

15 January 2015

Pat Scicluna  
Office of the Sentencing Council  
Room EB20  
Royal Courts of Justice  
Strand  
London  
WC2A 2LL



Dear Sirs

### **Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines**

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally of practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has around 3,800 members in the UK and abroad who represent hundreds of thousands of injured people a year.

APIL is grateful for the opportunity to respond to this consultation. In this response, we have focused on what we believe to be the overarching principles of sentencing for health and safety offences and corporate manslaughter.

#### **Aims and overarching issues**

*Q1 Do you agree with the overarching principles for setting fines for these offences, set out in step three of the draft guidelines?*

APIL agrees that in these cases, the fine should reflect the seriousness of the offence and society's abhorrence at breaches of health and safety law; sending a message that such breaches will not be tolerated. We agree that the fine should reflect the extent to which the offender fell below the required standard and that it should meet, in a fair and proportionate way, the aims of punishment and deterrence.

It is crucial for organisations to be held to account and appropriately punished for these offences. Deterrence is also extremely important - families of victims of health and safety breaches are often determined that their experiences should never be inflicted on any other family. Effective deterrence will also help to encourage a culture of health and safety within organisations.

In addition to punishment and deterrence, we also welcome the Council's principle that any economic gain derived from the offence must be removed. It must not be cheaper for the

organisation to offend again, rather than taking the necessary precautions to avoid a further breach. No financial gain should ever accrue to an organisation which has negligently caused injury or death. This would not only nullify the deterrent effect but would be a further insult to suffering families.

*Q3 Do you agree with how turnover, profit and reference to other financial factors have been used in the guideline to assist sentencers' in identifying fine levels? If not, what alternatives to assessing the means of the offender would you suggest?*

APIL believes that a fine only works as a sanction if it relates accurately to the defendant's financial circumstances. As pointed out in the consultation paper, the suggested approach of using turnover to identify the starting points for fines is not necessarily an accurate representation of the financial health of the organisation. Some companies have a very large turnover and a low profit margin, and a fine based on turnover will damage their profitability much more than it would a business which may have a significantly lower turnover, but which actually makes a greater profit. We are therefore pleased that at step three of the guidelines, the court should "examine the financial circumstances of the offender in the round, to assess the economic realities of the organisation and the most efficacious way of giving effect to the purposes of sentencing." This should mean that fines are calculated and set at the most suitable and effective level, to achieve the aims referred to in answer to question one.

*Q6 Do you agree with the wider factors set out in step four of the guidelines for organisations that the court should consider when finalising fines?*

We welcome that step four of the guidelines introduces the consideration of wider consequences which may warrant adjustment of the proposed figure for fines. We specifically welcome the guidance that the court should consider any adverse impacts that a fine may have on innocent parties. APIL believes that it is vital that the cost of the breach is not passed down to workers – either through job losses caused by financial hardship as a result of the fine, or through the employer being unable to rectify the breach or cutting corners elsewhere due to the impact of a disproportionate fine. Wider considerations such as these must be taken into account so that those who the action is intended to protect do not suffer harm as a result.

We hope that our comments prove useful to you. If you have any queries, please contact [alice.warren@apil.org.uk](mailto:alice.warren@apil.org.uk).

Yours faithfully



Alice Warren

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