



Wilkins Safety Group

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Welcome to our latest Update E-Newsletter

As ever, please feel free to share this with friends and colleagues. You will also find PDF versions of all our other newsletters on our website: www.wilkinssafety.co.uk with lots more useful information and a wealth of leaflets covering Health and Safety topics.



**Sentencing
Council**

New sentencing guidelines for corporate manslaughter, health and safety and food safety offences.

Proposed sentencing guidelines have been published by the Sentencing Council (SC) which will assist Judges and Magistrates dealing with corporate manslaughter, health and safety and food safety and hygiene offences.

In this week's article I hope to alert you to the potential impact of the Sentencing Council (SC) proposals and urge you to review your health and safety systems.

This week's 2 recent HSE cases look at falls from height.

- **WCD Sleeman and Sons Ltd**, of Frome, was fined **£30,000** and ordered to pay **£20,000** in costs.
- **23 cases** of dermatitis had not been reported to the HSE by The Royal Cornwall Hospitals NHS Trust as is required by law.

As ever, if you have a subject that you would like us to cover one week, please contact us by phone **01458 253682**
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New sentencing guidelines for corporate manslaughter, health and safety and food safety offences.

The draft guidelines cover offences that embrace a wide range of circumstances. The type of offenders that may commit these offences varies greatly and, with the exception of corporate manslaughter, there is a broad spectrum of seriousness encompassed within each offence.

Who could be offenders?

Offenders that are organisations in these cases may range **from a small family business to a multinational company**, from statutory bodies to charities. An individual may commit a health and safety or food offence in their capacity as a Director of a company or an employee; or they may be an individual putting others at risk..



So why are these being introduced?

The guidelines are being introduced due to a lack of comprehensive guidance for Judges & Magistrates in relation to these offences. While there is a guideline covering corporate manslaughter and fatal health and safety offences, there is no specific guidance on sentencing food safety offences or non-fatal health and safety offences. Furthermore, existing guidance only covers offences committed by organisations rather than individuals. This marks the first time that guidelines will cover all the most commonly sentenced health and safety offences and food safety offences.

Consequences of health and safety offences can hugely vary; they may pose the risk of minor harm or lead to multiple fatalities caused by deliberate breach of the law. Food offences are also wide-ranging. They could involve very poor hygiene standards in kitchens, or failure to manage processes involving the preparation of food properly.

The Council therefore concluded there was a need for expanded guidance on dealing with difficult issues that arise in these cases, such as those relating to the risk of harm, identifying appropriate fine levels for organisations, or fining offenders that are charitable or public bodies.

Some sentences imposed have been too low!



The review of guidelines is also taking place in part due to concerns that some sentences imposed for these offences have been too low, particularly in relation to large organisations convicted of the most serious health and safety and food safety offences.

Following an analysis of current sentencing practice, the Council is therefore proposing to increase sentence levels in such situations. This will ensure sentences that are proportionate to the seriousness of the offence while, as required by law, taking account of the financial circumstances of the offender. It is proposed that an offending organisation's means will initially be based on its turnover as this is a clear indicator that can be easily assessed and is less susceptible to manipulation than other accounting methods. However, the guideline also requires the court to consider the organisation's wider financial circumstances to ensure that fines can be properly and fairly assessed.

The Council's aim is to help ensure sentences that not only punish the offender, but deter them and others from committing these crimes while removing any financial benefit they may have had from offending. These offences can result in organisations that maintain proper standards being undercut by offending businesses who are often motivated by saving money at the expense of safety. Fines should therefore be big enough to have a real economic

impact which will bring home to the offending organisation the importance of achieving a safe environment for those affected by its activities.

Last year a SME which admitted an offence under the Health and Safety at Work Act 1974 involving a death and was fined an **average of £100,000**.

Under the proposed new guidelines, the starting point for the fine after a guilty plea (but before any consideration for aggravating and mitigating factors) **would be about £635,000**.

The proposals also increase the possibility of individuals being prosecuted, with a tough new fine banding – **600% of monthly income - for the most serious offences and even the chance of a custodial sentence**.

Sentencing levels in relation to lower level offences are unlikely to change. This is because they are seen as already proportionate, and because fines must be based on the financial circumstances of the offender.

Sentencing Council member Michael Caplan QC said:

“We want to ensure that these crimes don’t pay. They can have extremely serious consequences and businesses that put people at risk by flouting their responsibilities are undercutting those that maintain proper standards and do their best to keep people safe.

“Our proposals will help ensure a consistent approach to sentencing, allowing fair and proportionate sentences across the board, with some of the most serious offenders facing tougher penalties.”

Businesses need to understand the new financial dangers

Consultation on these proposals ended on February 18 and the Sentencing Council will take time to review the responses. The proposals are likely to be tweaked a little but the general principles will remain the same.

Businesses need to understand the new financial dangers - not just the reputational damage - of neglecting health and safety.

