



RESPONSE TO THE SENTENCING GUIDELINES COUNCIL
CONSULTATION GUIDELINE ON
SENTENCING FOR CORPORATE MANSLAUGHTER AND
HEALTH AND SAFETY OFFENCES CAUSING DEATH
January 2010

Executive Summary

1. On 27th October 2009 the Sentencing Guidelines Council (“the SGC”) published its Consultation Guideline on Sentencing for Corporate Manslaughter and Health and Safety Offences Causing Death. Responses were invited by 5th January, 2010.
2. The Criminal Bar Association welcomes the opportunity to respond to the Consultation Guideline.
3. We consider the approach to the sentencing process suggested in the Consultation Guideline and the guidance to be appropriate.
4. Although we agree that any case of corporate manslaughter will be more serious than a HSWA offence, a fine should always be one that the defendant is capable of paying, even if it may take a number of years to do so. Thus we do not agree with the proposition that the appropriate fine in such a case will *seldom* be less than £500,000.
5. In relation to offences of corporate manslaughter, the Consultation Guideline preserves the statutory discretion of judges as to the making of publicity orders. We consider the indication in the Guideline that such orders should ordinarily be imposed unobjectionable.

Background

6. On the same date as the SGC published this Consultation, it also published the Advice¹ it had received in November 2008 from the Sentencing Advisory Panel ("the SAP") after the SAP's consultation upon the same topic². The Criminal Bar Association ("the CBA") responded to the SAP Consultation in January 2008³.
7. Although the CBA had broadly agreed with the SAP's proposals, it did not agree with SAP's proposed starting points or ranges for fines for offences of corporate manslaughter and Health and Safety offences causing death. Those starting points and ranges were based upon percentages of the average turnover, gross revenue income or the equivalent of the organisations involved.
8. We welcome the rejection in the Consultation Guideline of an approach to sentencing based upon starting points and ranges of percentages of average annual turnover, gross revenue income or the equivalent.

The Consultation Guideline

The comments below follow the paragraph headings in the Guideline; suggested amendments are shown in italics.

A. Elements of the offences.

9. We have no observations save that we suggest that in paragraph 2(d) the word "*well*" is omitted.

¹ [http://www.sentencing-guidelines.gov.uk/docs/SAP%20\(07\)K3%20-%20Corporate%20manslaughter%202007-10-31-v%203.10.AR.pdf](http://www.sentencing-guidelines.gov.uk/docs/SAP%20(07)K3%20-%20Corporate%20manslaughter%202007-10-31-v%203.10.AR.pdf)

² http://www.sentencing-guidelines.gov.uk/docs/corporate_manslaughter/advice_corporate_manslaughter.pdf

³ http://www.criminalbar.com/86/records/206/CMA_Consultation_Response.doc

B. Factors likely to affect seriousness.

10. We endorse the range of aggravating and mitigating features that have been identified.
11. We suggest that paragraph 5 should read as follows:

“This Guideline applies only to corporate manslaughter and to those HSWA offences where *the offence is shown to be a cause of death*. By definition, the harm involved is very serious.”
12. We suggest that paragraph 6(a) should read as follows:

“*The greater and more obvious the risk of death or serious injury, the graver usually will be the offence.*”
13. We suggest the following amendment to paragraph 11:

“... which it identifies; *the defence should similarly set out in writing any points on which it differs ...*”

C. Financial Information; size and nature of organisation.

14. We agree that a fixed correlation between the fine and either turnover or profit is not appropriate.
15. The Guideline stresses in paragraph 16 that the court should look carefully at both turnover and profit. We agree. The judge should be provided with relevant financial information in relation to a defendant as set out in of Annex A. Such information will usually be provided by the defendant.

D. Level of Fines.

16. We endorse the recognition in paragraph 23 that cases will inevitably result in a broad range of fines, due to the range of seriousness involved and the differences in the circumstances of the defendants. We agree that a fine should always be one that the defendant is capable of paying, even if it may take a number of years to do so.
17. For the same reason we do not agree with the observation in paragraph 25 that the appropriate fine will *seldom* be less than £500,000. We suggest that the following wording be substituted:

"The appropriate fine will *usually* be *not* less than £500,000 *after a trial* and may be measured in millions of pounds."

18. We agree with the Guideline that, as a general proposition, fines for the offence of corporate manslaughter should be significantly greater than for a Health and Safety offence causing death. We are concerned, however, that precedents under HSWA before the CMCHA was in force should not be treated as necessarily indicating an inappropriate level of sentence for a CMCHA offence. Had e.g. the sentence for Balfour Beatty been in respect of an offence of corporate manslaughter, we doubt whether the fines would have been greater.

Sections E to H.

19. We endorse the observation that the assessment of compensation in cases of death should seldom be made as part of sentence.
20. We have no observations in relation to costs.
21. We agree that a publicity order should ordinarily be made in a case of corporate manslaughter.
22. Where a remedial order is made the judge should set a timetable for compliance and monitor the defendant's progress in this regard.

I. Summary of approach to sentence

23. We have no observations to make.

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