**Contents**

<table>
<thead>
<tr>
<th>Page</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Foreword</td>
</tr>
<tr>
<td>5</td>
<td>News</td>
</tr>
<tr>
<td>5</td>
<td>HSE publishes guidance for businesses involved in construction and demolition</td>
</tr>
<tr>
<td>6</td>
<td>Revised British Standard on Legionella Risk Assessment</td>
</tr>
<tr>
<td>7</td>
<td>Change in Enforcement Expectations for Mild Steel Welding Fume</td>
</tr>
<tr>
<td>8</td>
<td>Global survey shows women report more stress than men in “always on” culture</td>
</tr>
<tr>
<td>10</td>
<td>Cases</td>
</tr>
<tr>
<td>10</td>
<td>The relevance of linked organisations in sentencing health and safety cases</td>
</tr>
<tr>
<td>13</td>
<td>Companies fined for preventable injuries due to unguarded machinery</td>
</tr>
<tr>
<td>14</td>
<td>High number of falls from height cases continue</td>
</tr>
<tr>
<td>16</td>
<td>Companies fined for electrocutions from overhead power lines</td>
</tr>
<tr>
<td>19</td>
<td><strong>Sentencing Council publishes impact assessment on the revised Definitive Guideline for Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences</strong></td>
</tr>
<tr>
<td>22</td>
<td>Oil and Gas News</td>
</tr>
<tr>
<td>22</td>
<td>“Unseen costs” blocking dropped objects prevention efforts</td>
</tr>
<tr>
<td>23</td>
<td>Motion calling for offshore helicopter inquiry</td>
</tr>
<tr>
<td>24</td>
<td>What we do</td>
</tr>
<tr>
<td>26</td>
<td>CMS Locations</td>
</tr>
</tbody>
</table>
CMS Cameron McKenna Nabarro Olswang LLP is recognised as a leading firm in the area of Health and Safety. We provide specialist advice on regulatory compliance, prosecutions, investigations and corporate governance.

Emergency Response Service

The steps a company takes immediately following an incident can be pivotal and can significantly increase or decrease the likelihood of a subsequent conviction. Health and Safety Inspectors have substantial powers to enter and examine premises, remove articles and demand documents necessary for them to carry out their investigations. Immediate, on the spot advice and support can therefore prove to be invaluable in the event of an emergency.

Our dedicated team is on call 24 hours a day to provide assistance and respond to incidents on site. Our lawyers are qualified to practice in England, Wales and Scotland; but we also regularly advise clients in relation to health and safety matters in other jurisdictions and can draw on the expertise of our CMS network of European offices.

We are available for health and safety emergencies and advice; along with any other related urgent matters. In the event of an emergency the team will ensure a swift and efficient response to client queries, irrespective of the time of day or day of the week.

If your company has a health and safety emergency, you can contact us on:

- **0333 20 21 010 – Emergency Response Hotline (available 24 hours a day, 7 days a week)**
- 020 7367 3000 – London
- 01224 622 002 – Aberdeen
- 0114 279 4000 – Sheffield
- 0781 136 2201 – Out of hours (ask for Jan Burgess)
- 0797 049 7274 – Out of hours (ask for Lukas Rootman)

**Kelvin TOP-SET**

A number of our team are qualified as approved Senior Investigators under the Kelvin TOP-SET incident investigation system. They are also able to assist in conducting an incident investigation itself, in order to ascertain the ‘root cause’ of an incident with a view to future preventative measures and improvements to health, safety and welfare.

**Offshore environmental issues**

Our team has considerable experience in advising in relation to offshore oil and gas issues – ranging from defending prosecutions by BEIS to appealing enforcement notices – along with general advice in drafting of OPEPs and complying with the extensive range of offshore environmental regulation, including those introduced by the European Union Offshore Safety Directive (“OSD”) in 2015. Changes introduced by the Offshore Safety Directive are extensive and have significant impact on oil & gas operators, FPSO operators, drilling companies and contractors engaged in offshore activities. We are able to assist in any transitional measures that may be required.
HSE publishes guidance for businesses involved in construction and demolition

The HSE has published guidance for businesses involved in construction and demolition. The guidance sets out that, by law, all demolition, dismantling and structural alteration must be carefully planned and carried out in a way that prevents danger, by practitioners with relevant skills, knowledge and experience.

