



With higher fines, Safety pays

Good safety management becomes the key to avoiding massively higher fines, following new guidance to the Courts.

Published November 2015.

The New Guidance – effective from 1 February 2016.

The Sentencing Council is one of those little-known bodies that can seriously impact on your life. What they do is provide guidance to the Courts on how to decide penalties for offences committed. From the 1st of February 2016 new guidance will come into force. **This guidance radically changes what Courts will do when they impose fines or prison sentences for health and safety offences, and in particular will lead to a massive increase in the levels of fines imposed.**

Historically, there have been few fines of £100,000 or more, but in the future these will become much more common. This is for two reasons: firstly Magistrates' Courts no longer have a limit on the size of the fine that they can impose (previously this was capped at £20,000); and secondly, the new guidance provides explicit ranges of fines for different types of offences. The new guidance is mandatory on all Courts and “*every court ... must, in sentencing an offender, follow any sentencing guidance ... unless the court is satisfied that it would be contrary to the interests of justice to do so.*” (See page 2 of the Sentencing Council 'definitive guideline' document.)

Under this new system, the health and safety offences are banded according to the seriousness of the offence (e.g. how many people injured or at risk of injury and the level of harm involved), the turnover of the company (note turnover – not profit) and the level of culpability of the offence, with the actual level of fine being set in a scale. Below are some examples I have put together (based on my own Court experience as well as many published cases) to illustrate the levels of fine that a Court may decide to impose.



You can get a copy of the 'Definitive Guideline' from www.sentencingcouncil.org.uk/wp-content/uploads/HS-offences-definitive-guideline-FINAL-web.pdf

Example 1

A large company (turnover of over £50M) knowingly fail to maintain their air conditioning plant. The plant becomes contaminated with *leigonella* bacteria. The company then fail to follow the advice of a contractor who finds *legionella* in the open cooling system. This is in a town centre and therefore exposes staff and the public to risk of severe illness (potentially fatal).

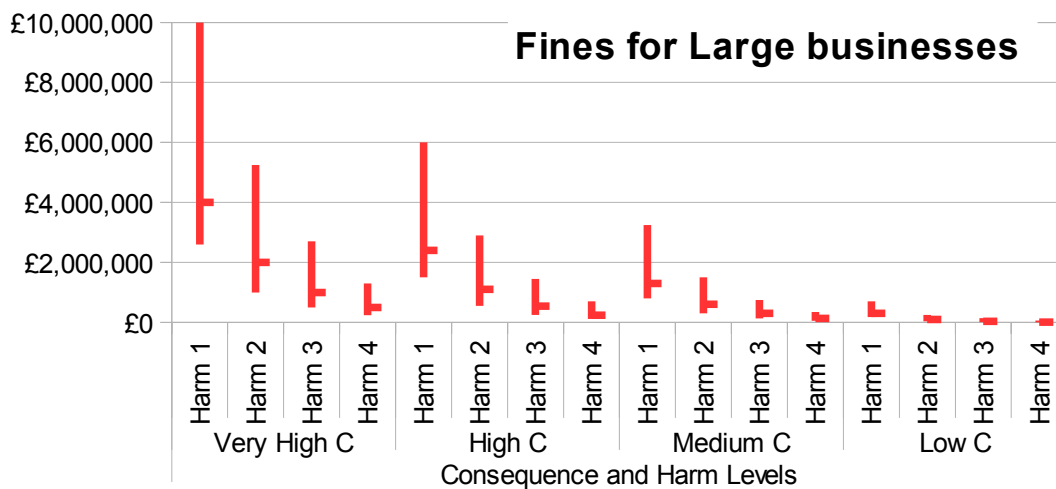
In my opinion this would be classified as a very high culpability, harm category 1 offence. Using the table on page 7 of the Guidance, this gives a starting point for the fine at **£4M** with a range of **£2.6M to £10M**.

This contrasts with cases that have been in the media following legionella outbreaks where the fines were in the thousands.



This is separate from any Corporate Manslaughter cases, taken with a range of fines from **£3M** to **£20M**, which is covered in pages 21 to 27 of the guidance.

Additionally, the individual manager may also be prosecuted personally under Section 37 of the Health and Safety at Work etc. Act 1974, with fines ranging from of up to **700% of weekly income** and **prison sentences** of up to **two years** (even from a Magistrates' Court). This is covered on pages 13 to 20 of the Guidance.



Current cases that are worth looking at:

- www.hse.gov.uk/press/2011/coi-wm-25611.htm a case with a **fine of £250,000** from 2011, and
- www.hse.gov.uk/prosecutions/breach/breach_list.asp?ST=B&EO=LIKE&SN=F&SF=CSUM&SV=legionella&x=0&y=0 for four cases involving eight breaches and fines of up to £55,000, all from Court hearings in 2015.

