

# Health and Safety - the new Sentencing Guidelines

The new Health and Safety Sentencing Guidelines that came into force on **1 February 2016** mean failures in this area just got a great deal more costly. The guidelines apply to **all** health and safety offences, including corporate manslaughter. Anyone involved in ensuring compliance with laws relating to health and safety needs to be aware of the changes. We are seeing more individual directors and officers being prosecuted for health and safety failings in addition to, and as an alternative to, the corporate entity.

In the last year, the Health and Safety Executive published statistics confirming that 3% of workers in the construction industry sustain a workplace injury and that 35 workers were fatally injured in 2014/2015.

## Why is it important?

There are many reasons (other than financial) why health and safety is important to housebuilders, including the impact on the workforce, insurance, brand and reputation and position in the market place, to name but a few. However, over the years, the extent of the financial penalty imposed by the courts has been something of a lottery - but one with increasing stakes, as the judiciary and various public organisations have expressed disquiet over the level of fines imposed, particularly for serious health and safety breaches.

## Enter the new Sentencing Guidelines

Sentencing Guidelines have changed the ballpark, in particular for businesses with a turnover of more than £10 million. In simple terms the new guidelines introduce a tariff system based on turnover, culpability and the degree of **risk of harm** (as opposed to **actual** harm).

## Number crunching

The assessment of culpability and risk is crucial in determining the level of fine. To illustrate the point, for a business with a turnover between £10 million and £50 million which is found guilty of a health and safety offence where the Judge considers there is medium culpability (so, systems were in place, but they were insufficient to

guard against the risk, which created a high likelihood of death or serious injury occurring), this would result in a fine of between £300,000 and £1.3 million. Take the same scenario and apply it to a business with a turnover of more than £50 million and that range increases to between £800,000 and £3.25 million. Aggravating and mitigating factors are then taken into account by the Judge to determine the eventual fine.

For housebuilders, the likelihood of death and serious injury on site is much more relevant, simply due to the nature of the work, for example, excavation and working at height.

## Warning bells

These sorts of numbers are a world apart from the level of fines previously imposed and should sound warning bells for all businesses. The best advice to avoid this 'brave new world' of sentencing has to be 'do not neglect safety'. However, if you find yourself on the wrong side of the tracks, getting the right advice from day one of an incident in order to protect your interests and remove or reduce the potential financial impact is imperative.

If you would like to discuss any of the issues raised in this update, please contact:



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