



Health and safety offences, corporate manslaughter and food safety and hygiene offences

Cases sentenced in March and April 2017



Our Health and Safety Team

Pinsent Masons has a leading Health and Safety Team (top ranked by the UK legal directories) operating across all UK jurisdictions (England and Wales, Scotland and Northern Ireland). Our clients are drawn from all sectors, which reflects the very broad reach of Health and Safety criminal regulation. Because we have built up considerable experience over many years advising clients in high hazard industries (such as construction, manufacturing and energy), we have developed and refined a “toolkit” of tried and tested measures that support clients before an accident takes place.

We also have a non-lawyer health and safety consultant in the team who is a Chartered Fellow of the Institution of Occupational Safety and Health; together with one lawyer who is dual qualified as a solicitor and health and safety professional.

Our focus on legal preventative measures distinguishes us from our competitors. It also means that we are leaders in the field when it comes to advising in the aftermath of incidents, as borne out by our involvement in some of the most important cases in this area. Working with you, our specialist lawyers take simple steps to ensure that you are protected from the moment we are instructed. We know how important the early stages after an incident can be and how best to serve your interests at this crucial time.

The legal landscape is changing with higher fines for health and safety offences being specifically linked to a company's turnover. Therefore, effective preventative and post-incident responses have never been more important.

We offer a full range of preventative and contentious services designed to help you avoid liability and to protect you should incidents occur. Our service is bespoke and tailored to your specific needs.

Preventive	Training	Incident management and litigation
Safety policies, procedures and management systems Compliance advice	Safety for directors and senior managers IOSH approved courses: IOSH Managing Safely; IOSH Safety for Senior Executives	24-hour availability Advice on investigations by the Regulators (HSE, EMOs, Fire Authorities and the Police)
Protocols for responding to incidents to avoid the pitfalls	Understanding risk assessment Mock trial (1/2-day event) H&S PACE interview role play (two-hour event)	Managing Police, HSE, Local Authority and other regulatory investigations
Stress testing your systems	Control of contractors	Commissioning and preparation of privileged incident investigation reports
Sentencing Guidelines “health check”	Nominated representatives for HSE and other enforcement authority interviews	Prosecutions, inquests, fatal accident inquiries and criminal trials
Support with contracts, projects and due diligence	Accident investigation for safety advisers	Appeals of enforcement notices and FFI notices

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Sentencing guidelines to date – headlines

Headline	Company	Fine	Details
Largest fine	Merlin Attractions Operations Limited	£5m 27 September 2016	The company was fined after a number of people were severely injured when two rollercoaster carriages collided at Alton Towers.
Second largest fine	Network Rail Limited	£4m 21 September 2016	The company was fined following the death of a former film actress who was killed when she was hit by a train at Gipsy Lane level crossing in Needham Market, Suffolk.
Third largest fine	ConocoPhillips (UK) Limited	£3m 8 February 2016	The company was fined following three separate releases of gas on an offshore platform that put workers at significant risk of serious harm or death (non-injury).
	Cristal Pigment UK Ltd	£3m 8 November 2016	The company was fined after the release of toxic vapour clouds. One incident caused the death of an employee, seriously injured another and put the public at risk.

	February 2017	March 2017	April 2017
Total fines imposed over £1m	1	0	4
Total fines imposed over £100,000	10	12	11
Average fine	£205,027	£188,068	£401,635

Sentencing guidelines update – very large companies

* assumed to be set at turnover of £1bn+ in the absence of any clear determination by the Courts

