

Regarding – CONSULTATION PAPER ON SENTENCING FOR CORPORATE MANSLAUGHTER

Response from -

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The C.W.U. N.W. Safety Forum represents 32,843 members of the Communication Workers Union in the North West who mainly work for Royal Mail, BT, O2, Alliance & Leicester, Girobank and Manpower. We have members who work for other communication companies and in the financial services industry. There is a large active retired members section whom are not included in the membership figure quoted.

Summary - the Forum would like to see :

- demonstrable close working with the relevant safety authorities and Trade Unions
- realistic and more imaginative penalties for non compliance
- courts to be reminded of their option for disqualification
- fines to be from a reasonable level which is not currently applied under separate legislation

Question 1

There is concern that the suggested approach may lead to seriousness of result of an act rather than seriousness of intent or inaction regarding an act or decision.

Question 2

A good safety record held by an organisation may be that they have luckily just not been caught before. An organisation who can demonstrate pro-active cooperation with the relevant authorities or share a partnership approach to safety with the relevant trade unions would demonstrate attitude to health and safety much better.

An employee may be acting outside his duties but that should be demonstrable to be by willful action. It is usually the case whereby such behavior has been caused by job management, lack of suitable and sufficient training or unattainable target setting by management - thus nullifying any claim made by the organisation for mitigation.

Question 3

A prosecution under CMA has to prove gross breach by an organisation. This would indicate a high breach of safety regulations and when sentencing this should be reflected in comparison with a prosecution brought under the HSWA.

Question 4

The punishment to an organisation should be aiming to protect future workers but also to punish the guilty. Remedial orders merely tell an organisation to do what they should have been doing already. Obeying the law is not a punishment – that should be automatically ordered, without consideration and question. Legal “appropriate standards” are minimum safety requirements and not even best practice. To only order an organisation to bring their plant up to the current safety standards for the industry involved would be insulting to the family of the deceased. Far from having any deterrent effect to other organisations for future safety stewards it would encourage bad behavior. An organisation would only raise standards to the required legal minimum if they were caught acting below them as the worst that could happen is them being order by the court to do what they should have been doing in the first place.

Question 5

We find that to even ask if a fine imposed for an offence under CM should eliminate any financial benefit resulting from the offence an astonishing question. To even consider that an organisation would be left with a financial benefit following a prosecution would set extremely low standards in health and safety in the particular industry, reward the poor performers and punish organisations who have invested in their employee’s welfare and safe systems of work. Industrial comparators may be used to assess the necessary expenditure of competitors who do implement safe systems of work.

Question 6

Agree with the principle of any pecuniary gain to an organisation be a major factor in punishment, but culpability is be massively enhanced if (1) there any previous convictions and (2) any current breach of a court order. It is understood that a large fine may jeopardise the existence of an organisation but no such organization should be allowed to operate business outside the law. Whilst the size of an organisation is important the profitability is also a factor, as are liquidity and assets. The former assumes the larger the organisation the larger the profit which may not always be the case. We agree with others that business turnover/profitability should be over the previous three years accounts.

Question 7

We do not think that it should be up to the prosecution to have to provide evidence of profitability, their job is in proving guilt. It should be up to the guilty party to provide evidence to limit the damage and offer mitigation.

Question 8

No comment.

Question 9

The proposal for an organisation to provide to the court comprehensive accounts for the previous three years is supported with the proviso that there may be a reason for the court to ask for further years depending on such factors as the time taken for case to come to court.

Question 10

Fines must protect employees and the public. We accept that the “spill over” may effect customers or shareholders – however the latter is to be welcomed as a major motivating factor in organisational safety. If the organisation has to increase prices to ensure safe working practice they must have previously been negligent in implementing safe systems of work. Competition is not an excuse for not ensuring the safety of employees and the public.

Question 11

We agree that offenders should be treated consistently whether or not they are publicly funded. However that must allow for punishments to be different depending upon the given circumstances.

Question 12

We remain unconvinced that a publicity order should be imposed on every prosecution as this may lead to such orders becoming overloaded and therefore no longer news. Therefore where such an order was to be a major part of sentencing the impact would be less impacting upon the guilty organisation.

Question 13

Adverse publicity orders may be particularly useful to consider upon sentencing public bodies when considering that fines may be seen as recycling tax payer’s money but with added waste.

Notices to shareholders would be useful but CM, and other safety, prosecutions should automatically be in organisations annual report.

Question 14

There may be occasions where the making of a adverse publicity order could lead to the reduction in a fine as per response to Q13.

Question 15

Remedial orders should be seen as a bare minimum and not as a punishment. This is merely telling organisations to obey the law as per response to Q4. The costs incurred on a remedial order must not lead to a reduction in other cost such as a reduction in a fine or less spend on adverse publicity.

Question 16

Compensation orders for funeral expenses, and other expenses such as counselling for the bereaved, should be awarded automatically. It is noted with disappointment that *“Damages for Bereavement (Variation of Sum) (England and Wales)”* limits this to £10,000. This is currently placed within civil proceedings but a recommendation from the CM prosecution would be a factor thereby considered by the civil court.

End
Derek Maylor 5/2/8
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