



Weightmans

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IOSH Legal update

Health & Safety

10 September 2019

Key contact:

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Weightmans

- National Law firm
 - c. £100m turnover
 - > 1300 people
 - Offices:
 - Liverpool, Leeds and Manchester
 - Birmingham and Leicester
 - London and Glasgow
 - 6 client segments
 - Insurance, Public Sector, Built Environment, Corporates, OMBs and Private Clients

Your presenter

- Dewi Ap-Thomas
 - Partner
 - Head of Regulatory Department
 - Based in Liverpool
 - Health & Safety Defense Lawyer
 - 14 years at Weightmans

What we'll cover

- Legal professional privilege & internal investigations
- Corporate Manslaughter update
- Sentencing

Privilege and Internal Investigations

- Where an Accident Investigation is –
 - 1) Carried out by, or on the instructions of, a lawyer
 - 2) Carried out “for the sole or dominant purpose of... reasonably contemplated litigation”

... the report and findings of that Investigation are **Legally Privileged** and are excluded from HSE’s s20 HSWA power

Privilege and Internal Investigations

- Significant + complex recent case law on when litigation is “*reasonably contemplated*” and when Legal privilege applies to accident investigations
- Not enough to simply say “*where there is a death and on the face of it a breach of duty, the HSE normally prosecutes*” – requires reasoned consideration of facts and law
- Protecting Internal Accident Investigations/Reports with Legal Privilege requires careful advice by specialist experienced lawyers

Privilege and Internal Investigations

Top Tips (1)

- Use privileged investigations – by instructing lawyers – where appropriate
- Do you have a procedure for determining what incidents/accidents warrant a privileged investigation?
 - Are any documents produced before this would kick in?
- Seek early advice from specialist experienced lawyers
 - Do you have provision in place for contacting lawyers for advice in such circumstances?

Privilege and Internal Investigations

Top Tips (2)

In all (incl non-privileged) accident investigations –

- Do not jump to early conclusions
- Are you being overly critical? Not everything is a systemic/management failure!
- “Improvements” are key – not blame
- Watch what you write down – how could it be viewed by an Inspector?

Corporate Manslaughter case summary

- 26 concluded cases to date.....
- Directors convicted of a health and safety offence in 10 cases
- Director disqualification in 5
- Gross negligence manslaughter charges in 13
- Gross negligence manslaughter convictions in 2
- Company is charged with both CM and a H&S offence in most cases (18)
- Publicity orders made in 7
- Highest fine to date.....**£1,200,000**
 - H&S fine of DB Cargo UK this year....**£2,700,000**

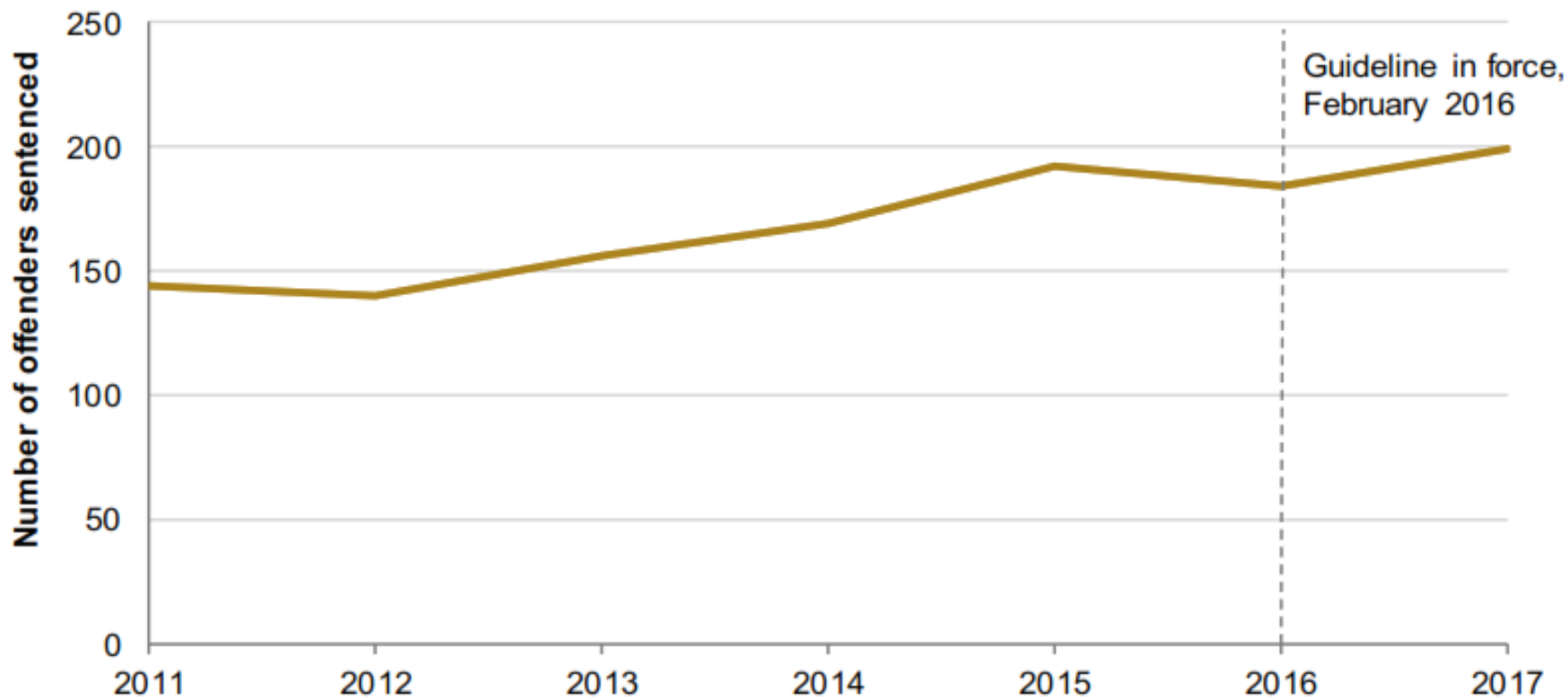
Huge Increase in Total Fines

Total fines for health and safety offences prosecuted by HSE and, in Scotland, COPFS



Prosecutions Against Individuals

Figure 5: Number of adult offenders sentenced for health and safety offences covered by the guideline, 2011-2017





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