

**Health and Safety (Offences) Bill**

**House of Commons second reading**

**1 February 2008**



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

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.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

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

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APIL welcomes and supports the Health and Safety (Offences) Bill, put forward by the Rt Hon Keith Hill MP, and urges all Members of Parliament to support its passage through the House of Commons.

### **Current situation**

At present, magistrates cannot impose a fine higher than:

- £20,000 if the offence relates to a breach of the Health and Safety at Work Act 1974 itself or other similar Act of Parliament
- £5,000 if the offence relates to a breach of a Regulation like the Management at Work Regulations 2001.

If, however, the sentencing takes place in the Crown Court, there are no maximum fines. The bill will raise the maximum fine for breaches of health and safety regulations to £20,000, and will make imprisonment an option for health and safety offences in both lower and higher courts. Courts may also pass a custodial sentence if it is felt that the gravity of the offence justifies it.

HSE statistics show that the average penalty per conviction in 2006-07 was £15,370. If fines in excess of £100,000 are excluded, however, this leaves an average of £8,723, considerably below the maximum possible figure of £20,000.

### **Reasons for the need for an increase in level of fines**

APIL's goal, shared by the bill, is to embed a health and safety culture in every workplace in the country. It is inequitable if some workers are placed at risk by the negligence or carelessness of their employers. Health and safety, contrary to many press reports, is one of the hallmarks of a civilised and cohesive society; a society

where every person looks out for the safety and welfare of their fellow citizens. In order to achieve the full benefits of such an approach, however, there needs to be a cultural shift. Ultimately this means that health and safety needs to become central to the way businesses are run and it is accepted that any breach of these laws rightly results in sanctions.

### **Prevention and deterrence**

One of the fundamental purposes of any legal sanction for wrong-doing is deterrence, and this applies equally to health and safety law. Many commendable organisations already take health and safety very seriously but some 'rogue companies', sadly, do not. 241 people were killed at work in 2006-07, an increase of 17 per cent on the previous year, so it is imperative that action is taken now to help prevent this figure from increasing further.

It would, of course, be a decidedly rosier scenario for employers, employees, and society as a whole, if these sanctions did not have to be imposed in the first place. Prevention is always infinitely preferable to punishment. The imposition of higher fines and the possibility of imprisonment is obviously not a definitive solution, but is certainly one important aspect of a coherent and ethical approach to health and safety.

APIL submits that the current sanctioning system does not provide a suitable deterrent for breaches of health and safety law and a strengthening of sanctions is long overdue. It cannot be right that implementing health and safety systems can often cost more than fines for flouting them. Conscientious companies that do take health and safety seriously should not be penalised by 'rogue companies' receiving paltry fines. Profitability should never be part of the equation, as it is people's lives and livelihoods that are at stake.

## **Comparison with fines for financial breaches**

A useful and apposite analogy is the level of fines for breaches of financial law and regulations. The Financial Services Authority (FSA) is the regulator which performs a similar role to the HSE in the financial sphere. In 2006-07 the average fine imposed by the FSA was £232,000. The average fine for the five years to the end of 2006 was £712,000. Two recently reported cases highlight the discrepancy:

*On 16 January 2008 the FSA fined HFC Bank Ltd £1,085,000 for failing to take reasonable care to ensure that the advice it gave customers to buy Payment Protection Insurance (PPI) was suitable<sup>1</sup>. On 20 January, ASDA was fined £225,000 after a customer was killed by a car park barrier which smashed through his windscreen<sup>2</sup>.*

APIL would not deny that these are serious financial offences and should be punished accordingly. It is the glaring difference in the level of fines which causes most concern. Breaches of health and safety often lead to death and serious injury and cause great distress to the person concerned and their family. This must be reflected in the sanctions imposed on the negligent party.

## **Redress**

It is one of the guiding principles of the British civil justice system, and one which forms a crucial aspect of APIL's work, that victims of negligence should receive appropriate redress for the wrong that has been done to them. This is not just a question of natural justice: many families involved in health and safety cases are more concerned similar events do not befall other innocent people. Increased fines will also

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1 FSA fines HFC Bank £1.085 million for PPI failings 16 January 2008:  
<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/004.shtml>

2 BBC News Online Monday 21 January 2008:  
[http://news.bbc.co.uk/2/hi/uk\\_news/wales/south\\_east/7200678.stm](http://news.bbc.co.uk/2/hi/uk_news/wales/south_east/7200678.stm)

send a message to the whole of society that breaches of health and safety will not be tolerated.

## **Consensus**

It has previously been acknowledged by the courts, the Government and the HSE itself that fines for breaches of health and safety laws and regulations are too low. Judicial support for this view came in the case of '*R v F Howe & Son (Engineers) Ltd*' [1999] 2 All ER 249:

"The objective of prosecutions for health and safety offences in the work place is to achieve a safe environment for those who work there and for other members of the public who may be affected. A fine needs to be large enough to bring that message home where that defendant is a company not only to those who manage it but also to its shareholders."

The HSC, in its response to the draft Regulatory Enforcement and Sanctions Bill, stated:

'Before looking at new penalties there is a need to ensure the level of fines imposed under current penalties act as an effective deterrent: current levels are too low'.

Anne McGuire MP, Parliamentary Under-Secretary of State, Department for Work and Pensions, stated in an adjournment debate on carbon monoxide on 8 January:

*'I am pleased that my right hon. Friend the Member for Streatham (Keith Hill) is yet again to introduce a Bill to increase sentencing. If successful, it will raise the penalties for health and safety offences, and will make imprisonment more widely available for serious offences..... We want to see the Bill enacted'.*

APIL applauds the Government's position on this issue. It is now time to capitalise on this unanimity and ensure the Health and Safety (Offences) Bill reaches the statute book.