



CORPORATE HEALTH AND SAFETY COMMITTEE - 11TH JULY 2016

SUBJECT: SENTENCING GUIDELINES (MANSLAUGHTER, HEALTH AND SAFETY OFFENCES)

REPORT BY: INTERIM CHIEF EXECUTIVE

1. PURPOSE OF REPORT

- 1.1 This report is provided to advise members of the Corporate Health and Safety Forum of the changes to criminal sentencing guidelines for Health and Safety Offences by organisations and individuals.

2. SUMMARY

- 2.1 Under the Coroners and Justice Act 2009, the sentencing Council has issued a definitive guideline on sentencing. The guideline applies to all organisations and offenders aged 18 or older, who are sentenced on or after 1 February 2016, regardless of the date of the offence. When sentencing public authorities, the court may have regard to the fact that a very substantial financial penalty may inhibit the performance of the public function that the body was set up to fulfil. This is not to suggest that public bodies are subject to a lesser standard of duty of care in safety matters, but it is proper for the court to take into account all the facts of the case, including how any financial penalty will be paid.

3. THE REPORT

- 3.1 Historically sentences for health and safety offences in criminal courts have been relatively low in comparison with other criminal offences. In some cases the cost of the state taking the case to court has outweighed the level of fine issued. In this regard the threat of criminal action has been little deterrent to organisations who are not meeting their legal requirements in managing health and safety. The new guidelines will rectify this position and the incentive to manage health and safety and avoid breaches of duty are stronger than ever.

Organisations - Breach of Duty of Employers to Employees/Non Employees

- 3.2 The guidelines are very detailed and fines issued against organisations will depend on a number of factors including:-
1. The seriousness of the harm risked and the likelihood of that harm arising (this applies where the offence caused no actual harm).
 2. Whether the offence was a significant cause of harm (contributory negligence is not taken into account).
 3. The level of culpability, which ranges from flagrant disregard of the law, to the offence

being caused with little fault.

4. The fine will take into consideration the turnover of the organisation or for the public sector the total annual revenue budget.
5. Other aggravating factors affecting the fine include; previous convictions or enforcement action; the breach was a result of cost-cutting at the expense of safety, falsification of documentation or licences.

3.3 In most cases the fines levied are between 10 and 15 times higher than those issued by courts prior to the guideline. For example a case where the defendant (public body) failed to provide asbestos information to a contractor, who went on to disturb asbestos during refurbishment works, prior the guidelines the fine would have been in the region of £40,000 excluding costs. Based on the new sentencing guidelines if this case was sentenced after February 2016 the fine would be in the region of £600,000.

Organisations - Corporate Manslaughter

3.4 By definition the harm and culpability involved in corporate manslaughter will be very serious in such cases the fine is unlimited, however the guidelines provide a financial range which will be determined by:-

1. How Foreseeable was serious injury?
2. How far short of the appropriate standard did the offender fall?
3. How common is this kind of breach in the organisation?
4. Was there more than one death?

3.5 Where answers to the above indicate a high level of culpability for the fatality the offence is regarded as a category A offence. For a public body with a revenue budget of over 50 million the sentence would be between the ranges of between 4-20 million. Where answers to questions above indicate a lower level of culpability for the fatality the offence is regarded as a category B offence. For a public body with a revenue budget of over 50 million the sentence would be between 3-12 million.

Individuals - Breach of Duty of Employers towards Employees/Non-Employees

3.6 Individuals can be prosecuted under the Health and Safety at Work Act 1974 (section 33) for breaches under section 2, 3 and 7. Health and safety offences are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm; the offence is in creating a risk of harm. Again the sentence depends on the seriousness of the harm risked or the harm caused by the breach as well as culpability, which ranges from; the offender intentionally breached, or flagrantly disregarded the law to the offence was committed with little fault. When tried on indictment the sentence will be a maximum of an unlimited fine and/or 2 years in custody. When tried summarily the sentence will be a maximum of an unlimited fine and/or 6 months in custody.

4. EQUALITIES IMPLICATIONS

4.1 There are no Equalities implications for the Council arising from this report.

5. FINANCIAL IMPLICATIONS

5.1 There are no direct financial implications for the Council arising from this report

6. PERSONNEL IMPLICATIONS

6.1 There are no direct personnel implications arising from this report.

7. CONSULTATIONS

7.1 All comments from consultees have been included in the report.

8. RECOMMENDATIONS

8.1 To note the contents of the report.

9. REASONS FOR THE RECOMMENDATIONS

9.1 Provide an understanding of the new sentencing guideline.

10. STATUTORY INSTRUMENTS

10.1 The Health and Safety at Work etc. Act 1974.

Author: Donna Jones, Service Manager, Health, Safety & Welfare
Consultees: Chris Burns, Interim Chief Executive, burnsc1@caerphilly.gov.uk
Cllr C. Forehead, Cabinet Member for Human Resources and Governance / Business
Manager, forehc@caerphilly.gov.uk