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Practice Group(s):

*Government
Enforcement*

*Labor, Employment
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Health and Safety Sentencing Guidelines – Emerging Trends One Year On

By Christine Braamskamp, Dylan Moses, Patrick Navein and Oliver Bates

Since the new Health and Safety Sentencing Guidelines (the “**Guidelines**”) were implemented in February 2016, a series of headline-making fines have been handed out by the Health and Safety Executive (the “**HSE**”).

[Balfour Beatty received one of the first major fines under the Guidelines](#), forfeiting £2.6 million for a failure to risk assess events leading to the death of a sub-contractor in 2010. More recently Merlin Entertainments was fined £5 million for the failure to implement adequate health and safety controls leading to the crash of the Smiler ride at its Alton Towers theme park.

Fines have totalled £20.6 million during the first six months under the Guidelines compared to £14.6 million over the same period in the previous year.

Additionally, the number of individuals prosecuted tripled in 2015/2016 compared with the previous year’s total.

With an increasingly active HSE and the courts armed with more powerful sentencing Guidelines, the consequences of health and safety failings are greater than ever, but what trends have we seen since they came into force?

Prosecution of individuals

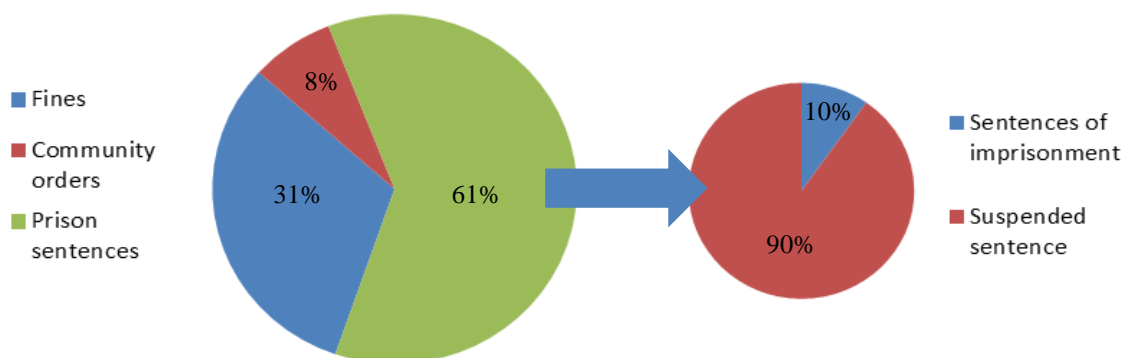


Chart outlining individuals prosecuted by HSE since the Guidelines came into force

Source: HSE website: <http://press.hse.gov.uk/release-type/press/>

Over the course of the last 12 months, 67 individuals have been prosecuted for health and safety offences, 61% of whom have received prison sentences. Whilst 90% of those individuals had their sentences of imprisonment suspended, they will still suffer reputational damage, potential disqualification from standing as a director and may be sent to prison at a later date if they breach the terms of their suspended sentence. Furthermore, those imprisoned received sentences ranging from 6 to 18 months, two of whom were directors.

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Prosecution of companies

The media tend to only focus on the multi-million pound fines issued to household names; recent examples include the £2 million fines handed out to Wilkinsons and Warburtons. However, in reality, this is only a snapshot of the hundreds of companies fined every year by the HSE.