Very large organisation

Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

Convicted company and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Kier Construction Ltd</p> <p>Date of Incident: Not reported</p> <p>A worker was seriously injured after falling almost four metres at a construction site in Uxbridge. He sustained fractures to his arm and pelvis as a result of the fall. The HSE alleged the company had failed to ensure that work at height was properly planned, appropriately supervised and carried out in a manner which was safe.</p>	<p>Turnover: £1.4bn</p> <p>Perofit before tax: £18.5m</p>	<p>Date: 14 March 2017</p> <p>Westminster Magistrates' Court</p> <p>Guilty plea to breaching section 4(1) of the Work at Height Regulations 2005</p>	Medium	Category 3	<p>Actual: £400,000</p> <p>Costs: £1,534</p>	<p>The Court's assessment of the offence provides for a starting point of £300,000 and a range of £130,000 to £750,000 under the guideline. However, since the company's turnover greatly exceeds £50m (the threshold for large organisations) the Court would have been justified in moving outside the suggested range of fines. In mitigation, the Court accepted that the company had no previous convictions, co-operated fully with the HSE and has an excellent health and safety record.</p> <p>Therefore, the Court arrived at a fine of £600,000, reduced by one third to reflect full credit for an early guilty plea.</p>

Sentencing guidelines update – very large companies

Convicted company and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Laing O'Rourke Construction Limited</p> <p>Date of incident: 2 October 2014</p> <p>The company was fined after a worker reversed into his brother (also working for the company) while attempting to tow a broken down scissor lift at Heathrow Airport. The injured party sustained fatal injuries after being crushed between two vehicles.</p> <p>The HSE's investigation identified failings with the management and supervision of the towing operation.</p>	<p>Turnover: £1.1bn</p> <p>Loss before tax: £141m</p>	<p>Date: 24 March 2017</p> <p>Southwark Crown Court</p> <p>Guilty plea to breaching Regulation 22(1) (a) of the Construction (Design and Management) Regulations 2007</p>	Medium	Category 1	<p>Fine: £800,000</p> <p>Costs: £10,000</p>	<p>The fine imposed is at the lower end of the bracket for Medium Culpability, Harm Category 1 offences for large organisations. The guideline provides for a starting point of £1.3m which would have been reduced to take into account the company's guilty plea. It has been reported that the Court also took into account the company's high level of co-operation with the HSE's investigation and acceptance of responsibility as mitigating factors.</p>

Sentencing guidelines update – very large companies

Convicted company and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Essar Oil (UK) Limited</p> <p>Date of incident: 14 November 2013</p> <p>The company was prosecuted after an explosion at its refinery in Ellesmere Port. The blast was reportedly caused by the release of flammable hydrocarbons into a furnace. Fortunately no one was injured but the explosion caused more than £20m in damage to the surrounding structures.</p> <p>The HSE's investigation identified three main failings, namely:</p> <ul style="list-style-type: none"> • failing to correctly install a critical safety valve; • failing to adequately assess the installation of a critical safety trip; and • failing to properly isolate the fuel lines to the furnace. 	<p>Turnover: £5bn</p> <p>Profit before tax: £251m</p>	<p>Date: 3 April 2017</p> <p>Liverpool Crown Court</p> <p>Guilty plea to breaching Regulation 4 of the Control of Major Hazards Regulations 1999</p>	Between Medium and High	Category 1	<p>Fine: £1.65m</p> <p>Costs: £57,644.80</p>	<p>Health and safety offences are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm – the offence is in creating a risk of harm. Therefore, even though no one was injured by the explosion, it is unsurprising that the offence was characterised as Harm Category 1 under the guideline. The court may also increase the Harm Category where the offence exposed a number of workers or members of the public to the risk of harm.</p> <p>For a large company, Medium and High Culpability provide for starting points of £1.3m and £2.4m, respectively, under the Guideline. However, the Court could have moved outside of these figures to achieve a proportionate sentence.</p>