The guidance is split into sections on “what you need to do” and “what you need to know”. In the “what you need to do” section, the guidance addresses the following key issues:

— Falls from height
— Injury from falling materials
— Risks from connected services
— Traffic management
— Hazardous materials
— Noise and vibration
— Fire
— Worker involvement

In the “what you need to know” section, the guidance states that a systematic approach to demolition projects is a team effort between all those with responsibilities. In summary:

— Clients must appoint duty holders with the relevant skills, knowledge and experience and where organisations, the organisational capability and adequate resources.
— Clients, with the help of the principal designer, must provide those who need it with pre-construction information. A range of surveys and reports will be needed before the demolition is carried out.
— Principal designers must plan, manage, monitor and coordinate health and safety issues before demolition starts to give principal contractors as much information as possible.
— Principal contractors must plan, manage, monitor and coordinate health and safety issues once demolition has started.
— Site managers are responsible for ensuring that workers are supervised and are following safe working practices.
— Sub-contractors and site workers must follow instructions and plans given to them by those in charge and ensure that their colleagues do too.

Comment

Businesses may wish to review their current processes against the guidance from the HSE to ensure that all demolition, dismantling and structural alterations are carried out in such a way as to prevent danger with a particular focus on thorough planning, management and control.
Revised British Standard on Legionella Risk Assessment

The British Standards Institute has released British Standard BS 8580-1:2019 Water quality, risk assessments for Legionella control – Code of practice. The standard is said to be a significant revision to the 2010 British Standard providing further guidelines for assessing water quality and the risk of Legionnaires disease. The revision comes as government statistics confirm that an ageing population puts more people at risk of Legionellosis infection.

The standard gives recommendations and guidance on the assessment of the risk of Legionellosis presented by artificial water systems. Legionellosis is a collective term for diseases caused by bacteria of the genus Legionella, a pathogen which normally inhabits warm, moist or aquatic environments. The most serious and potentially fatal is Legionnaires’ disease.

There have been increasing reports of incidences of Legionnaires’ disease throughout Europe, the US and Australasia. Susceptibility increases with age and given there is an ageing population, the proportion of the population that is susceptible is increasing accordingly. In England and Wales, data from Public Health England, which co-ordinates a national surveillance scheme for the disease, reported 532 cases in 2018, compared to 448 reported cases in 2017, and 359 in 2016.

A number of cases, particularly in northern Europe, can be linked to travel and the fact that modern hotels have complex water systems. Generally, the increasing complexity of artificial water systems, and exposure to them, leads to increased exposure to colonised systems. It is also possible that the drive for energy and water conservation is leading to measures that increase the likelihood of the colonisation of systems with Legionella. Similarly, it is said that the widespread application of anti-scaling measures has tended to increase the risk of systems becoming colonised with Legionella and in turn causing Legionnaires’ disease.

Comment

Employers, or those in control of premises, are legally responsible for understanding the associated health risks, and carrying out Legionella risk assessments under the Management of Health and Safety at Work Regulations 1999 and the Control of Substances Hazardous to Health Regulations 2002. The guidance should assist anyone with responsibility for health and safety in public premises in adopting adequate prevention measures in line with their legal obligations.
Change in Enforcement Expectations for Mild Steel Welding Fume

The HSE has, with immediate effect, strengthened its enforcement expectation for all welding fume, including mild steel welding; because it has been found that general ventilation does not achieve the necessary control.

The change comes after new scientific evidence from the International Agency for Research on Cancer has shown that exposure to mild steel welding fume can cause lung cancer and possibly kidney cancer in humans. The Workplace Health Expert Committee has endorsed the reclassification of mild steel welding fume as a human carcinogen.

The outcome of the change is that to control cancer risk, suitable engineering controls for all indoor welding activities will need to be put in place through, for example, Local Exhaust Ventilation (LEV). Extraction will also control exposure to manganese, which is present in mild steel welding fume and can cause neurological effects similar to Parkinson's disease.

