

HEALTH & SAFETY BULLETIN

FINES/ONE YEAR'S PROFITS - ARE THEY THE SAME?

This bulletin has on more than one occasion previously indicated that, since the landmark decision of the Court of Appeal in **R -v- F. Howe & Son (Engineering) Ltd**, all Courts hearing health & safety prosecutions are likely to take a tough line when defendants guilty of health & safety offences come before them. This prevailing attitude has impacted on a wide variety of organisations over the recent months. Fines have of course varied depending on the nature of the business but the range included companies with £300,000 for a UK steel manufacturer, £350,000 for a household name building company and £350,000 for a council to £10,000 for a hotel owner whose window cleaner fell from a third floor window.

Courts are now, of course, required because of the Howe decision to take into account both aggravating and mitigating features. The Court emphasised that the standards of care imposed by the health & safety legislation generally are the same regardless of the size of the company and that that size, and indeed a company's strength or weakness, cannot and should not affect the degree of care that it needs to exercise in health & safety matters.

Courts will not ignore the features the Howe case identified. In particular Courts will be keen to stamp on a failure to heed health & safety warnings or where a defendant has deliberately profited from a failure to take necessary health & safety steps by putting profit before safety or running a risk in order to generate profit. Equally, this is not to say that a company's good safety record will be ignored nor a prompt admission of responsibility nor when steps have been taken to remedy deficiencies which have been brought to a company's attention. The importance of balancing these features should not

be underestimated. This importance is starkly illustrated in one of the cases the Court of Appeal heard in 2000 when it reduced a fine of £600,000 to £250,000 because the

original judge had, wrongly, included an aggravating feature in his overall assessment, considering that the company had put profit before safety. The Court of Appeal said that he was wrong to do so.



We have previously reported that it was the Government's intention to increase fines for health & safety offences across the board but the suggested Bill of Parliament never saw much light of day. This means, for the moment anyway, the Courts will make the running. One judge, when sentencing a local authority last year, after one of its workers had been electrocuted, stated that the case was a disgrace and that if the council had been a commercial company with a view to making profit then he would have imposed a fine equivalent to one year's profits. That is clearly a salutary warning to companies and shareholders alike and for those who are charged with maintaining a healthy & safe workplace. In addition companies can have, even under present legislation, the stigma of being convicted for corporate manslaughter as occurred with one firm last August. Directors also remain vulnerable to personal sanction, again recently evidenced when two company directors were fined in excess of £45,000 between them and ordered to pay £30,000 prosecution costs each. Readers of this bulletin will need no reminding about the HSE'S annual report on offences and penalties the recent edition of which was published at the end of November 2001, and which is an unwelcome, and public, reminder for those who have been found guilty of health & safety offences.

HEALTH & SAFETY AUDIT

Do you need a health & safety audit, or a health & safety healthcheck to review current documentation and procedures?

For an informal, no obligation discussion, please contact Chris Platts on 01482 323239 or by e-mail at chris.platts@rollits.com



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HERE WE GO AGAIN

The late 1980's and early 1990's saw various EEC directives on health & safety and there then followed various regulations, commonly known as 'the six pack,' which substantially altered the face of health & safety law in this country. The European Commission have not, however, kept quiet over the last ten years and have continually raised issues as to whether the UK's present regulations fully implement the EEC directives. It appears in behind the scenes discussions the Government have been able to act upon and resolve most of the EEC's concerns without substantial change to the regulations but nonetheless the EEC's dissatisfaction has remained on a number of matters and this has necessitated a period of consultation by the Health & Safety Commission on the following regulations:



- Health & Safety (First Aid) Regulations 1981
- Health & Safety (Display Screen Equipment) Regulations 1992
- Manual Handling Operations Regulations 1992
- Personal Protective Equipment at Work Regulations 1992
- Workplace (Health, Safety & Welfare) Regulations 1992
- Provision and Use of Work Equipment Regulations 1998
- Lifting Operations and Lifting Equipment Regulations 1998
- Quarries Regulations 1999

Consultation in relation to the above ends on the 1st February 2002.

The Government has also indicated that it wants to consult through the Health & Safety Commission on amendments to the Management of Health & Safety at Work Regulations 1999 and also the Fire Precautions (Workplace) Regulations 1997. Consultation on these amendments closes on the 14 March 2002. These may be rather more far reaching because the Government is committed, through an amendment to the Management Regulations, to include civil liability for breaches. This was previously excluded. This will mean that employees will be able to claim damages from their employers where they have suffered injury or illness as a result of their employer breaching the Management Regulations. Given the wide ranging nature of the Regulations this will substantially alter matters in relation to civil liability. It should be noted that consultation in relation to this part of the changes is, in reality, not consultation in the truest sense because the Government are already committed to

removing the civil liability exclusion and anybody responding can therefore only comment on **how**, and not **whether**, these civil liability changes should be made.

It is expected that the new regulations will see the light of day at some stage in 2002.



CLAIMS - HONEST OR NOT

Most businesses will at some stage face claims for damages from either employees or members of the public in respect of injuries either may have suffered. Most claims will be honestly pursued and run their proper course. Even cases involving more serious injuries, albeit perhaps taking longer to be finalised, will result in appropriate awards of damages made on the basis of evidence gathered.

Every now and again, however, claimants can get a little bit ambitious and to a greater or lesser degree 'exaggerate'. Many of you reading this article will have come across such claims. The Court of Appeal recently heard an appeal on what legal costs should be recovered by a claimant who sought damages in excess of £300,000 but was awarded £18,897 in total. Very late in the day he revealed that he had in fact returned to work some 13 months after the accident, having previously maintained that he had tried to obtain alternative work but had been unable to do so. The Court found that that in itself contained an inference that he was unable to do his pre accident type of employment.

The Court felt this claimant was quite prepared to try and manipulate the system by grossly and deliberately exaggerating his claim. He got his comeuppance when it came to the question of costs because the defendant in that case had actually paid into Court more than the judge awarded and some sort of justice was done, because costs were awarded against him. The Court, however, was greatly concerned by this turn of events, to such an extent that one of the judges said that he had considerable qualms whether a Court should entertain a case **at all** once it is presented with a dishonest claim "on so grand a scale". This suggests that, even though a claim might otherwise justify an award of damages, that right might be forfeited if the claim is then presented in an exaggerated and dishonest way. This should be a salutary warning for those few individuals who decide that their claims are a licence to recover undeserved damages.

INFORMATION

**If you have any queries on any aspect of health & safety law please contact:
Chris Platts at Hull on 01482 323239**

This bulletin is for the use of clients and will be supplied to others on request.

It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice. We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

The law is stated as at 1 February 2002

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