Sentencing guidelines update – very large companies

Convicted company and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Moy Park Limited</p> <p>Date of incident: not reported</p> <p>An engineer sustained deep lacerations to his hand from the blades of a machine after the machine was restarted while being checked. The HSE concluded that the company did not have an adequate procedure in place for isolating machinery while it was being maintained.</p>	<p>Turnover: £1.4bn</p> <p>Operating profit: £50m</p>	<p>Date: 12 April 2017</p> <p>Lincoln Crown Court</p> <p>Guilty plea to breaching Section 2(1) of the Health and Safety at Work Act 1974</p>	Unknown	Unknown	<p>Fine: £200,000</p> <p>Costs: £11,924</p>	<p>Allowing for one third credit for a guilty plea, the level of fine imposed suggests this was categorised as a Medium Culpability, Harm Category 3 offence under the guideline. This provides for a starting point fine of £300,000 and a range of £130,000 to £750,000.</p> <p>Medium culpability would imply that the company did have isolation procedures in place but these were not sufficiently adhered to or implemented.</p>
<p>Bakkavor Foods Limited</p> <p>Date of incident: 4 February 2015</p> <p>A worker was fatally injured after being crushed beneath approximately 700kg of plastic bales. The incident appears to have taken place at the premises of one of the company's subsidiaries. However, the parent company, Bakkavor Foods Limited, was reportedly prosecuted by the HSE after its investigation identified inadequate systems of work and insufficient training for workers regarding the stacking of the plastic bales.</p>	<p>Turnover: £1.4bn</p> <p>Profit before tax: £90m</p>	<p>Date: 28 April 2017</p> <p>Manchester Crown Court</p> <p>Guilty plea to breaches of Section 2 (1) of the Health and Safety at Work at 1974</p>	Medium	Category 1	<p>Fine: £2m</p> <p>Costs: £32,595.10</p>	<p>With corporate defendants there will often be complex group structures in place and it is crucial that the correct entity is identified in any prosecution.</p> <p>Under the guideline, normally only financial information relating to the defendant will be relevant for sentencing purposes, unless exceptionally it is demonstrated to the Court that the resources of a linked organisation, such as a parent company, are available and can properly be taken into account.</p>

Sentencing guidelines update – large companies

Large

Turnover or equivalent: £50 million and over

	Starting point	Category range
Very high culpability		
Harm category 1	£4,000,000	£2,600,000 – £10,000,000
Harm category 2	£2,000,000	£1,000,000 – £5,250,000
Harm category 3	£1,000,000	£500,000 – £2,700,000
Harm category 4	£500,000	£240,000 – £1,300,000
High culpability		
Harm category 1	£2,400,000	£1,500,000 – £6,000,000
Harm category 2	£1,100,000	£550,000 – £2,900,000
Harm category 3	£540,000	£250,000 – £1,450,000
Harm category 4	£240,000	£120,000 – £700,000
Medium culpability		
Harm category 1	£1,300,000	£800,000 – £3,250,000
Harm category 2	£600,000	£300,000 – £1,500,000
Harm category 3	£300,000	£130,000 – £750,000
Harm category 4	£130,000	£50,000 – £350,000
Low culpability		
Harm category 1	£300,000	£180,000 – £700,000
Harm category 2	£100,000	£35,000 – £250,000
Harm category 3	£35,000	£10,000 – £140,000
Harm category 4	£10,000	£3,000 – £60,000

Sentencing guidelines update – large companies

Convicted company and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Amey LG Limited</p> <p>Date of Incident: 29 May 2015</p> <p>A worker sustained serious burns to his body after receiving an electric shock from an underground cable while attempting to change a traffic light pole. Amey LG had subcontracted the work but according to the HSE's investigation it had failed to provide sufficient information to the subcontractors regarding the location of underground services. The HSE also identified issues with the adequacy of Amey LG's management and supervision of the work.</p>	<p>Turnover: £453.7m</p> <p>Loss before tax: £92m</p>	<p>Date: 8 March 2017</p> <p>Gloucester Crown Court</p> <p>Guilty plea to breaching Regulation 25(4) of the Construction (Design and Management) Regulations 2015.</p>	Medium	Category 2	<p>Fine: £600,000</p> <p>Costs: £15,498</p>	<p>The starting point under the guideline for a Medium Culpability, Harm Category 2 offence is £600,000 with a range of £300,000 to £1.5m.</p> <p>Since the company would likely have received some credit for its guilty plea, the judge must have been minded to move above the recommended starting point when sentencing the company. It has been reported that the company was also convicted in 2015 for a health and safety offence, which would have been an aggravating factor.</p>
<p>Whirlpool UK Appliances Limited</p> <p>Date: 21 March 2015</p> <p>The company was prosecuted after a contractor fell almost five metres and was fatally injured. The contractor was working from a mobile elevated work platform (MEWP) when an overhead conveyor belt was started. This caused the MEWP to fall over and the contractor to fall to the ground below.</p>	<p>Turnover: £710.8m</p> <p>Loss before tax: £165m</p>	<p>Date: 21 March 2017</p> <p>Bristol Crown Court</p> <p>Guilty plea to breaching Section 3 of the Health and Safety at Work Act 1974.</p>	Low	Category 3	<p>Fine: £700,000</p> <p>Costs: £11,466</p>	<p>The HSE's investigation concluded that there were inadequate controls or supervision in place to prevent conflicting work from being carried out in the same place at the same time at the premises where the incident occurred.</p> <p>Based on the Judge's findings of Low Culpability and Harm Category 3, the starting point fine for a 'large' company under the guideline is £35,000. Instead, the judge opted for a starting point of £1.2m - nearly 35 times greater.</p>