You can’t get rid of every risk in business, but you have to have systems in place to ensure everything has been done to reduce risks so far as is reasonably practicable.

One of the main problems that I regularly see is that companies often have safe systems and procedures that appear to be extremely good on paper but they fall down in practice.



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Now to the latest HSE cases:

A Somerset Company in court again after dangerous quarry blast

A Somerset company has been fined after a quarry blast sent rocks of up to 15 kilos flying outside a danger zone toward employees and across a public road.

Falling rocks narrowly avoided hitting workers as they landed well outside the designated blast zone at Moons Hill Quarry, Stoke St Michael near Shepton Mallet on 7 February 2012. Rocks also fell onto a public highway, exposing road users to unacceptable danger.

Frome-based WCD Sleeman and Sons Ltd, who organised the blast, were prosecuted today (27 February) after an investigation by the Health and Safety Executive (HSE) identified serious control failings.

Bristol Crown Court heard that workers acting as sentries outside the danger area were aware of rocks flying above their heads and landing all around them immediately after the blast. Rocks also landed in the processing plant area of the quarry, which is on the other side of a public road.

HSE inspectors discovered that the blast had not been properly planned. Too much explosive was used in an area where the ground was already broken and measures put in place to reduce risks were inadequate.

WCD Sleeman and Sons Ltd, of Valley View, Vallis Park, Frome, **was fined £30,000** and ordered to pay **£20,000 in costs** after pleading guilty to breaching Section 3(1) of the Health and Safety at Work Act 1974.

The court was told the firm was prosecuted by HSE after investigating a similar offence in Devon when they were fined £20,000 with £17,000 costs in July 2013 at Barnstaple Magistrates' Court.

Speaking after the hearing, HSE Inspector Catherine Pickett said:

“This was a very serious incident, which put both members of the public and employees at serious risk of being hit by rocks and could easily have led to death or serious injury.

“Blasting operations at quarries are potentially very dangerous. The risks must be rigorously controlled by good explosives engineering practice and in accordance with legal requirements.

“Quarrying remains one of the most dangerous industries to work in with 3,250 injuries, including 27 fatalities, reported to HSE since 2000.

“This is not the first time WCD Sleeman and Sons have been prosecuted for similar offences that have put people at considerable risk and I hope they take more heed of the lessons to be learned.

“Proper planning and control is required at all times in the quarrying industry. The option of stopping and re-evaluating the blasting operation for safety is always available to shot firers, and in this case would have avoided danger.”



Cornwall health trust fined for dermatitis failings

The Royal Cornwall Hospitals NHS Trust has been fined after failing to take measures to prevent or monitor at least 23 cases of dermatitis among staff between 2007 and 2012.

The Trust pleaded guilty to a breach of health and safety legislation when it appeared before Torquay Magistrates on Friday 20 February in a prosecution brought by the Health and Safety Executive (HSE).



Dermatitis showing crusting and thickening of skin

The prevalence of dermatitis was discovered during an inspection by HSE, which identified that 23 cases had not been reported to them by the Trust as is required by law.

Magistrates heard that health and hospital staff were at increased risk of developing skin issues like dermatitis as they needed to wash their hands often and had to wear gloves for some procedures to reduce the risk of infection. They were also encouraged to use hand gels.

Despite the known risk, there was limited information for staff about reducing it with simple but effective methods such as drying hands fully and regularly applying moisturisers.

The Trust failed to carry out regular health checks of employees to detect any symptoms of dermatitis or other skin issues. As and when symptoms were reported by members of staff, they were simply told to see their GP by the trust's occupational health team.

As a result cases of work-related dermatitis were not picked up by the Trust and the issue was not seen as a priority. At the time, there was no link between occupational health and dermatology. This has since been rectified.

Irritant contact dermatitis (ICD) develops when an irritant substance comes into contact with skin in sufficient quantities over a period of time. It causes damage to skin cells, usually in the hands and causes swelling, flaking, blistering and cracking. Allergic contact dermatitis (ACD) is caused by a reaction to a substance which causes inflammation, usually a rash.

The Royal Cornwall Hospitals NHS Trust, of Treliske, Truro, was fined £10,000 and ordered to pay costs of £9,620 for a breach of the Management of Health and Safety at Work Regulations.

HSE Inspector Emma O'Hara, speaking after the hearing, said:

“Royal Cornwall Hospitals Trust, which employs 5,000 people, failed to have an adequate management system in place to prevent dermatitis, a recognised condition in the health sector, and deal with it when it arose.

Dermatitis is a painful and often unsightly condition which can affect the individual psychologically, socially and physically.

“Employers must ensure they identify risks to staff and come up with plans and procedures to minimise the risks and make sure cases that do occur are properly treated and recorded.”

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Also contact us if you have a particular health and safety subject or question you would like covered



If you have any queries on any health and safety matter, please contact Jon Wilkins on [01458 253682](tel:01458253682) or by email on jon@wilkinssafety.co.uk



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