



# Penalty kick

Leading lawyers predict the fallout from the higher fines expected after the new court guidelines take effect in February

**T**he Sentencing Council's new guidelines for penalties for health and safety and corporate manslaughter offences in England and Wales have been in the offing for 12 months, but the final text bringing the prospect of fines in the tens of millions of pounds has again caused major ripples in the safety world. If practitioners fail to communicate to corporate boards the importance of a change that might triple or quadruple penalties for larger firms, no doubt the penny will drop with executives when fines merit a mention in the business pages of the national newspapers.

We covered the parameters set for courts by the new guidelines in last month's issue ([www.healthandsafetyatwork.com/sentencing-guideline-2015](http://www.healthandsafetyatwork.com/sentencing-guideline-2015)).

For this month we asked a group of health and safety lawyers for their views on the effects, expected and unexpected, of the higher penalties and the new schedule of fine ranges based on factors including corporate turnover and degree of harm.

Their speculations on the guidelines' consequences range from a drop in near miss reporting, greater efforts by defence counsel to show injuries were not foreseeable and from groups whose divisions share services being penalised to a slip back for occupational health as a business priority. None of them suggests last month's dramatic headlines on the guidelines were hyperbole.



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The new guidelines represent a huge gear change in the approach to sentencing both organisations and individuals. They trigger on 1 February. The date of the offence is not relevant — only the date of sentencing. This new development has already sent a chill through Corporate UK and many defendants, particularly larger ones and individuals, will inevitably feel it unfair that a sentence imposed on 1 February could be 10 or 15 times higher, say, than for the same offence on 31 January.

Advising these defendants will be very difficult and many procedural and evidential hurdles will have to be overcome by the courts particularly in the early stages. The waiting lists in many courts are already very lengthy.

The new guidelines will lead to more individuals being sent to prison for longer periods; the custody threshold has been reduced.

On a different point, I must confess to being both surprised and somewhat disappointed that only 104 organisations and individuals responded to the Sentencing Council's evaluation document on the guidelines issued last year. As we know, very little has changed

from the consultation document and, though we will never know for certain, perhaps an opportunity has been missed by this somewhat laissez-faire attitude.

These eye-watering changes must raise a legitimate concern that some larger organisations may consider scaling down their UK operations. Much bigger fines will also trigger much more adverse publicity and therefore have a real impact on reputational factors: big businesses do not tend to relish such developments.



**Jon Cooper**  
partner  
Bond Dickinson

The guidelines will require courts to take a stepwise approach to sentencing; taking into account the degree of culpability and harm and, having determined those factors, the turnover of the organisation.

It is that link to turnover that has created the most comment because it will lead to significantly higher penalties. That may well be a means of achieving the objective of safer working environments. However, might a strict application of the guidelines have unforeseen, and perhaps unwanted, consequences?