Sentencing guidelines update – large companies

Convicted company and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Electricity North West Ltd</p> <p>Date of incident: 22 November 2013</p> <p>A worker was fatally injured after falling approximately six metres from a ladder while clearing vegetation away from power lines. The HSE alleged that it was inappropriate for the work to be done from a ladder and a MEWP should have been used instead. The HSE's investigation also identified issues with the planning of the maintenance work and a lack of information provided to the worker.</p>	<p>Turnover: £450.8m</p> <p>Profit before tax: £121.5m</p>	<p>Date: 31 March 2017</p> <p>Preston Crown Court</p> <p>Found guilty of breaching Regulation 4(1) of the Work at Height Regulations 2005.</p>	Unknown	Unknown	<p>Fine: £900,000</p>	<p>It has been reported that the company was found not guilty of charges relating to the failure to risk assess and the failure to ensure the safety of its employees, but was nevertheless found guilty of a technical breach under the working at height regulations.</p> <p>It has also been reported that the sentencing judge referred to the company's systemic failures when fining the company, which is suggestive of High Culpability.</p>
<p>BAM Construction Limited</p> <p>Date of incident: 26 January 2015</p> <p>The company was appointed by Network Rail to construct a new railway operating centre. While lampposts were being installed and manoeuvred into position, one touched an overhead power line. A worker received a severe electric shock resulting in life changing injuries and severe burns. The HSE's investigation revealed the work had not been properly planned and no suitable control measures were in place.</p>	<p>Turnover: £817m</p> <p>Profit before tax: £5.5m</p>	<p>Date: 4 April 2017</p> <p>Winchester Crown Court</p> <p>Guilty plea to breaching Regulation 14 of the Electricity at Work Regulations 1989.</p> <p>A subcontractor, Shoreland Projects Limited, hired by the company was also fined £22,000 following a guilty plea to the same charge.</p>	Unknown	Unknown	<p>Fine: £260,000</p> <p>Costs: £9,415.13</p>	<p>Taking into account the severity of the injuries sustained, the level of fine suggests Medium Culpability and Harm Category 3 which provides for a starting point fine of £300,000 and a range of £130,000 to £750,000.</p> <p>The company was previously prosecuted in 2009 for a section 3 offence. This would likely have been an aggravating feature in this most recent case but the company will have also received some credit for a guilty plea.</p>