Where LEV is not sufficient to control exposure it should be supplemented by respiratory protective equipment (RPE). RPE should also be provided for welding outdoors, as appropriate, and welders should be instructed and trained in the use of these controls.

Risk assessments should reflect the change in the expected control measures.

**Action required:**
- Make sure exposure to any welding fume released is adequately controlled using engineering controls
- Make sure suitable controls are provided for all welding activities regardless of duration and whether performed indoors or outdoors.
- Where engineering controls alone are not sufficient, RPE should be provided.
- It must be ensured that engineering controls are used correctly, suitably maintained and subject to thorough examination and tests where required.
- RPE should be subject to an RPE programme ensuring that it is effective in protecting the wearer.

**Comment**
The new enforcement expectations will impact all workers, employers, contractors' and anyone else undertaking welding activities, across every industry. Businesses must look at the level of protection they currently offer their welding workforce and ensure it is sufficient to meet the new expectations of the HSE.
Global survey shows women report more stress than men in “always on” culture

HSE statistics for 2017/2018 have shown that more people in the UK are experiencing work-related stress, depression or anxiety compared to 2016/17 with the trio accounting for a higher proportion of both overall cases of ill health in the workplace and working days lost. Mental ill health caused or aggravated by work accounted for 15.4m working days lost through ill health in 2017/18, representing 57% of the total number of lost working days, at 26.8m. A global survey has found that such work-related stress is reported more by women than it is by their male counterparts.

The survey questioned around 1,000 employees in the UK and found 79% of women reported that they were experiencing stress compared to 66% of men. Being judged for prioritising family or spending time away from work is a source of stress for some women, with 52% of senior women executives who are mothers fearing judgement the most. A number of triggers for stress were cited including workload, financial concerns and personal health concerns. With single women considering personal finances their focal stress point, while working mothers reported being anxious about workload.

A key factor in rising stress levels was also the “always on” culture whereby remote working and access to emails via smartphones allows the working day to extend into evenings, weekends and holidays. In the UK, 35% of respondents reported spending too much time using their devices.

In addition, 48% of working women in the UK survey felt that workplace wellness programmes should be structured to offer tailored benefits to men and women while 48% of the UK respondents thought that their employers did not take workplace wellness programmes seriously enough.

Comment

With reports of work-related stress on the rise and a significant number of lost working days recorded as a result, companies should ensure they are proactive in offering wellbeing programmes to their workforces and additionally, may wish to consider tailoring these to the different needs of men and women.
The recent case of R v NPS London Ltd [2019] EWCA Crim 229 provides useful clarification on the approach adopted by the courts when considering linked organisations in the application of the Sentencing Guideline.

**Background**

NPS London Ltd ("NPS") was fined £370,000 after pleading guilty to an offence contrary to s.3(1) of the Health and Safety at Work Act 1974, for failing to recognise deficiencies in an asbestos survey it had commissioned, which exposed workers to long-term risk to health from dust containing asbestos.

NPS was a JV, 80% owned by NPS Property Consultants Ltd and 20% by the London Borough of Waltham Forest.

At first instance, the judge assessed culpability as high and the harm as category level 2. The annual turnover of NPS was £5-6m, making it a small organisation. On this basis, the starting point of any fine should have been £100,000 with a range from £50,000 - £450,000.

NPS was, however, loss making and its director’s report stated that the parent company would provide financial support for a period of at least 12 months. The judge determined that NPS should therefore be treated as a large organisation, because the parent company had a turnover of £125m. This led to an increase in the starting point to £1.1m, with a category range of £500,000 - £2.9m.
Decision

The Court of Appeal concluded the judge was wrong to treat NPS as a large organisation for sentencing purposes. Only the defendant’s turnover, and not that of any linked organisation, should be used at step 2 of the guideline to identify the relevant starting point and range of any fine.

There are only limited circumstances in which it is appropriate to lift the corporate veil at step 2 (for example, where a subsidiary had been used to carry out work with a deliberate intention of avoiding or reducing liability for non-compliance with health and safety obligations).

The resources of the linked organisation can, however, be considered at step 3 of the guideline, to ensure the fine is proportionate to the financial circumstances of the defendant. It was not appropriate to reduce the fine at step 3 in this case, as although NPS was operating at a loss, it had the financial support of the parent company that could provide the necessary funds.