Example 2

A small company (turnover from £2M to £10M) had waste management measures in place

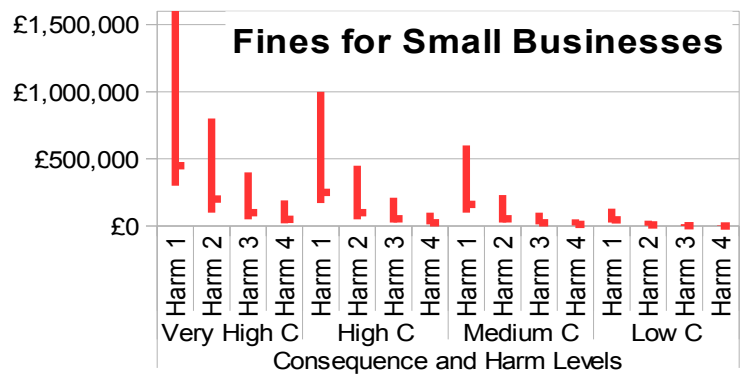
for their operations, but failed to ensure that the operatives had access to the correct waste containers where they were working. As a result, hazardous waste went out in the wrong waste stream, it reacted with other waste causing fire in the contractor's waste collection vehicle as it was driving along the road. [This is possible in many ways, including when lead acid batteries are put in the 'general domestic' waste and rupture in the crusher, mixing with metal cans and paper etc.] This type of incident can cause serious harm to members of the public and the contractor's waste vehicle and crew.



In my opinion this would probably be classed as a medium culpability, harm category 2 offence. Using the table on page 8 of the Guidance, the starting point for the fine would be **£54,000** with a range of **£25,000 to £230,000**.

Current fines for an incident like this would be likely to be in the £3,000 to £5,000 range, dealt with in the Magistrates' Courts.

As noted above, individuals may be prosecuted personally. This is covered on pages 13 to 20 of the guidance.



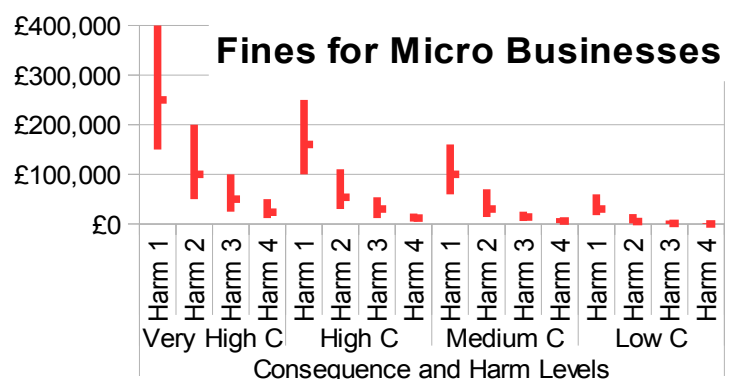
Example 3

A micro company (turnover below £2M) operates a laboratory (with high-hazard chemicals in use) and decide to undertake work in a bench-top fume cupboard, which uses filters to take dusts out of the air before returning the air to the laboratory. Unfortunately, the substances they are using are vapours and they pass through the filter. The company fails to do an adequate COSHH risk assessment and does not identify that they have inadequate protection measures in place.

After two years, the failure is identified in an HSE inspection and a prohibition notice is issued. The HSE also take samples and demonstrate that the company had exposed its staff to significant levels of the carcinogens. The COSHH assessments for other substances were also inadequate.

I think that this would probably be classified as a high culpability, harm category 2 offence. Using the table on page 8 of the guidance, the starting point for the fine would be £54,000 with a range of £30,000 to £100,000.

Current fines for a COSHH offence of this type (with a micro company) would be likely to be in the range of £500 to £5,000, dealt with in the Magistrates Courts.



Help and Support

The most important thing is to prevent incidents from happening, by taking proportionate measures to manage your health and safety. Next you need to maintain good communications and records of what you are doing and why. However, even the best run company can still have problems. That is where the extra support comes in useful.



Free for our clients.

To help you start your own investigations as soon as any incident happens, we have produced short guides to taking statements and taking photographs for evidence. If you want copies of these guides (published as PDF documents), then go to our website and sign up for our new mail list. You will then receive a couple of emails a month with news items like this and resources like the investigation guides. These useful resources are only available to people who are members of our list or who attend relevant courses delivered by us.

Mark of quality

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