

### Sentencing Council: Health and Safety Consultation

By Michael Caplan

The sentencing of organisations or individuals convicted of health and safety, corporate manslaughter or food safety and hygiene offences is set to change following the publication of proposed sentencing guidelines on 13 November.

The Sentencing Council is aiming to help judges and magistrates deal fairly and proportionately with what is a very broad area of offending that covers 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.

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. Alternatively, they may be an individual who puts others' lives at risk.

We are introducing these guidelines because there is at the moment a lack of comprehensive guidance for sentencers. There is a guideline covering corporate manslaughter and fatal health and safety offences, but 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.

We also concluded there was a need for expanded guidance due to the fact that the consequences of health and safety offences can hugely vary and there are some difficult issues that arise in these cases, such as those relating to the risk of – rather than actual – harm, identifying appropriate fine levels for organisations, or fining offenders that are charitable or public bodies.

There have also been 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.

As a result, we analysed current sentencing practice, and are 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 means of the offender.

We are proposing that an offending organisation's means will initially be based on its turnover. This is a clear indicator that can be easily assessed and is less susceptible to manipulation than other accounting methods. However, our proposals also require the court to consider organisations' wider financial circumstances to ensure that fines can be properly and fairly assessed.

The Sentencing 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.

We therefore think that fines should 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.

Our proposed guidelines are unlikely to change sentencing levels in relation to lower level offences. This is because we think they are already proportionate, and because fines must be based on the financial means of the offender.

We are interested in what health and safety practitioners think about our proposals – they are now subject to a consultation until 18 February 2015. In particular, we are interested in feedback on the approach to sentencing we have taken, what factors should make these offences more serious or less serious, the principles of sentencing in this area and sentencing levels.

For more information and to send your views, visit: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

### Health and Safety Statistics

- **1.2 million** working people suffering from a work-related illness.

- **2535** mesothelioma deaths due to past asbestos exposures (2012)
- **133** workers killed at work
- **78 000** other injuries to employees reported under RIDDOR
- **629 000** injuries at work from the Labour Force Survey
- **28.2 million** working days lost due to work-related illness and workplace injury
- **£14.2 billion** estimated cost of injuries and ill health from current working conditions (2012/13)

## Property Developer and Builder in Court over Death at Construction Site

A Middlesex property development firm and a Buckinghamshire contractor have been ordered to pay a total of over £180,000 for safety failings after a worker was killed whilst driving a dumper truck during construction works at a former military base in Buckinghamshire.



Geoffrey Crow, 48, from Eaton Bray, Bedfordshire, sustained fatal crush injuries in the incident at the former RAF Chenuis site on 13 February 2012. The dumper fell into a deep and completely unguarded excavation, overturned and landed directly on top of him. He was killed instantly by the five-tonne machine.

Harrow-based Lois Gastoneaux Ltd and Michael Brett, a self-employed contractor working on the site at the time, were sentenced today (20 November) after an investigation by the Health and Safety Executive (HSE) identified serious safety breaches in their operations.

St Albans Crown Court heard that Mr Crow, known to his friends as 'Geoff', was working at ground level whilst others were working to excavate a deep basement for a swimming pool at a new build property belonging to the sole director of Lois Gastoneaux Ltd, Mr Kevin Andrews.

The dumper went into the large excavation, which was up to 6.5 metres deep, shortly after he had freed the vehicle when it became stuck near the unguarded edge.

The HSE investigation found that despite operations being underway for some three weeks at the site, there were no measures in place to prevent people or vehicles falling into the excavation, or to prevent any collapse of the excavation faces onto those working below ground.

Additionally none of the workers on site, five including Mr Crow, were used to operating plant machinery, such as excavators and dumpers, as large as those they were asked to use here. Neither did they have relevant construction experience despite being tasked with digging such a large excavation.

The seat belt on the machine Mr Crow was driving was not operational at the time of the incident, and his colleagues also stated they would not usually wear seatbelts when operating the machines. The court was told the range of issues were all contributory factors in the death, and that standards at the site fell well below those expected.

