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Are any trends emerging in corporate manslaughter sentencing?

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Corporate Crime analysis: Is there a disparity between the Sentencing Council's (SC) definitive guideline for corporate manslaughter and the actual sentences imposed? Prashant Popat QC of Henderson Chambers suggests penalties could be 'substantially greater' if proposals to amend the existing guideline go ahead as drafted.

Original news

R v Pyranha Mouldings Ltd and Peter Mackereth (Sentencing remarks) [2015] Lexis Citation 38, [2015] All ER (D) 292 (Mar)

The first defendant company, P Ltd, was convicted of gross negligence manslaughter of one of its employees, who had died after becoming trapped in an industrial oven. It was further convicted of offences under the Health and Safety at Work etc Act 1974, along with the second defendant director, M. In sentencing, the judge expressed his intention that the penalty should bite against the director shareholders while at the same time ensuring the company was preserved for the benefit of its employees. The judge imposed a fine of £200,000 on P Ltd and £25,000 on M. M was also given a suspended sentence of nine months' imprisonment.

Draft guidelines issued by SC, LNB News 13/11/2014 120

Increased sentence levels are proposed to cover health and safety, food safety and hygiene offences, and corporate manslaughter. The SC is consulting on draft sentencing guidelines. The SC believes there is a need for expanded guidance on dealing with difficult issues arising in these cases, such the risk of harm, identifying appropriate fine levels for organisations and fining charitable or public bodies. The SC is reviewing the guidelines partly due to concerns that some sentences imposed for these offences have been too low. The consultation is open until 18 February 2015.

In light of recent sentences for corporate manslaughter, what trends can be identified for convictions under the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA 2007)?

It is not possible to identify a trend for sentences for this offence. Pyranha Mouldings was the tenth company to be convicted of corporate manslaughter under CMCHA 2007. It was fined a total of £200,000, following a trial in which it unsuccessfully challenged the charge.

A further corporate manslaughter conviction followed the Pyrhana conviction when Peter Mawson Ltd pleaded guilty to a charge under CMCHA 2007. It was fined £220,000.

Across the 11 convictions for this offence, the penalties have ranged from £8,000 (*R v Mobile Sweepers (Reading) Ltd* [2014]) to £500,000 (*Sterecycle (Rotherham) Limited* [2014]). Similar penalties have been imposed on defendants who have pleaded guilty and those who have pleaded not guilty. What is clear is that the level of penalty will be heavily influenced by:

- o the sentencing judge's assessment of the particular facts of the case
- o the grossness of the defendant's failure
- o the company's means

How do recent sentences passed compare to the SC's definitive guideline on sentencing corporate manslaughter offences?

The definitive guideline for corporate manslaughter and health and safety offences states that fines imposed on companies found guilty of corporate manslaughter should 'seldom be less than £500,000 and may be measured in millions of pounds'. Apart from one case, no defendant so far convicted of this offence has been fined £500,000.

Undoubtedly, the disparity between the guideline and the sentences imposed has been because the companies so far convicted of this offence have demonstrated that their means are limited and they are relatively small outfits. As such, companies with an annual turnover not exceeding £10m have been fined £385,000 (*R v Cotswold Geotechnical (Holdings) Ltd* [2011] EWCA Crim 1337, [2011] All ER (D) 100 (May) following a not guilty plea) and £480,000 (*R v Lion Steel Equipment Ltd* [2012] following a guilty plea). Defendants with a smaller turnover have been fined even less.

What issues should practitioners consider when advising corporate clients on possible corporate manslaughter sentences?

Corporate clients should be advised that under the current sentencing guideline, their financial position will be very important in determining sentence. It is important, therefore, they are in a position to present an accurate and fair account of their means and available assets. It is likely that in future cases the court will impose greater fines because the defendant is a larger corporate organisation, with a greater turnover or balance sheet than the defendants so far sentenced.

Corporate clients will need to be advised that new sentencing guidelines have been proposed. The consultation for these guidelines has just closed. No date has been provided for the implementation of revised guidelines and, of course, the final guidelines may be substantially different to the draft proposed.

If, however, the guidelines are finalised in the same form as the present draft, it is likely that the penalty for this offence will be substantially greater. For example, for a company with a turnover in excess of £50m, the draft guidelines propose a penalty range of £4.8m to £20m for the most serious corporate manslaughter cases.

Companies should also be aware of the increasing use of publicity orders in sentencing for corporate manslaughter offences. Orders have included requiring the defendant to advertise the fatal incident on its website and to take out a half-page advertisement in its local newspaper publicising its conviction. These orders may cause a substantial financial detriment to the company, possibly equivalent to, or even greater than, the fine imposed.

Interviewed by Hannah Giles.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.