



# Sentencing Guidelines Council

## Sentencing Guidelines Secretariat

4<sup>th</sup> Floor, 8-10 Great George Street, London SW1P 3AE

Telephone: 020 7084 8130 Fax: 020 7084 8114

Website: [sentencing-guidelines.gov.uk](http://sentencing-guidelines.gov.uk)

E-mail: [info@sentencing-guidelines.gsi.gov.uk](mailto:info@sentencing-guidelines.gsi.gov.uk)

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27 October 2009

Dear Consultee,

### **Sentencing for Corporate Manslaughter and Health and Safety Offences Causing Death – Consultation guideline**

The Council has today published for consultation the above guideline developed from advice received from the Sentencing Advisory Panel; that advice has also been published today. All documents can be found on our website: [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk).

This guideline concerns sentencing for offences committed by organisations where the most serious form of harm, the death of one or more persons, was caused. Accordingly, the sanction will principally be a financial penalty with the additional sanctions of a publicity order and/or a remedial order where appropriate.

For corporate manslaughter, the culpability required is high - a gross breach of a duty of care at senior management level which was the substantial cause of the death(s).

Health and safety offences may be committed by individuals or organisations and may involve a wide variation in culpability. This guideline will only apply to those cases where the offence was committed by an organisation and caused death(s). It is not enough to attract this guideline that a death ensued unless causation is also proved. Such offences should be dealt with in the Crown Court.

This is the first offence guideline issued by the Council relating to sentencing organisations rather than individual offenders. Careful consideration has been given to the difficulties in assessing the appropriate level of a financial penalty for a serious offence which might be committed by a commercial organisation (large or small) by a public authority or by a charitable or other not-for-profit organisation. When determining the amount of a fine, statute requires a court to take account of both the seriousness of the offence and the financial circumstances of the offender and provides that that may have the effect of either increasing or decreasing the amount.

The Sentencing Advisory Panel tendered its advice to the Council in November 2008. Its public consultation had attracted 63 responses, many of which focused on the complexities of fining organisations of different types and sizes.

In previous advice to the Court of Appeal in relation to sentencing environmental offences, the Panel had stated that fines should be devised to have an equal economic impact on organisations of different sizes, which would require an agreed method of calculation to determine an organisation's ability to pay. Applying that

principle to these offences, the Panel proposed that the guideline should provide starting points and ranges expressed as a percentage of an organisation's average annual turnover or gross revenue income or equivalent, depending on the nature or type of organisation.

The Council applied that approach to the many disparate ways in which offences within this guideline can be committed (including examples of both systemic and operational failings either (or both) of which may be involved), and to the great variety of type of organisation which may commit them. In particular, it explored further the differences arising from the resourcing for public and third sector bodies compared with the finances of commercial organisations, and the many different forms of corporate structure which the latter exhibit.

It concluded that the formula approach could inadvertently risk an unfair outcome, was particularly difficult to apply to public and third sector bodies, was likely to create a perverse incentive to adjust corporate structure to avoid the proper consequences of offending and so did not provide the most effective way of assessing the level of fine across such a wide range of situations.

As a result, the Council is proposing that, in some respects, the guideline should take a different form from that adopted for most other offences. As usual, the proposed guideline sets out the key principles regarding the assessment of the seriousness of an offence. However, rather than setting out specific starting points, it proposes a level below which a fine would not normally be expected to fall supported by a general indication concerning the extent to which a fine should be above that level. In addition, guidance is given concerning the use of the powers to make a publicity order (which the Council considers should ordinarily be imposed in cases of corporate manslaughter) or a remedial order.

The Council would particularly welcome comments in relation to this proposed approach. Since aspects of the approach differ from that proposed by the Panel and from other offence guidelines, the Council is consulting more widely than usual.

In accordance with section 170(8)(b) of the Criminal Justice Act 2003, the Council is seeking your views on the consultation guideline which it will consider before issuing a definitive guideline. Your response (to the above address) is requested by **5 January 2010**.

The names of those who respond will be listed in a summary of responses. Whilst full responses are not routinely published, on request the Council may be required to release copies in accordance with the Freedom of Information Act 2000. **If anonymity is required, please make that clear in your response.**

Yours,

Lord Judge  
Chairman, Sentencing Guidelines Council