of harm and culpability.

Importantly the Guidelines **do not require actual harm** to have occurred (although it will be an aggravating feature) - **only the risk of harm.**

Pre and Post Guidelines Benchmarks



| | Pre Guidelines | Post Guidelines |
|--|--|---|
| Health and Safety Offences (fatalities) | A health and safety offence which resulted in death recommended a starting point for a fine at £100,000 . | A medium sized company (turnover between £20-50m) could see the starting point as high as £4 million depending on the level of culpability. For large companies (£50m+) the guidelines indicate a top level fine of £10 million . |
| Corporate Manslaughter | Fine starting point of £500,000 ; highest fine to date £700,000 . | A medium sized company would see a starting point of £3 million with a possibility of fines up to £7.5 million . A large company faces potential fines of up to £20 million . |
| Health and Safety Offences (non-fatalities) | For companies small and large alike fines in the tens of thousands . | Potential fines in the hundreds of thousands even for smaller companies and above £500,000 for larger companies. |

Fines under the New Guidelines: Very Large



| Company | Fatal | Turnover Category | Fine |
|--|-------|--|----------|
| ConocoPhillips | N | Very Large | £3m |
| Balfour Beatty Utility Solutions Limited | Y | Very Large (group company) | £2.6m |
| Travis Perkins | Y | Very Large | £2m |
| National Grid Gas | N | Very Large | £1m |
| Balfour Beatty Civil Engineering | Y | Very Large (group company – low profits) | £1m |
| UK Power Networks | Y | Very Large | £1m |
| BT plc | N | Very Large | £600,000 |

Fines under the New Guidelines: Large, Medium and losses/liquidation



| Company | Fatal | Turnover Category | Fine |
|-----------------------------|-------|-------------------|----------|
| Babcock Rail | N | Large | £400,000 |
| Syngenta | N | Large | £200,000 |
| C.RO Ports London | N | Medium | £1.8m |
| Falcon Crane Hire | Y | Medium/losses | £750,000 |
| MJ Allen Holdings | N | Medium/losses | £160,000 |
| Solvay Solutions UK Limited | N | N/A - liquidation | £440,000 |

Emerging Trends



- Significant increase in the size of the fines – approximately £10m in the last 4 months
- Significant increases in the number and severity of fines for incidents that caused little or no harm to workers - risk based approach to sentencing
- ConocoPhillips compared with Network Rail Hatfield/Ladbroke Grove disasters
- Impact so far has been mainly on large companies – will the courts begin to apply the ‘multiplier effect’ when sanctioning very large companies?

Very Large Companies



- Turnover of over £50m – the Guidelines give an example of a £900m turnover company
- The Guidelines permit the courts to exceed the maximum fines provided for in the top brackets for health and safety offences (£10m) and for corporate manslaughter (£20m)
- During a recent environmental prosecution of a large company the Court of Appeal, applying the similarly structured new Environmental Sentencing Guidelines, stated that fines **“up to 100%, of the company's pre-tax net profit for the year in question even if this results in fines in excess of £100 million”** were not unthinkable
- Merlin Attractions (turnover of over £1bn) will soon be sentenced in relation to the crash on the ‘Smiler’ rollercoaster – this may provide some guidance on the application of the Guidelines to very large companies

How should companies prepare and protect themselves?



- **Undertake specific risk assessments** – Tailored to work task and site
- **Crisis Response:** a robust Crisis Management plan will need to be in place to maintain consumer, stakeholder and employee confidence
- **Corporate Governance:** accountability at board level - ISO 45001 requires boards to take ownership of the risk management system, rather than delegating - duties both individually and as a key element of organisational compliance
- **Risk Profile:** a reappraisal of risk registers will be necessary, including consideration of the level of reserve and financial planning and the impact upon EL/PL Insurance and premiums
- **Organisational Structure:** risk containment – group companies may need to consider the operational independence of divisions to limit the turnover that could be referred to on a sentencing

Any Questions?





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