Sentencing guidelines update – large companies

Convicted company and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Munster Joinery (UK) Ltd</p> <p>Date of incident: October 2013</p> <p>A worker was knocked unconscious after being hit in the head by a set of double doors that were being unloaded at a construction site. The HSE's investigation noted there had been a number of previous similar incidents at the company's premises.</p>	<p>Turnover: £73.6m</p> <p>Profit before tax: £3m</p>	<p>Date: 10 April 2017</p> <p>Oxford Crown Court</p> <p>Guilty plea to breaching Section 3(1) of the Health and Safety at Work etc. Act 1974</p>	Unknown	Unknown	<p>Fine: £300,000</p> <p>Costs: £18,424.98</p>	<p>The Judge reportedly referred to "systemic management failings" as the cause for the offence suggesting High Culpability under the guideline.</p> <p>It is also notable that the level of fine imposed equates to 10% of the company's profit before tax during 2015 demonstrating the potentially disproportionate effect of the guidelines on comparatively smaller companies. Nevertheless, one of the overriding principles of the guidelines is to ensure that fines are sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with health and safety legislation.</p>
<p>Beckett's Foods Limited</p> <p>Date of incident: 11 May 2016</p> <p>A young worker sustained a serious crush injury after he fell at the company's premises and caught his hand in a meat separating machine. The HSE's investigation concluded there was insufficient guarding on the machine and the company had failed to introduce an adequate system of work.</p>	<p>Turnover: £96.3m</p> <p>Profit before tax: £4.3m</p>	<p>Date: 18 April 2017</p> <p>Coventry Magistrates' Court</p> <p>Guilty plea to breaching Sections 2 (1) and 33 (1) of the Health and Safety at Work Act 1974</p>	Unknown	Unknown	<p>Fine: £366,666</p> <p>Costs: £10,978.09</p>	<p>Taking into account credit for a guilty plea, the level of fine imposed suggests the offence was categorised as High Culpability, Harm Category 3 under the guideline. This provides for a starting point of £540,000 and a range of £250,000 to £1.45m.</p>

Sentencing guidelines update – large companies

Convicted company and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Nottinghamshire County Council</p> <p>Date of incident: 1 June 2015</p> <p>A member of the public was injured after being struck by a tractor in a local park. The tractor was being used to collect branches. He suffered bruising and injuries to his extremities as a result of the collision. The HSE's investigation identified several failings, namely:</p> <ul style="list-style-type: none"> • the council did not have an adequate system of work in place to segregate pedestrians and vehicles; • inadequate training and supervision of workers; • inadequate planning of the work; and • the use of unsuitable machinery. 	<p>Actual Income: £487.7m (2015/2016)</p>	<p>Date: 19 April 2017</p> <p>Nottingham Crown Court</p> <p>Guilty plea to breaching Sections 2(1) and 3(1) of the Health and Safety at Work Act 1974</p>	Unknown	Unknown	<p>Fine: £1m</p> <p>Costs: £10,269.85</p>	<p>The level of fine imposed suggests High or even Very High Culpability on the part of the council – particularly since the guidelines allow for fines to be substantially reduced where it will fall on public or charitable bodies and the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of its services.</p> <p>However, the Court of Appeal has recently upheld a £500,000 fine against the London Borough of Havering despite the submissions of the council that the fine would have a significant impact on its services and that ultimately those that would suffer were those who are the most dependent on public services.</p>
<p>South West Water</p> <p>Date of incident: 30 December 2013</p> <p>The company was prosecuted after an operator drowned at its water treatment facility while carrying out a maintenance operation alone. The HSE's investigation concluded that the company had not adequately considered the risk of drowning during the operation.</p>	<p>Turnover: £506.4m</p> <p>Profit before tax: £154.4m</p>	<p>Date: 21 April 2017</p> <p>Truro Crown Court</p> <p>Guilty plea to breaching Section 2(1) of the Health and Safety at Work Act 1974</p>	High	Category 2	<p>Fine: £1.8m</p> <p>Costs: £41,607.71</p>	<p>The level of fine imposed suggests the Judge was minded to move beyond the starting point of £1.1m under the guideline to the upper end of the category range (£550,000 to £2.9m). Reported aggravating factors included a similar previous incident in 2009 and the failure to take any substantive action thereafter. In mitigation, the judge noted the company's co-operation with the HSE and health and safety record.</p>

Sentencing guidelines update – medium companies

Medium

Turnover or equivalent: between £10m and £50m

	Starting point	Category range
Very high culpability		
Harm category 1	£1,600,000	£1,000,000 – £4,000,000
Harm category 2	£800,000	£400,000 – £2,000,000
Harm category 3	£400,000	£180,000 – £1,000,000
Harm category 4	£190,000	£90,000 – £500,000
High culpability		
Harm category 1	£950,000	£600,000 – £2,500,000
Harm category 2	£450,000	£220,000 – £1,200,000
Harm category 3	£210,000	£100,000 – £550,000
Harm category 4	£100,000	£50,000 – £250,000
Medium culpability		
Harm category 1	£540,000	£300,000 – £1,300,000
Harm category 2	£240,000	£100,000 – £600,000
Harm category 3	£100,000	£50,000 – £300,000
Harm category 4	£50,000	£20,000 – £130,000
Low culpability		
Harm category 1	£130,000	£75,000 – £300,000
Harm category 2	£40,000	£14,000 – £100,000
Harm category 3	£14,000	£3,000 – £60,000
Harm category 4	£3,000	£1,000 – £10,000

