

REGULATORY RISK UPDATE

Sentencing Council proposes new fining regime for Food Safety and Food Hygiene offences

The Sentencing Council has just opened a consultation on proposed draft Guidelines for the sentencing of Food Safety and Food Hygiene offences. The paper sets out in detail its recommendations as regards sentences for these offences. It might be a reaction to the horsemeat scandal and other recent high profile food cases, but if implemented these Guidelines look as though they will significantly increase the consequences to food businesses of getting it wrong. Traditionally, fines in these types of cases have been relatively modest but that looks set to change - the suggested fine for a large company in a case with very high culpability is £3 million.

Current approach

Currently, there is little specific guidance for sentencing food cases and the courts have usually extracted general principles involving public protection from health and safety and environmental sentencing cases. When the Council reviewed the current approach they found that in some cases the level of fine was too low to meet the aims of sentencing, and that there was an inconsistency across cases in the factors that were taken into account to reach a sentencing decision.

Why has the Council issued the consultation

The Council wishes to promote a consistent approach to sentencing Food Safety and Food Hygiene offences.

The offences are wide ranging and can cover a variety of situations, from people who have suffered ill health as a result of poor food preparation, to other matters such as failing to retain documentation to ensure that products being sold can be traced through to suppliers. The offences also cover a broad spectrum of culpability; for example operators may have knowingly and deliberately breached standards, or at the other end of the scale there may have been an isolated failure or a misjudgement on the part of an employee. These offences can also be committed by individuals or large organisations. The Council aims to devise Guidelines allowing sentencers to apply relevant factors in a consistent way in order to achieve a fair and proportionate outcome.

Proposed approach

The Sentencing Council's aim is to ensure that the fine that sentencers will impose will reflect the seriousness of the offence and take into account the financial circumstances of the offender. Courts will be able to tailor the fine so that it reflects the extent to which the offender fell below the required standard, in order that it meets, in a fair and proportionate way, the aims of punishment and deterrence.

The Council has proposed a step by step process to work out the appropriate level of fine that will be imposed on an organisation, following the same basic

formulaic approach as was used in the Environmental Sentencing Guidelines implemented in July 2014.

The first step is to determine the seriousness of the offence by assessing the harm that has been caused and the culpability of the offender. The financial information of the offender, along with the category of harm and culpability of the offence, will then be used to identify a sentencing starting point and a sentencing range for the offence. The sentencer will then take into account any mitigating and aggravating factors to make adjustments from the starting point.

The sentencer will then assess whether the proposed fine, based on turnover, is proportionate to the means of the offender. So a large company (turnover in excess of £50 million) is looking at a starting point fine of £1.2 million, and a general sentencing range of £500,000 to £3 million in a very high culpability case. Even in a low culpability case a large company is looking at a fine of between £6,000 and £90,000.

The Council has stated that it believes that this structure allows the sentencer a wide discretion to tailor the sentence to individual cases, but provides sufficient guidance to promote a consistent approach to sentencing.

Whilst, if implemented (we have little doubt that it will be), the proposed approach may result in the stated aim of greater consistency in sentencing food cases, it is inevitably going to lead to much larger fines, particularly for large companies, than has historically been the case for this type of offence. Now may be the time, therefore, to conduct a critical review of systems, procedures, policies and training to check for effectiveness.

The consultation for the guidelines will end on 18 February 2015. You can find the consultation paper and details of how to respond on the [Sentencing Council's website](#).

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