Lois Gastoneaux Ltd, from Harrow, Middlesex, was fined £150,000 and ordered to pay £28,033 in costs after pleading guilty to / being found guilty of breaching Section 3(1) of the Health and Safety at Work etc. Act 1974 and Regulations 37(6) and 31(1) of the Construction (Design and Management) Regulations 2007.

Michael Brett, of Lodge Lane, Little Chalfont, Buckinghamshire, was fined £2,000 and ordered to pay £1,500 in costs after pleading guilty to / being found guilty of breaching Regulation 37(6) and Regulation 31(1) of the Construction (Design and Management) Regulations 2007.

Speaking after sentencing HSE Inspector Stephen Manley, said:

“Working with construction plant can be extremely dangerous, which is why appropriate safety measures must be in place at all times to protect workers and others onsite.

“In this instance, Mr Crow died as a direct consequence of the lack of controls of the risks involved in the excavation operations. There was no protection whatsoever to ensure workers, whether driving machinery or otherwise, did not fall into the deep excavation.

“A number of people were at work with Mr Crow and they were all at risk of serious harm through the absence of physical controls, as well as poor maintenance of equipment and a lack of training and information provided to workers.

“There are clear industry standards setting out how to identify and manage risks, and guidance is widely available. So there is no excuse to let operations continue without having the proper health and safety measures in place.”

## Forty Per Cent of Construction Sites Fail Health and Safety Spot-Checks

HSE is urging the construction industry to ensure basic health and safety measures are in place after a month long inspection initiative found 40 per cent of sites failing to properly protect workers.

Unacceptable conditions and dangerous practices were found at nearly half of the 1,748 repair and refurbishment sites visited by HSE inspectors, with 1 in 5 sites so poor, formal enforcement action was required. Many of the issues found could have been easily prevented with simple, straightforward management and planning.

The focus of the initiative was on health risks and 35 per cent of the notices served were for issues such as management of asbestos, failure to control exposure to harmful dusts, noise and vibration, and insufficient welfare.

However failure to provide basic safety measures for people working at height was once again the most common issue found by Inspectors with 42 per cent of all enforcement notices served for this activity.

HSE's Chief of Construction Philip White said: "These results show that whilst the majority of employers in the refurbishment sector are getting it right, a significant part of the industry is seriously failing its workers.

"The inability to properly plan working at height continues to be a major issue, despite well-known safety measures being straightforward to implement. It is just not acceptable that Inspectors had to order work to stop immediately on over 200 occasions because of dangerous practices.

"We also find health is often overlooked as its implications are not immediately visible, however the effects of uncontrolled exposure to deadly dusts such as asbestos and silica can be irreversible. We urge industry to ensure the most basic of measures such as use of protective equipment and dust suppression methods are put in place to help protect the future health of workers.

"We need to continue to educate industry through initiatives like this and encourage a change in behaviour on small projects where over half the industry's fatal accidents still occur and many workers become seriously ill."

For examples of good and bad practice Inspectors found during the campaign visit the HSE's Safersites 2014 Pinterest gallery.

You can also view the HSE's set of instructional film clips on working safely with dust on their Youtube page.

### Summary breakdown of results:

- Poor standards/dangerous practices at 40% of sites visited (691 of 1748)
- On 360 (one in five) sites, practices so poor that enforcement action needed.
- 313 prohibition notices issued
- 235 improvement notices issued
- The most common issues identified related to work at height and falls (42%), failure to control dust (12%), insufficient welfare (12%) and asbestos (10%).
- In total 35% of notices were served for health issues (asbestos, dust, noise, vibration, welfare, manual handling).
- The initiative took place between 22 September and 17 October 2014.

For more on the Safersites campaign visit: [www.hse.gov.uk/construction/campaigns/safersites](http://www.hse.gov.uk/construction/campaigns/safersites)

Further HSE news releases are available at [www.hse.gov.uk/press](http://www.hse.gov.uk/press)

## Worker's Fall Lands Cardiff Construction Company in Court



A Cardiff building firm has been fined for safety failings after a labourer broke his right thighbone in a fall from a roof during development work.

Malcolm Milne, 59, from Caldicot, fell approximately 8ft from a single storey roof to the ground when a beam he was standing on gave way at Beach Cliff, Penarth, on 30 January 2013. He spent several days in hospital, was reliant on crutches for five months and has been unable to return to construction work since.

