Further focus on sentencing for Health & Safety Offences

A construction company has been fined £900,000 after an employee died when he was struck by a retaining wall which collapsed as it was being backfilled. Proposed revisions to the Sentencing Guidelines may increase the regularity of higher fines such as this.

Bournemouth Crown Court heard how, on 2 June 2015, Thomas Telfer was working as a bricklayer employed by Capstone Building Ltd (“Capstone”), when he was struck by falling masonry after a retaining wall failed as it was being back-filled with concrete.

An investigation by the Health and Safety Executive found that Capstone had failed to appropriately manage the work that was being carried out and failed to ensure the health, safety and welfare of employees on site. Capstone, which went into administration 6 months after the incident, was found guilty after a trial to breaching Section 2 and Section 3 of the Health and Safety at Work Etc Act 1974, was fined £900,000 and ordered to pay costs of £60,336.99. The firm’s sole director was found not guilty of the same charges.

Given that Capstone is insolvent, and the director was acquitted, the HSE is unlikely to recover any monies. This could therefore seem somewhat of a hollow victory for the HSE, save that it serves to highlight the HSE’s determination to pursue offenders and the courts’ willingness to set fines at a level that serve as a deterrent to others.

Capstone was set up with the sole purpose of developing the land at Chatterton Heights, which it owned, into 5 houses. Capstone therefore had no turnover as such and funding for the development came in the form of a loan of just over £3million from a financing company. The level of fine suggests that Capstone was considered to be a small company for the purpose of the Sentencing Guidelines (regardless of its insolvency) and its culpability was classed as high or very high. Even so, the fine of £900,000 sits significantly above the starting point for both assessments, suggesting that the court considered that there were some significant aggravating factors. As the case had been fought to trial, Capstone was also ordered to pay significant prosecution costs.

At present, aggravating and mitigating factors appear as a simple list at the end of Step 2 of the Sentencing Guidelines for Breach of Health & Safety regulations. However, the Sentencing Council is currently consulting on the proposal to provide expanded and, where possible, standardised, explanations of these factors in all offence-specific sentencing guidelines – i.e. those which use a stepped approach to consider harm and culpability factors (at step one) leading to starting points and ranges which are adjusted to take into account aggravating and mitigating factors (at step two) before consideration of steps such as plea, totality, ancillary orders, reasons etc. This would include the Sentencing Guidelines for Health & Safety offences and Corporate Manslaughter and for Environmental offences. The consultation closes on 23 May 2019.

The Sentencing Council states that the expanded explanations are designed to reflect current best practice rather than to alter sentencing practice and to provide sentencers and other court users with useful information relating to commonly used factors and to improve transparency for victims, defendants and the wider public. However, it is evident that the aim is also to improve consistency of interpretation by sentencers which would suggest that some change in practice will occur and that these factors would receive more considered attention.

As this recent case demonstrates, fines for breaches of Health & Safety legislation have increased since the Sentencing Guidelines came into effect of 1 February 2016. The proposed further changes to the Guidelines will increase the focus on aggravating and mitigating factors and raise the possibility that fines could increase further and/or higher fines will be imposed more consistently.

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