The appeal judge substituted the fine, after taking all factors into account, for a fine of £50,000.

Impact

The NPS judgment provides much needed clarification following the decision in R v Tata Steel UK Ltd [2017] EWCA Crim 704, that in appropriate circumstances, the court may take into account the resources of a linked organisation in deciding not to reduce a fine because of a defendant’s non-profitability.

The defendant organisation must be treated as separate when considering turnover at step 2. Only in exceptional circumstances can the corporate veil be lifted at this step to look beyond the defendant organisation. That a defendant is a wholly owned subsidiary of a larger corporation is not a reason in itself to depart from established principles or to treat the turnover of the linked organisation as if it were the defendant organisation’s turnover for the purposes of allocating the sentencing table at step 2.

The resources of a linked organisation are, however, relevant at step 3 in deciding whether the fine is proportionate, but again this should only be in exceptional circumstances. In NPS and Tata Steel, the exceptional circumstances arose from statements contained in the directors’ reports, which confirmed financial support from a parent company.
Companies fined for preventable injuries due to unguarded machinery

Company fined after worker’s hand is crushed by unguarded machine
A concrete wall blocks company has been sentenced after a worker’s hand was crushed in an unguarded machine.

The experienced worker was making concrete screen wall blocks at their site when his hand became trapped and was crushed by the machine. The worker suffered three broken fingers and a broken thumb and had to undergo surgery to stabilise his hand.

An investigation by the HSE found the company had failed to ensure the machine was properly guarded and that it had not been properly guarded for a number of years.

The company pleaded guilty to breaching Regulation 11(1) of the Provision and Use of Work Equipment Regulations 1998 and has been fined £26,667 with £3,560 costs. It is worth noting the company would likely have been considered a micro company with turnover of less than £2m for the purposes of the Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline.

The HSE inspector on the case said:

The incident could easily have been avoided by having suitable guarding in place and that the case highlights the importance of ensuring machinery with dangerous moving parts are guarded.

Manufacturing company fined after worker’s hand caught in machinery
A manufacturing company has been fined after a worker’s hand was caught in machinery trying to clear a blockage. The blade of a metal cutting saw cut through the worker’s knuckle damaging the tendon and ligament and rendering the worker unable to work for 8 months.

The HSE investigation found that there was inadequate guarding to prevent access to dangerous parts of the machinery and that training had not been provided on isolation, lock-off procedures and safe systems of work during maintenance activities. The investigation also found that the company had failed to identify the risks associated with inadequately guarded machinery.

The company pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc. Act 1974 and was fined £14,000 with £5,462.21 costs. It is worth noting the company would likely have been considered a small company with turnover of between £2-10m for the purposes of the Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline.

The HSE Inspector said:

The injury was easily preventable and employers should make sure they properly assess risk and apply control measures to minimise risk from dangerous parts of machinery.
High number of falls from height cases continue

Company fined over £1.8m after two workers injured in fall from height
A food manufacturing company has been sentenced after two workers fell over 4 metres through a rooflight.

The incident took place when two workers were investigating a leak in the roof at one of the company’s sites. The workers did not realise the roof contained several roof lights and while walking closely together both fell through a roof light which caved due to the weight.

One worker suffered four fractured ribs, a punctured lung and muscular contusions. The other suffered a fractured skull, muscular injuries to his leg and injuries inside his ear which have caused ongoing problems with balance, memory and mental health.

The HSE investigation found that the roof was made of asbestos cement and had several rooflights situated along it that were not visible due to a build-up of moss and dirt. The employees had also not been made aware of the rooflights.

The company pleaded guilty to breaching Section 2(1) of the Health and Safety at Work etc. Act 1974. The company has been fined £1,866,000 with £8,019 costs. It is worth noting the company would likely have been considered a very large company with turnover greatly in excess of £50m for the purposes of the Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline.

The HSE inspector commented that this accident was entirely avoidable and caused by the failure of the company to have in place adequate controls against the risks of working at height.

