

Corporate Governance: Large Corporations to Face Fines in excess of £100 Million for Environment and Safety Breaches

In its ground-breaking decision in *R v Thames Water Utilities* (2015), the Court of Appeal has signalled a sea-change in penalties for environmental breaches, with fines for very large commercial organisations (“VLOs”) set to rise exponentially.

The Court said that penalties for environmental offences need to be placed at the same level as those applicable to fines for breaches of financial regulation. It said:-

“This may well result in a fine equal to a substantial percentage, up to 100%, of the company’s pre-tax profit for the year in question ... even if this results in fines in excess of £100 million”.

The case has implications reaching beyond environmental offences and, with the publication of new sentencing guidelines for health and safety offences later this year or early next, is likely to put environmental and safety compliance to the top of the Board’s agenda.

How does it affect you?

- The Courts have now recognised that the Council’s Sentencing Guidelines have made it clear that the starting points and range of fines in the Guidelines do not apply to VLOs.
- VLOs should be mindful of the need to certify that prompt and effective measures are in place to ensure, not only breaches of an environmental-nature but also of a health and safety-nature, are acted upon and managed as soon as possible.
- The need to ensure proper corporate governance measures to fulfil an organisation’s regulatory obligations is very much at the forefront of the Court’s approach to sentencing.

- The size of the organisation and the degree of fault involved will be significant factors considered by the Court in imposing sentences for environmental and health and safety breaches.

Background

Thames Water Utilities Ltd, which had pleaded guilty to an offence arising from the negligent discharge of untreated sewerage into a brook from a faulty pumping station and flowing through an Area of Outstanding Natural Beauty between 29 August 2012 and 4 September 2012, appealed against a fine of £250,000 imposed on it by the Reading Crown Court.

The Sentencing Guidelines propose a step-by-step approach to calculation of a fine based upon 3 elements, being the degree of culpability of the offender, the extent of the harm caused and the size of the offending organisation. In applying the new Sentencing Guidelines, the Court confirmed that the starting point for range of fines in the Guidelines do not apply to VLOs.

Instead, the Court said that:-

“Fines must be large enough to bring the appropriate message home to directors and shareholders and punish them”.

The Court acknowledged that Thames Water Utilities, with a turnover of £1.9 billion, clearly fell into the category of being deemed a VLO for these purposes.

Further, the Court noted that Thames Water Utilities’ record over the years did not suggest a routine disregard of environmental obligations, but it did leave room for substantial improvement, and its recent record suggested that the appropriate message had not fully ‘struck home’.

The Court ultimately considered that the fine was, in fact, lenient and that it would have no hesitation in upholding a fine greater than £250,000.

Key Points and Implications

- The Court of Appeal has delivered a ground breaking judgment in an environmental prosecution but which has far wider application to regulatory and business crime cases.
- The decision reflects the growing tendency of the Courts to impose higher levels of fines for environmental offences, however this decision goes even further to acknowledge that where a corporate offender's turnover is so large that it falls outside the scale set down in the Sentencing Guidelines, fines in excess of £100 million may be imposed for breaches of environment and safety regulations.
- The Court noted that the aim of a sentence for offences of this nature was to bring home the appropriate message to the directors and shareholders of the company in question, even if that organisation has an impeccable record. Obviously, the fine required to "bring home" such a message to VLOs may be (extraordinarily) high.
- The importance placed upon ensuring corporate react properly and effectively to any breaches and that this is led from the top.

If you have any questions on the key reforms, please contact:

Michael Hutchinson

Partner, London

E: mhutchinson@mayerbrown.com

T: +44 20 3130 3164

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