The incident was investigated by the Health and Safety Executive (HSE), which today (11 November) prosecuted his employer, RHP Merchants and Construction Ltd, for failing to provide sufficient measures to prevent or mitigate a fall.

Cardiff Magistrates' Court heard that RHP was the principal contractor for a mixed development project to create commercial units, flats and town houses. Mr Milne and a colleague were working on a disused lodge building that was being demolished to make way for the new buildings, and were removing roof tiles at the time of the fall.

HSE's investigation established that neither Mr Milne or his co-worker had any training for the demolition work, and that Mr Milne was also untrained for working at height. Inspectors found that RHP had not carried out any risk assessment for the work and no safety equipment had been provided for working on the roof. The court was also told that the project manager was on holiday at the time of the incident, as was a senior site engineer. So supervision and management was lacking.

RHP Merchants and Construction Ltd, of Newport Road, Castleton, Cardiff, pleaded guilty to single breaches of the Construction (Design and Management) Regulations 2007 and the Work at Height Regulations 2005. It was fined a total of £20,000 and ordered to pay £9,414 in costs. After the hearing HSE Inspector David Kirkpatrick said:

"Mr Milne's injuries could have been much worse and he could even have been killed in the fall, which was entirely preventable and would not have happened had the work been better planned, managed and monitored.

"A risk assessment would have identified the hazards and a proper plan of work would have mitigated the risks of any fall. The lack of site management and supervision during the week of the incident played a major part in what happened.

"Falls from height are one of the biggest causes of workplace death, but simple, cost effective measures are available to reduce the risks. All too often these are not put in place, and yet the human cost of incidents involving work at height far outweigh the cost of ensuring a safe system of work is implemented."

## Costs to Britain of Workplace Injuries and New Cases of Work-Related Ill Health

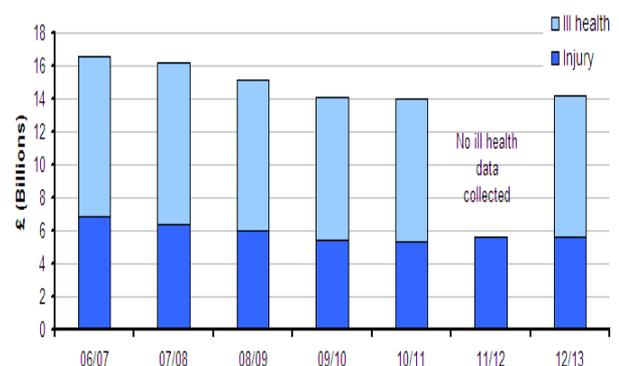
Workplace injury and work-related ill health impose costs on employers (e.g. sick pay), on individuals (e.g. the human costs of pain, grief and suffering) and on the Government (e.g. health care expenditure).

New estimates show that injuries and new cases of ill health in workers in Great Britain resulting largely from current\* working conditions cost society an estimated **£14.2 billion** in 2012/13 (expressed in 2012 prices). This total has fallen since 2006/07, reflecting the fall in injury and illness numbers since then. The total cost shows signs of levelling off in recent years.

Somewhat over half of the total cost in 2012/13 fell on individuals whilst the remainder was shared between employers and Government.

- Financial costs, such as those associated with lost productivity or healthcare, represents £6.0 billion of the total cost in 2012/13; the remaining £8.2 billion represents the monetary value given to individuals' 'pain, grief and suffering'.
- New cases of workplace illness account for around £8.6 billion of the total cost in 2012/13; workplace injury (including fatalities) around £5.6 billion.
- Between 2006/07 and 2012/13 the estimated total cost fell by around £2.3 billion (£14.2 billion in 2012/13 compared with £16.5 billion in 2006/07, all in 2012 prices). The total cost shows signs of levelling off in recent years.

Further work continues to estimate the cost of work-related conditions, such as cancer, caused by historic conditions.



The cost estimates for 2006/07 to 2011/12 that were published in 2013 have been updated to express costs in 2012 prices. In addition, a number of small changes have been introduced to the cost model, which has had a small impact on previous cost estimates. Each year's cost estimate is based on a 3-year average annual estimate of the number of illness and injury cases.