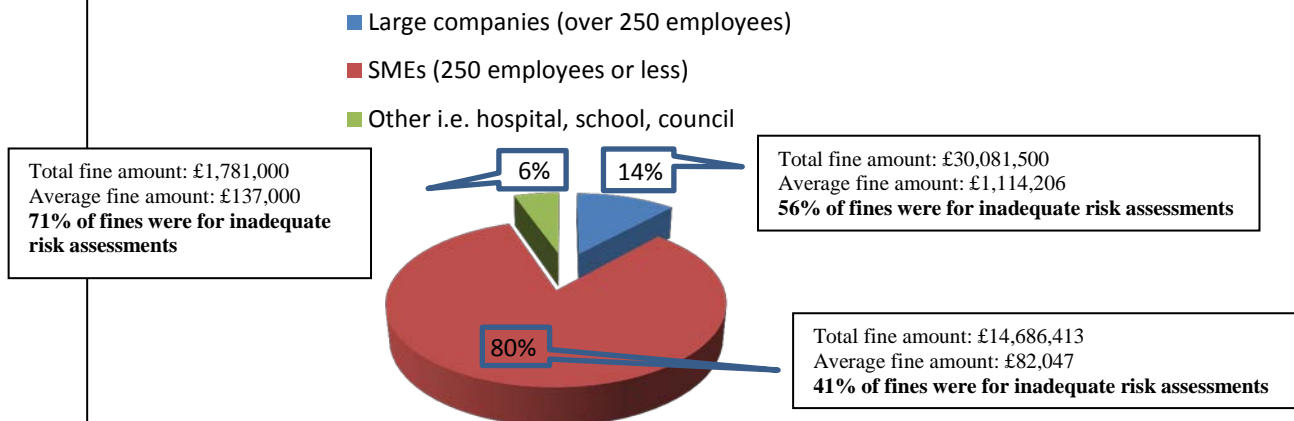


Chart outlining companies prosecuted by HSE since the Guidelines came into force
 Source: HSE website: <http://press.hse.gov.uk/release-type/press/>

The analysis above suggests that with more limited financial and human resources, small and medium enterprises (“SMEs”) have found it more challenging to meet health and safety standards. Although smaller companies have received the majority of fines, larger companies have received average fines in excess of £1 million. However, rather than focus on the level of the fines, companies should concentrate on addressing the typical failings seen time and time again in small family businesses and multinationals alike.

What are the key failings?

Although it is clear that the HSE issues fines to a range of different businesses, these fines are often given for the same recurring deficiencies in health and safety policies and procedures.

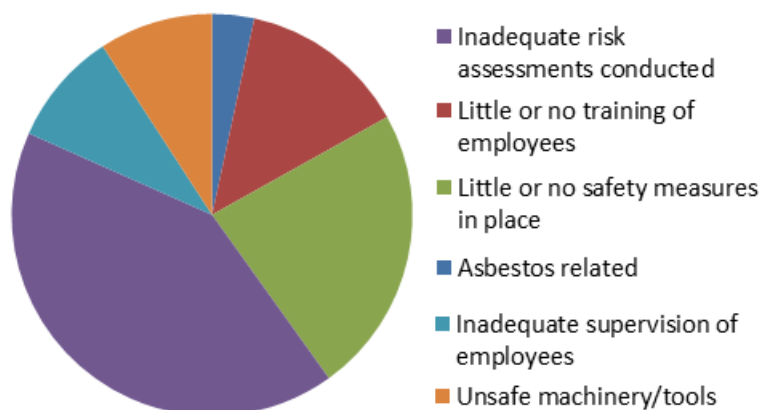


Chart outlining the causes of HSE prosecutions since the Guidelines came into force
 Source: HSE website: <http://press.hse.gov.uk/release-type/press/>

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In the past year nearly 50% of all HSE prosecutions have been for inadequate risk assessments, an issue that clearly needs addressing.

When it comes to planned work, this can be more easily remedied. Appropriate and proportionate risk assessments can be devised according to the nature of the business, and steps can be taken to ensure procedures are adopted by managers, supervisors and employees.

Unplanned work can prove more difficult. Attempting to anticipate every piece of work that may arise is impossible and companies will need to think how best to strategically mitigate this risk. Adopting pre-arranged risk assessments is impractical and often leads to criticisms of being generic.

Key note address from the HSE

Companies will need to think carefully how to best manage safety reasonably and proportionately in their business. On 9 February 2017, K&L Gates are hosting a seminar to discuss the practical impact of the Guidelines. This will present an interesting opportunity to hear more on how to tackle some of the issues outlined above from Philip White, Head of Operational strategy at the HSE.

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