Roofing company fined after worker falls from height
A roofing company was sentenced for safety breaches after a worker fell around 3 metres through a rooflight suffering a fractured pelvis and spinal injuries.

The self-employed roofer who was working for a roofing and building services company was on a roof laying wooden ‘lats’ and roofing felt, when he fell through a sky light that was not visible due to being covered with felt.

An investigation by the HSE found that while the roofing and building services company had initially provided air bags as a means of mitigating any falls by workers, these air bags had been moved to remove debris resulting in the worker instead hitting the floor.

The roofing and building services company pleaded guilty to breaching Section 3(1) of the Health and Safety at Work etc. Act 1974 and has been fined £20,000 with £1,100 costs. It is worth noting the company would likely have been considered a micro company with turnover of less than £2m for the purposes of the Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline.

The HSE Inspector on the case commented that “Falls from height through fragile surfaces and skylights remain one of the most common causes of work related fatalities in this country”. The Inspector also noted that “the risks associated with working at height are well known” and that:

This incident could so easily have been avoided by adopting reasonably practicable safe working practices.
Companies fined for electrocutions from overhead power lines

Freight operator fined after boy electrocuted

A rail freight company has been fined £2.7m after two boys were injured while climbing on top of a stationary train and receiving electric shocks from an overhead wire.

The company has been sentenced after being found guilty of breaching Section 3(1) of the Health and Safety at Work etc. Act 1974.

The prosecution was brought by the Office of Rail and Road (ORR), the regulator for the rail network and train operators.

The incident took place in 2014 when four children entered a yard which has nine “staging” sidings for trains. Seven of the sidings have wires above them which are energised at 25,000 volts. Two boys climbed on top of a wagon that formed part of a 22 wagon train and in coming too close to the wire both received an electric shock.

It is not necessary to touch the wire to receive an electric shock, shocks can occur at distances of up to 3 metres, according to safety advice published by Network Rail.

One of the boys had both legs amputated as well as losing all the fingers and thumb on his right hand, two fingers on his left hand and part of the left hand itself. The other boy was thrown to the ground but sustained only minor injuries.

Access to the yard could be gained by four bridges only two of which had been safely fenced off, one had a gate which did not lock and the other did not have any gate at all to prevent pedestrians from gaining access. There was no security patrol nor any warning signs on the bridge.

There was a signal box at the site which had not been used since 1991. Records show that the company had noted in January 2013 that the signal box needed to be demolished because of the risks it presented. Again in April 2013, the company obtained quotes for its demolition and in March 2014, a risk assessment confirmed the highest possible level of risk, however, the box was not demolished until October 2014.

The company denied the charge, under Section 3(1) of the Health and Safety at Work etc. Act 1974, of failing to ensure that non-employees were not exposed to risk. The company told the court that it did have security patrols in place for the signal box at night on weekdays and also that it had posted warning signs but that these had been torn down.

The jury found the company guilty and the judge said there were “systematic failings”, fining the company £2.7m with £188,874 costs. The judge also found the company guilty of a breach of Section 20 of the Health and Safety at Work etc. Act 1974 having refused a request for documentation made by an ORR inspector, fining the company £33,500. It is worth noting the company would likely have been considered a very large company with turnover greatly in excess of £50m for the purposes of the Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline.

Following the sentencing the chief inspector of railways said:

“We welcome the sentence which clearly indicates the seriousness with which this offence is viewed and we expect the company and the rail industry as a whole to look very hard at their sites and make sure they are doing everything possible to ensure they are secure.”
Company fined after worker killed by overhead powerline strike

A company has been fined after an employee was killed by an overhead power line strike.

The employee was unloading material at a site using a grab arm when it came into contact with an overhead power line fatally electrocuting him. The site was not managed by the employer.

The HSE investigation found that the company had identified risk from the overhead power line in their risk assessments but had failed to implement action to mitigate against the risks, adequately plan construction work and to train its employees.

The company responsible for managing the site pleaded guilty to breaching section 3 of the Health and Safety at Work etc. Act 1974 and was fined £400,000 with £17,242.33 costs. It is worth noting the company would likely have been considered a medium sized company with turnover or equivalent of between £10 – 50m for the purposes of the Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences Definitive Guideline.