Sentencing guidelines update – medium companies

Convicted company and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>T E Scudder Ltd</p> <p>Date: 17 January 2011</p> <p>The company was the principle contractor for a luxury apartment conversion project in Victoria. A lift shaft in the building was being decommissioned when the chain supporting the lift snapped. Two men were working on top of the lift when the incident occurred. One man, who was not wearing a harness, fell six storeys and was killed by the fall. The second man did have a harness but nevertheless sustained serious injuries.</p>	<p>Turnover: £40.7m</p> <p>Profit before tax: £1.4m</p>	<p>Date: 6 March 2017</p> <p>Southwark Crown</p> <p>Guilty plea to breaching Section 2(1) and Section 3(1) of the Health and Safety at Work Act 1974</p>	High	Category 2	<p>Fine: £600,000</p> <p>Costs: £27,408</p>	<p>The HSE’s investigation uncovered issues with the adequacy of the planning and management of the project.</p> <p>For this category of offence, the guideline provides for a starting point fine of £450,000 and a range of £220,000 to £1.2m. The sentencing judge clearly felt the offence justified moving substantiary above this starting point. It should also be noted that the fine imposed represents 43% of the company’s profit before tax, according to its latest accounts.</p> <p>The director of the company responsible for planning the decommissioning of the lift shaft also pleaded guilty to breaching Section 3(2) of the 1974 Act and was sentenced to 120 hours community service.</p>
<p>Buchan Concrete Solutions Ltd</p> <p>Date of Incident: 30 June 2015</p> <p>A worker was seriously injured while concrete blocks were being unloaded at the company’s premises in Burton-on-Trent. One block fell onto the worker while being unloaded using a forklift truck. He sustained a serious crush injury and his leg was later amputated.</p>	<p>Turnover: £29m</p> <p>Loss before tax: £0.8m</p> <p>(In administration)</p>	<p>Date: 6 March 2017</p> <p>Newcastle-under-Lyme Magistrates’ Court</p> <p>Guilty plea to breaching Regulation 8 of the Lifting Operations and Lifting Equipment Regulations 1998</p>	Unknown	Unknown	<p>Actual: £300,000</p> <p>Costs: £10,092.42</p>	<p>The HSE discovered two key issues with the unloading operation, namely: the FLT’s lifting capacity was not sufficient to unload the blocks and workers should not have been allowed within the vicinity while the blocks were being unloaded.</p> <p>Allowing one third credit for a guilty plea, the level of fine imposed suggests this was determined to be a High Culpability, Harm Category 2 offence which provides for a starting point of £450,000 under the guideline. Although, it should be noted the company is in administration and therefore may not have the funds to meet any fine imposed.</p>

