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# The Development of the Sentencing Guidelines for Health and Safety offences, corporate manslaughter and gross negligence manslaughter

Sir Colman Treacy



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# Trends in the determination of appeals in Health & Safety cases

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## Impact assessment published in April 2019:

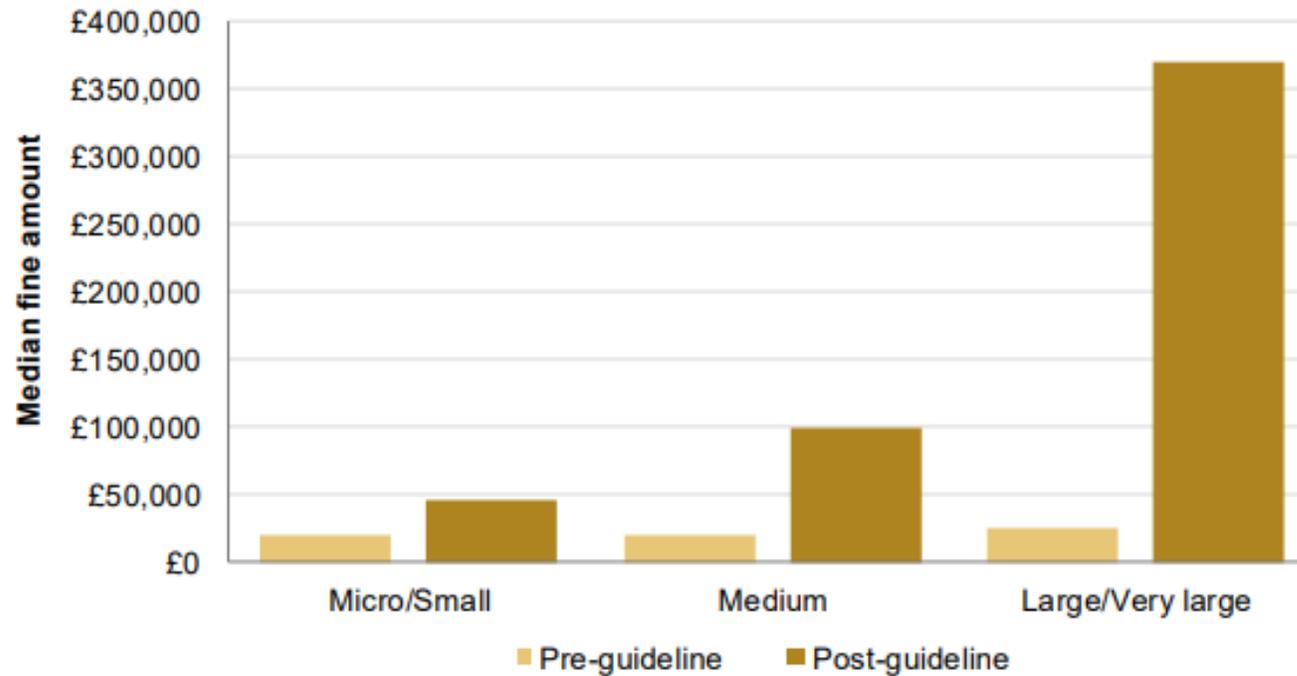
*“For health and safety offences, there has been a considerable increase in fine amounts for larger organisations since the guideline came into force, which was anticipated by the Council. Fines also appear to have increased (to a lesser degree) for smaller organisations, which was not anticipated.”*

*“A comparison of a sample of judgments for health and safety cases heard by the Court of Appeal (both before and after the guideline came into force) suggests that fewer appeals have been successful following the guideline's introduction (although this finding is indicative only, due to the small sample analysed).”*



# Increase in median fines post Guideline

**Figure 3: Median fine amounts imposed on organisations prosecuted by the Health & Safety Executive, 16 months pre-guideline compared with 16 months post-guideline<sup>30</sup>**



Source: HSE prosecutions data, supplemented with information from Companies House

Since 1 October 2013 there have been 29 appeals to the Court of Appeal by companies in relation to health and safety offences.

Is there evidence of any trend in relation to how the appeals are determined:

- (a) During the period Lord Thomas was LCJ (October 2013 – October 2017) by comparison with the period thereafter?
- (b) Pre and post implementation of the Guideline?



First appeal in a health and safety case after Lord Thomas became LCJ.

Sellafield fined £700,000; Network Rail £500,000.

Appeals dismissed.

Lord Thomas: *“the fine of £500,000 imposed on a company of the size of Network Rail can only be viewed as representing a very generous discount for the mitigation advanced; we would observe that if the judge had imposed a materially greater fine, there would have been no basis for criticism of that fine.”*



Appeal against a fine of £250,000 imposed on a company with a turnover of £4-£5 million dismissed.

Lord Thomas: “It seems to us that a fine very substantially greater than £250,000 could and should have been imposed upon Hastingwood. It was well within a position to pay it. It must be appreciated by judges that sentences on companies, for offences where death occurs, must reflect the gravity of the harm caused and bring home to the company concerned that offending of this type is unacceptable. Accordingly, once the point in relation to the level of fine imposed on RK is dismissed, the fine of £250,000 imposed was far, far too low.”



During Lord Thomas' period of office:

- (a) 16 appeals by companies (4 p.a.) Lord Thomas a member of the Court in 4 of the 19.
- (b) 6 of the 16 the fine was reduced (37%).
- (c) No successful appeals against conviction.

During Lord Burnett's period of office to date:

- (a) 13 appeals (6.5 p.a.) Lord Burnett a member of the Court in only one (*Whirlpool*).
- (b) 10 of the 13 the fine was reduced (77%).
- (c) No successful appeals against conviction.



**Pre implementation (1/10/13 – 31/1/16):**

- (a) 11 appeals by companies to the Court of Appeal**
- (b) In 3 of the 11 appeals the fine was reduced (27%)**

**Post implementation (1/2/16 – date):**

- (a) 18 appeals**
- (b) In 13 of the 18 appeals the fine was reduced (72%)**



(1) R v CRO Ports London (11 Oct 2016)

Fine reduced from £1.8m to £500,000.

(2) R v John Henry & Sons (16 Jan 2018)

Fine reduced from £550,000 to £500,000.



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