The HSE Inspector on the case commented that the incident was “wholly avoidable” and caused by the failure of the company to “implement safe systems of work and to ensure that health and safety documentation was communicated and followed. The Inspector also noted that:

> Every year in the UK, two people are killed and many more are injured when machinery comes into contact with, or close proximity to, overhead power lines.
CAUTION
WET FLOOR
Sentencing Council publishes impact assessment on the revised Definitive Guideline for Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences

The Sentencing Council have published their impact assessment on the revised Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene offences Definitive Guideline.

The Guideline came into force on 1 February 2016. The guideline followed a new model for sentencing based on the culpability of the offender, the risk and likelihood of harm created by the offence as well as any actual harm caused. The guideline has a suggested starting point and range for an appropriate fine linked to the turnover of the organisation. In respect of individuals, factors of culpability and harm also have to be assessed with a corresponding sentencing table.

**Key findings from the impact assessment:**

— As anticipated by the Sentencing Council, there has been a considerable increase in fines for larger organisations since the guideline came into force.

— There also appears to have been an unanticipated increase in fines for smaller organisations, however, to a lesser degree.

— Similarly, an unanticipated increase has been seen in the level of fines for individuals sentenced for health and safety offences and a change in the use of some disposal types though this appears to be a short-term change.

— For food safety and hygiene offences, an increase in fines has also been evident though to a lesser degree than in health and safety cases.

— It appears that the fine amounts imposed on organisations sentenced for corporate manslaughter may have increased since the guideline came into force, this was anticipated, however, there have been low volumes of sentences in this area and therefore this finding should be treated with caution.

— From an analysis of Crown Court judges’ sentencing remarks for a sample of health and safety cases, the guideline is generally being applied in the manner intended.

— From a comparison of judgments for health and safety cases before and after the guidelines came into force, it appears that fewer appeals have been successful.
Health and Safety offences

The vast majority of organisations sentenced for health and safety offences receive a fine. The impact of the sentencing guidelines on organisations sentenced for health and safety offences was assessed by comparing a 10 month period prior to the guideline coming into force with a 10 month period afterwards. In the 10 month period prior to the guideline, the mean fine amount was £40,500 and the median was £12,000. In the 10 month period following the guideline, the mean increased to £221,700 and the median increased to £60,000.

In the period before the guideline came into force, around two thirds of organisations received a fine of under £20,000 and only 17% received a fine of £60,000 or more. In the period following the guideline, these proportions changed to 31% and 51% respectively.

An analysis of prosecutions data from the HSE enabled a pre-and post-guideline comparison of fines imposed on organisations of different sizes. The analysis found that fine amounts increased after the guideline came into force for all organisations though the increase was much greater for large and very large organisations, increasing almost 15 fold from the pre-guideline level.

Fines are also the most frequently used sentence for individuals sentenced under health and safety offences. Analysis of the 10 month period before and after the guideline came into force showed that both the mean and median fine amounts increased following the coming into force of the guideline. The mean increased from around £6,300 to £8,200 and the median increased from £3,000 to £5,000. The proportion of fines at the lower end remained the same post guideline, however, there was a decrease in the proportion of offenders receiving a fine between £2,000- £6,000 and an increase in those receiving a fine of £6,000 or more. Following the guideline, 50% of offenders received a fine of £6,000 or more, while only 30% received this prior to the guideline.

Judges transcripts from a small sample of cases for both individuals and organisations were also analysed and based on the assessment, sentencers have generally not experienced any issues when using the guidelines.
Food safety and hygiene offences
Most organisations fined for food safety and hygiene offences receive a fine. The analysis found that the mean fine amount increased from £2,200 pre-guideline to £7,100 in the post-guideline period. The median also increased, from £1,500 to £2,500. In general, fines for food safety and hygiene offences are lower than those of health and safety offences, however, a similar trend was noted to that of health and safety offences in that a greater proportion of organisations were receiving a fine at the higher end, of £4,000 or more, 34% post-guideline compared with 11% pre-guideline.