Sentencing guidelines update – medium companies

Convicted company and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Erith Haulage Company Limited</p> <p>Date of Incident: 17 and 18 January 2015</p> <p>The company was prosecuted after an employee fell 4.5 metres through a skylight at the company's premises onto the floor below. The employee had been cleaning the roof at the time and sustained multiple fractures as well as further injuries to his arms and legs as a result of the fall.</p>	<p>Turnover: £20m</p> <p>Profit before tax: £0.23m</p>	<p>Date: 6 March 2017</p> <p>Southwark Crown Court</p> <p>Guilty plea to breaching Regulation 4(1) of The Work at Height Regulations 2005</p>	Unknown	Unknown	<p>Fine: £215,000</p> <p>Costs: £10,622</p>	<p>The HSE's investigation uncovered issues with the planning and supervision of the work at height.</p> <p>It is notable that the fine imposed is almost as much as the company's most recent profit before tax. Under the guideline, the fine imposed must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with health and safety legislation. Whether the fine will have the effect of putting the offender out of business will be relevant but in some cases this may be an acceptable consequence.</p>
<p>Structural Metal Decks Limited</p> <p>Date of Incident: 22 April 2015</p> <p>A worker was seriously injured when the decking he was working on gave way and he fell four metres to the ground below. He sustained an injury to his spinal cord and is now paralysed from the neck down. The company had been contracted to install the metal decking.</p>	<p>Turnover: £17m</p> <p>Profit before tax: £0.56m</p>	<p>Date: 7 March 2017</p> <p>Airdrie Sheriff Court</p> <p>Guilty plea to breaching Sections 3 (1) and 33 (1) of the Health and Safety at Work Act 1974</p>	Unknown	Unknown	<p>Fine: £105,000</p>	<p>The HSE's investigation discovered the decking was not adequately secured and access to the area was not properly controlled.</p> <p>Technically the guideline only applies in England and Wales – this case was prosecuted in Scotland. Nevertheless, the courts have accepted that the approach adopted by the guideline is persuasive to the sentencing of cases in Scotland as well.</p>

Sentencing guidelines update – medium companies

Convicted company and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Forefront Utilities Limited</p> <p>Date of incident: 23 May 2014</p> <p>An employee was severely injured while working in a trench when a heavy gas pipe weighing approximately 440kg collapsed onto him. The employee sustained a fractured spine and was paralysed by the incident. The company had been subcontracted to install the pipework by Southern Gas Networks.</p> <p>The HSE's investigation concluded the system of work in place was unsuitable and unsafe.</p>	<p>Turnover: £23.1m</p> <p>Loss before tax: £3.8m</p>	<p>Date: 12 April 2017</p> <p>Maidstone Crown Court</p> <p>Found guilty of breaching Section 2(1) of the Health and Safety at Work etc. Act 1974</p>	Unknown	Unknown	<p>Fine: £200,000</p> <p>Costs: £56,686</p>	<p>Under the guideline the Court should check whether the proposed fine is proportionate to the overall means of the offender. The profitability of an organisation will be relevant and if it has a small profit margin relative to its turnover, a downward adjustment in the level of fine may be appropriate.</p> <p>Nevertheless, the guideline acknowledges that sometimes it may be an acceptable consequence that a fine will put an organisation out of business.</p> <p>The company has reportedly been given three years to pay the fine – presumably since its latest accounts record the company was making a loss.</p>
<p>CMF Limited</p> <p>Date of incident: 6 November 2013</p> <p>The company was prosecuted after a hired subcontractor was fatally injured when a 1.2 tonne concrete landing fell on him while being lowered into place.</p> <p>The HSE's investigation discovered issues with the supervision of the staircase installation and noted no safe system of work had been put in place.</p>	<p>Turnover: £18.1m</p> <p>Profit before tax: £1.1m</p>	<p>Date: 21 April 2017</p> <p>Southwark Crown Court</p> <p>Guilty plea to breaching Section 3 (1) of the Health and Safety at Work Act 1974</p>	High	Category 1	<p>Actual: £185,000</p> <p>Costs: £20,606.14</p>	<p>The coroner also published a Prevention of Further Deaths Report following the inquest investigating the fatal incident. The coroner was concerned that the existing documentation did not adequately recognise or describe the work activity that was being undertaken. Witnesses were also unfamiliar with the terminology used in the documents and also did not appear to fully understand the activity.</p>

Sentencing guidelines update – individuals

	Starting point	Category range
Very high culpability		
Harm category 1	18 months' custody	1 – 2 years' custody
Harm category 2	1 year's custody	26 weeks – 18 months' custody
Harm category 3	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 4	Band F fine	Band E fine – 26 weeks' custody
High culpability		
Harm category 1	1 year's custody	26 weeks – 18 months' custody
Harm category 2	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 3	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 4	Band E fine	Band D fine – Band E fine
Medium culpability		
Harm category 1	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 2	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 3	Band E fine	Band D fine or low level community order – Band E fine
Harm category 4	Band D fine	Band C fine – Band D fine
Low culpability		
Harm category 1	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 2	Band D fine	Band C fine – Band D fine
Harm category 3	Band C fine	Band B fine – Band C fine
Harm category 4	Band A fine	Conditional discharge – Band A fine

