

# HSEQ Bulletin

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## The new sentencing guidelines for gross negligence

*Brian Parker discusses the upcoming changes to sentencing guidelines of gross negligence.*

The penalties imposed on individuals for fatal accidents in the workplace are set to increase after the Sentencing Council for England and Wales reviewed its guidance for manslaughter not specifically relating to Health and Safety Offences.

This will change the sentencing range available to judges when trying a health and safety case and will now also give judges a much greater custodial sentencing range for all types of manslaughter.

The Sentencing Council consulted in 2017 to draft sentencing guidelines for gross negligence manslaughter.\*

### What is gross negligence manslaughter?

Gross negligence manslaughter occurs when the offender/offenders':

- Is in breach of a duty of care towards the victim
- Causes the death of the victim and, having regard to the risk involved
- Conduct was so bad as to amount to a criminal act or omission

Manslaughter is not just an offence that can be directed towards senior management in a business following a workplace death; any person can be implicated.

## So what's changed

As of October 2018 the law hadn't changed, the potential for longer custodial sentences have always been available to judges, however they haven't been used and this is why very few individuals have been imprisoned.

Moreover increased fines may not only make the directors and boards of business take note but also the potential for individuals at all levels of the business, could you afford a fine 700 times that of your weekly salary? I guess many of us wouldn't have that ability.

The new guidelines came into force for sentences imposed from 1st November 2018, but what's certainly worth noting is that they are also retrospective. Because of this they will apply to existing cases which have not been concluded before that date.

## Starting points

The culpability starting points have been given as two years for 'low', four years for 'medium', eight years for 'high' and 12 years for 'very high' respectively.

As noted, for the lowest level of culpability, individuals can expect a two year sentence, but this moves quickly up to eight or 12 years if a judge determines that new features, or what some have referred to as 'flashpoints' such as 'cost saving' and/or 'disregarding very high risk of death', factors have been met.

Be mindful that in cases where perhaps more than one person was put at risk, or you have ignored previous warnings, then you could be sentenced up to 18 years in jail.

## What do the changes mean?

The changes mean that for a typical workplace case of gross negligence manslaughter, we can now expect to see more four year jail terms being given. But for cases that exhibit one or both of the new 'flashpoint' or 'contributing features' i.e. 'cost saving' and 'disregarding a very high risk of death', we can now expect to see jail terms starting at eight years, 12 years and above.

## So how is culpability decided?

Culpability, or being culpable, is a measure of the degree to which an agent, such as a person, can be held morally or legally responsible for action and inaction.

A degree of flexibility in determining the culpability of an offender (in effect, how 'guilty' they are) is particularly important in relation to the guidelines. Very high culpability cases will range in type and scenario.

The guidelines sets out a nine stage step-by-step decision making process for the court to use to ensure a consistent approach to sentencing in gross negligence manslaughter cases across England and Wales.

Step 1: involves determining the offence category, which reflects the severity of the offence

Step 2: relates to the starting point and category range. Starting points define the position

Step 3: then takes into account any factors which would indicate a reduction in the accused assistance during the trial

Step 4: then considers a reduction for guilty pleas

Step 5: considers whether it would be appropriate to impose a life sentence

Step 6: covers the totality principle. This is a common law principle which applies when a court imposes multiple sentences of imprisonment

Step 7: in appropriate cases an offender may be disqualified from being a director of a company in accordance with Section 2 of the Company Directors Disqualification Act 1986, the maximum period of disqualification to 15 years

Steps 8 & 9: relates to the Criminal Justice Act 2003 and imposes a duty to give reasons and explain the effect of the sentence and also to give credit for any time spent on bail.

Quite harrowing reading no doubt, thankfully gross negligence manslaughter offences happen rarely.

## So how is culpability decided?

An example however of gross negligence manslaughter would be the case of Indian takeaway shop owner, Mohammed Zaman of Huntington. Zaman was found guilty of the manslaughter of customer, Paul Wilson, after he knowingly replaced almond powder with ground peanut mix as part of a cost cutting exercise for his business.

Zaman cut corners by using cheaper ingredients containing peanuts and tried to save money due to his business having debts of £300,000.

A week before Mr Wilson's death, trading standards had warned staff at the restaurant they had to tell customers their meals contained peanuts; this was after a different customer suffered an allergic reaction at another of Zaman's restaurants.

This undoubtedly shows that Zaman had a 'blatant disregard for the safety' of his customers by showing a 'no-nuts' message in his menu and that due to his business debts it also clearly triggers the 'cost saving' factor.

Another recent and very high profile case is that of the Grenfell Tower, the ramifications of which will no doubt take many years to come to fruition. The investigation is still ongoing, tragic and sad as it is, it is likely that gross negligence manslaughter sentences will be considered given the huge loss of life, given the repeated and ignored warnings that the tower wasn't safe, and the cost saving on the cladding which was installed.

Message for the boardroom?

The message for the boardroom is clear, if you weren't taking Health and Safety seriously it is now time to sit up and take note and above all to avoid the worst culpability flashpoints of 'cost saving' and 'disregarding a very high risk of death'.

The new sentencing guidelines show just how serious the consequences can be. It's important that your business has the tools in place to avoid such action being taken against you, or your employees.

\*this was in addition to the three other forms of manslaughter and is not covered here.

Source: [www.walkermorris.co.uk/publications/sentencing-council-publishes-gross-negligence-manslaughter-definitive-sentencing-guideline/](http://www.walkermorris.co.uk/publications/sentencing-council-publishes-gross-negligence-manslaughter-definitive-sentencing-guideline/)