

# **Sentencing Guidelines Panel**

## **Consultation on sentencing for corporate manslaughter**



**A response by the Association of Personal Injury Lawyers**

**February 2008**

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

APIL's executive committee would like to acknowledge the assistance of the following members in preparing this response:

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The association welcomes the opportunity to comment on these proposals. The response does not deal with every question but concentrates on the questions which are of most relevance to the association and the work of its members.

**Q3: What do you consider should be the main aim of sentencing an organisation for an offence of corporate manslaughter or an offence under the HSWA involving death? Should there be any difference between the two types of offence and, if so, why?**

Sentencing for these offences should be viewed as an expression of society's abhorrence at such grave breaches of health and safety law. It is crucially important for organisations to be held to account and appropriately punished for such negligence. One of the main aims is to deter other potentially negligent employers and to send a message that such breaches will not be tolerated.

The association does not believe that a distinction should be made between the two types of offence. Ultimately, a death is a death and it would seem excessively legalistic to bereaved families if one death resulted in a harsher sentence than another. Consistency is critical to maintaining public confidence in the law.

**Q4: Do you agree that the aims of the fine should be to ensure future safety and reflect serious concern at the unnecessary loss of life? Should there be any difference in aim when imposing a fine for corporate manslaughter or for an offence under the HSWA involving death?**

The association agrees that one of the aims of the fine should be to deter the organisation from treating health and safety in a negligent manner. Families of victims of health and safety breaches are often determined that their experience should never be inflicted on any other family.

It should also, though, be about trying to embed a health and safety culture in all organisations. APIL recognizes that many organisations already take health and safety seriously but it is clear that some 'rogue' organisations are still subjecting their employees to unacceptable levels

of risk. The recommended fines would provide a stronger 'stick' to persuade them to institute efficient health and safety systems and procedures.

**Q5: Do you agree that a fine imposed for an offence of corporate manslaughter or an offence under the HSWA involving death should aim to eliminate any financial benefit resulting from the offence? If so, what information would be necessary, and how could this be obtained?**

The association agrees that no financial gain should ever accrue to an organisation which has negligently caused a death. This would not only nullify the deterrent effect mentioned above but would be a further insult to bereaved families.

**Q6: Do you agree with the Panel's proposed starting points and ranges for a) offences of corporate manslaughter and b) offences under the HSWA involving death? If not, what alternative approach would you suggest for the fining of organisations for these offences?**

It is our contention that a fine only works as a sanction if it relates to the depth of the defendant's pocket. The difficulty, though, is that some organisations may be asset rich rather than cash rich. Some companies have a very low profit margin. Large supermarket chains and construction companies, for instance, have huge turnovers upon which they make a low percentage profit. Fines of 10 per cent of turnover will damage their profitability much more than it would a business which may have a significantly lower absolute turnover but actually makes a greater profit on that turnover.

This means that in some cases it may be more appropriate for a fine to be based on the means of the organisation, rather than a simple turnover-related fine. Regardless of how the fine is calculated, APIL believes that it is vital that the cost of the breach is not passed down to the workers, therefore hurting the very people which such an action would be designed to protect.

**Q8: Do you consider that there should be a minimum fine for a) offences of corporate manslaughter and b) offences under the HSWA involving death? If so, what amount do you think would be appropriate?**

The association does not consider the concept of 'minimum' fines is appropriate in these cases. It can often be the case that a minor offence can result in a tragic outcome and, similarly, a major offence can result in a minor outcome. It would be more appropriate for the fine in each case to be decided on the circumstances of each individual case.

**Q9: Do you consider that a report on each offender should be prepared for the court with full details of financial status? If so, how would this be provided?**

APIL agrees that the court should be provided with details of the organisation's financial status. Independent expert evidence could be provided on what level of fine would hurt enough for it to be an effective sanction.

**Q12: Do you agree that, when sentencing an organisation for an offence of corporate manslaughter, the court should impose a publicity order?**

APIL supports the suggestion that courts should impose a publicity order on every organisation found guilty of corporate manslaughter. The association has, in fact, repeatedly proposed a similar concept where organisations which commit health and safety violations are publicly 'named and shamed'. This reflects the belief that health and safety offences are, ultimately, crimes against society as well as individuals and, therefore, the organisation in question should acknowledge its offence to society as a whole.

This naturally has a significant impact on that organisation's image and reputation, and may lead to a loss of trust amongst consumers. The publishing of these details, and the transparency which results, influences people's perception and behaviour and helps to cultivate a culture of

community responsibility. Members of the local community are therefore involved in the process of punishment and sanction.

**Q13: What should the extent of the publicity be and how (if at all) will this differ between cases of corporate manslaughter?**

APIL proposes that any adverse publicity order should include placing offending organisations onto a publicly available register or 'black list'. A company's health and safety records would be assessed against clearly defined and transparent criteria. For example, included within such health and safety information would be whether the organisation has appropriate Employers' Liability Compulsory Insurance (ELCI) cover or not. Failure to have such cover would instantly place the company on the 'black list'.

There should be also be a duty on the organisation to disclose in its year end accounts any, and all, health and safety notices which have been issued against it, including adverse publicity orders. This combined with the aforementioned 'black list' will hopefully allow investors to scrutinise companies which are failing in their health and safety duties. When Government agencies, for instance, are assessing tenders for work via public procurement, one of the primary considerations – in addition to cost - should be the health and safety record of the potential supplier. Ultimately this will reward companies with good health and safety records, and punish those with poor health and safety records.

**Q14: Do you agree that the making of a publicity order should not lead to a reduction in the level of fine imposed on an organisation for an offence of corporate manslaughter?**

APIL strongly agrees with this statement. We are dealing with deaths due to gross negligence. The offending organisation should therefore be forced to face the full consequences of its neglect. A reduction in the fine just because the offence is publicised would not provide adequate redress to the family of the victim or society as a whole.

**Q15: Do you agree that the making of a remedial order should not lead to a reduction in the level of the fine imposed on an organisation for an offence of corporate manslaughter or an offence under the HSWA involving death?**

Once again, APIL agrees with this statement for the same reasons outlined above. Indeed, given that the very purpose of a remedial order is to remedy the breach that caused the death, and other deficiencies in the organisation's policies, systems or procedures, this aspect of the sentencing options may well be more effective in preventing further deaths than a fine.