As with organisations, the most frequently used disposal for individual offenders under food safety and hygiene offences is fines. A comparison of the pre and post guideline fines showed an increase in the mean from £930 to £1300 and an increase in the median from £500 to £520. There was also a small increase in the proportion of individuals receiving a fine of £2,000 or more with this proportion rising from 13% to 17%.

Corporate Manslaughter
There have only been around 20 organisations sentenced with corporate manslaughter in the last decade. The penalty for corporate manslaughter is a fine. Given the low volume of cases it is difficult to assess the impact of the guideline on sentencing. It was anticipated that following the introduction of the sentencing guideline for manslaughter, that an increase in fine levels may be seen and it appears this is the case. From qualitative analysis carried out on Crown Court judges’ sentencing remarks both before and after the guideline came into force, it appears that sentencers are placing more emphasis on an organisation’s turnover in determining fines. This was an anticipated effect of the guidelines providing separate sentencing tables for organisations of different sizes.

Comment
It should be noted that in all cases there may be other factors present which might affect the fine amounts imposed, such as a change in the seriousness of cases coming before the court. Therefore the increases outlined above should not solely be attributed to the introduction of the guideline.

In any case, the overall results of the impact assessment are largely unsurprising. It was expected that fines would increase following the introduction of the guideline and the assessment shows this to be the case. Of course, this information was already available through the Health and Safety Executive’s enforcement statistics which have shown an increase in organisations fined £500,000 or more since the guideline came into force. The Sentencing Council has stated that it will investigate further the operation of the guideline in due course and consider whether any revisions to it are required though appears to be satisfied that the guideline is achieving one of its key objectives, ensuring that fines are sufficiently substantial to have a real economic impact.
"Unseen costs" blocking dropped objects prevention efforts

A global provider of dropped objects prevention technology for the energy and resources markets has published a white paper on why costs should not be a barrier to dropped object prevention. The provider has found that businesses may be exposing themselves to significant unseen long-term costs in their procurement of health and safety equipment. The paper reports that, in the absence of a clear benchmark for assessing the quality and longevity of the solutions available, many firms both on and offshore have adopted a short-term focus that may ultimately affect safe and successful operation as the industry sees an upturn.

Dropped objects, defined by industry body DROPS as any material or object of any mass or density which falls from its previous position, pose a prominent, but under reported risk to the safety of personnel, and the financial and reputational standing of firms in a number of high risk industries. In 2017, the International Marine Contractors Association reported that dropped objects constitute one of the top five causes of Lost Time Injuries offshore, but quality and consistency of incident reporting remains an obstacle to understanding the true scale of the threat. DROPS has also cited dropped objects as a top 10 cause of injury and fatality in Oil and Gas operations.

The whitepaper highlights that the lack of understanding is paralleled by a shortfall in clear advice and guidance for dropped objects prevention. While there are moves towards standardisation of key technologies, HSE decision makers still do not have a clear point of comparison between products available.

Barrier systems are now commonly installed across on and offshore industrial sites, attaching to guardrails upon elevated walkways, stairways and access ways of either permanent or temporary structures to prevent loose items falling from height. Although an apparently straightforward concept, there is a wide range of solutions on offer – from flexible mesh netting to more versatile plastic barrier systems – not all of which constitute a suitable long-term investment.

The whitepaper reports that barrier solutions that may be deemed to be the most cost-effective in the short-term may end up incurring higher costs in the long-term. By way of example, flexible mesh netting has a very low upfront cost, but requires routine maintenance and full replacement on a regular basis. Similarly, welded metal solutions are vulnerable to corrosion, and their installation necessitates hot works, which can lead to significant downtime in industries dealing with hydrocarbons.

Comment

Many companies are already adopting robust solutions to manage and mitigate against the risk of dropped objects. However, given the prominent risk they pose to safety or personnel and firm reputation, firms should ensure they are considering their safety solutions in this respect and in the absence of external regulatory guidance are pro-actively self-regulating in this area.
Motion calling for offshore helicopter inquiry

At the Scottish Trade Union Congress in Dundee workforce concerns around the need for an offshore helicopter inquiry were raised.