Sentencing guidelines update – individuals

Convicted individual and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Mark Kinsley</p> <p>Date of Incident: 5 December 2015</p> <p>A scaffold collapsed after being incorrectly erected by Mark Kinsley and two employees. Fortunately no one was injured by the collapse.</p> <p>The HSE's investigation revealed Mark Kinsley had failed to properly erect or design the scaffolding.</p>	Not reported	<p>Date: 6 March 2017</p> <p>North Staffordshire Justice Centre</p> <p>Guilty plea to breaching Section 3 (1) of the Health and Safety at Work Act 1974</p>	Unknown	Unknown	<p>Sentence: £1,400 and 16 weeks in custody (suspended for 12 months)</p> <p>Costs: £1,648</p>	<p>It may appear surprising that this case resulted in a custodial sentence (albeit suspended) when considering that no one was injured. However, it does demonstrate the approach of the Courts under the new sentencing guideline and the focus on the risk of harm rather than actual harm.</p> <p>Taking into account the number of people exposed to a risk of harm as a result of the scaffolding collapse, including members of the public, the Court would have been justified in increasing the harm category for the offence under the guideline.</p>
<p>Peter Knight</p> <p>Date of Incident: Not reported</p> <p>Peter Knight was prosecuted after carrying out gas safety checks on a property without being Gas Safe registered and having no experience with gasworks. He was investigated by the HSE after the regulator was warned by the Gas Safe Register following a report by the property's tenant.</p>	Not reported	<p>Date: 20 March 2017</p> <p>Plymouth Crown Court</p> <p>Guilty plea to breaching Regulation 3(3) and 3(7) of the Gas Safety (Installation and Use) Regulations 1998</p>	Unknown	Unknown	<p>Sentence: 16 months custody (suspended for two years)</p>	<p>The level of sentence imposed suggests Very High Culpability and Harm Category 1 or 2.</p>

Sentencing guidelines update – individuals

Convicted individual and brief facts	Turnover	Details of conviction	Culpability	Harm	Sentence	Comments on sentence
<p>Michael Trent Algar</p> <p>Date of incident: not reported</p> <p>The gas fitter was prosecuted after installing a boiler without being Gas Safe registered. Once the boiler had been installed by Michael Algar, the owners of the property smelled gas and contacted a different gas engineer who subsequently reported the incident to the Gas Safe Register.</p>	N/A	<p>Date: 25 April 2017</p> <p>Manchester Magistrates' Court</p> <p>Guilty plea to three charges under the Gas Safety (Installation and Use) Regulations 1998</p>	Unknown	Unknown	14 months' imprisonment	<p>The greatest sentence for individuals under the guidelines is two years' custody. Michael Algar may have received some credit for a guilty plea, therefore it is reasonable to assume the offences were categorised as High or even Very High Culpability and Harm Category 1 under the guideline. It has also been reported that Michael Algar had previously been advised by the HSE in connection with similar incidents, which may have been an aggravating feature in this case.</p>
<p>Gareth Scott Redford</p> <p>Date of incident: various concerns during 2014</p> <p>Complaints were made to the Gas Safe Register after plumber, Gareth Redford, carried out gas work at four different properties. He was investigated by the HSE and Cambridgeshire County Council who discovered he had not been Gas Safe registered. The work was also considered to be unsafe and put members of the public at risk.</p>	N/A	<p>Date: 28 April 2017</p> <p>Cambridge Crown Court</p> <p>Guilty plea to 14 breaches under the Gas Safety (Installation and Use) Regulations 1998, Consumer Protection from Unfair Trading Regulations 2008 and the Fraud Act 2006</p>	Unknown	Unknown	16 months' imprisonment	<p>Although it is difficult to separate the health and safety offence from the other counts against Gareth Redford in this case, a 16-month custodial sentence for a health and safety offence would suggest High or Very High Culpability.</p> <p>The number of offences is also likely to have been an aggravating feature despite any credit awarded for a guilty plea.</p>

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Notes

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