A total of 33 workers and crew have been killed in Super Puma helicopter crashes in the North Sea since 2009. In 2009, 14 workers and two crew died in a crash off the coast of Aberdeenshire. An Air Accidents Investigation Branch investigation into the crash found that the aircraft had suffered a failure of its main rotor gearbox and a fatal accident inquiry in 2014 found that the tragedy might have been avoided.

The latest fatal crash took place off the coast of Norway in 2016 and killed 13 people. While Super Puma helicopters are no longer in operation over the North Sea, there are still concerns over the safety of helicopter transport offshore.

Despite confirmation from the Scottish Government that meetings with the Oil and Gas Authority and the Civil Aviation Authority took place in November and December 2018 and a statement that ministers would “continue to work with partners” on a collaborative health and safety environment being given, the Scottish Government, earlier this year, said it would not back calls for an inquiry, stating that work is already being carried out in the industry and as such an inquiry would not be helpful.

A cross-party group of seven Labour, SNP and Lib Dem MPs have tabled a motion calling for Westminster to:

"Launch an inquiry into offshore helicopter safety, covering the crucial area of commercial pressure, in order to effectively address offshore workers’ concerns over the safety of offshore helicopter transport to economically vital offshore energy installations and vessels."

Comment
There was a previous request for a public inquiry in 2014 but the UK Government decided against it. It is a widespread concern held by the industry workforce and the outcome of the motion will be eagerly anticipated by many.
What we do

CMS is recognised as a leading firm in the area of Health and Safety. We provide specialist advice on regulatory compliance, prosecutions, investigations and corporate governance.

We have specialist knowledge of the offshore and energy sector in particular, which faces greater challenges and regulation than most. However, our client base and expertise spans a broad range of sectors, including:

- Construction
- Health and healthcare
- Energy
- Global health and safety advice
- Hotel and leisure
- Manufacturing
- Renewables
- Transport
- Technology
- Infrastructure
- Waste
- Real Estate

Regrettably, accidents at work can be serious and sometimes result in fatalities. Our clients appreciate the high level of attention and support we are able to offer during what can be a difficult time for any organisation. We are able to provide assistance with every aspect of incident response, including incident investigations, dealing with witnesses, defending prosecutions and advising senior management on relations with the Health and Safety Executive.

Emergency response team

Our specialist team is on call to provide assistance and respond to incidents 24 hours a day, every day of the year. Our team is qualified to practise in England, Wales and Scotland but also regularly advises clients in relation to international working practices and health and safety matters in other jurisdictions.

Our clients come to us for advice on:

- Emergency response
- Health and safety prosecutions
- Crisis management
- Accident inquiries
- Formal interviews and investigations undertaken by inspectors
- Corporate manslaughter investigations
- Inquests and Fatal Accident Inquiries
- Appeals against Improvement and Enforcement Notices
- Compliance with UK and European regulatory requirements
- Drafting corporate health and safety policies and contract documentation
- Safety aspects of projects and property management
- Due diligence in corporate acquisitions/disposals
- Directors’ and officers’ personal liabilities
- Management training courses
- Personal injury defence
- Risk management and training
Recent experience

— Defending health and safety prosecutions of client companies
— Appealing other types of enforcement action against companies (e.g. Prohibition Notices)
— Conducting numerous Coroners’ Inquests and Fatal Accident Inquiries – including some of the most high-profile and complex Inquiries to have taken place in relation to offshore incidents
— Obtaining the first ever award of expenses against the Crown in favour of a client company following a Fatal Accident Inquiry
— Taking appeals to the High Court of Justiciary
— Taking appeals on human rights issues to the Privy Council
— Defending Judicial Reviews
— Advising on forthcoming health and safety legislation
— Assisting clients in consultations with the Health and Safety Executive and other regulatory bodies, including the Department for Energy and Climate Change
— Advising clients in relation to Safety Cases, corporate governance issues and directors’ duties and liabilities
— Undertaking transactional due diligence in relation to health and safety matters
— Carrying out health and safety audits
— Advising clients on incident investigation, legal privilege and dealing with Health and Safety Executive inspectors
— Preparing and drafting incident investigation reports
— Advising clients on media, public relations and reputational issues following incidents
— Advising clients in the immediate aftermath of an incident and providing emergency response services
— Successfully defending environmental prosecution

For more information, please contact:

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