

Health and Safety Offences

Applying the definitive guidelines effective from 1 February 2016

Drum Construction Ltd is a small construction company which has, through its managing director, Michael Drum, pleaded guilty at the first hearing to not taking suitable and sufficient measures to prevent an employee from suffering a personal injury. The offence is contrary to Regulation 6(3) of the Work at Height Regulations 2005: "Where work is carried out at height, every employer shall take suitable and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury."

Drum Construction has no previous convictions.

Guideline note

The offender is a limited company and should therefore be sentenced using the guideline for health and safety - organisations.

An early guilty plea will normally result in a one-third reduction to the sentence.

The lack of previous convictions is a mitigating factor

The company which has an excellent HSE inspection record was contracted to make repairs to a residential property.

Guideline note

A good health and safety record is a mitigating factor.

The project involved building a dormer roof extension on the back of the house, and repairing the whole roof.

Drum Construction Ltd built scaffolding to gutter level at the front of the house, and a tower scaffold at the back of the house to build the dormer extension. Drum Construction's employee, G, an experienced roofer, was tasked with the job along with another colleague.

G worked on the project for a number of days. Having completed the dormer extension using the tower scaffold, G started work to fix the rest of the roof.

G accessed the front of the roof using the scaffolding placed at the front. However, following the completion of the dormer extension G could no longer reach the back part of the roof using the tower scaffold. Therefore, G used the scaffolding at the front of the house, climbed over the ridge of the roof using a ladder, before climbing down onto the dormer roof to access the remaining area.

One day G was working on the dormer roof when he started to feel dizzy. G fell off the dormer roof which had no protection to guard against falls, into the garden 8 metres below and suffered a fractured skull, a fractured pelvis and two broken vertebrae in his back and also later had to have a kidney removed. G was in hospital for 8 weeks. He was unable to return to work for 4 months.

Guideline note

The offence is in the creation of a risk of harm, taking into account both the likelihood and seriousness of harm risked.

The offence is likely to be considered as having created risk of death, with a high likelihood of harm, which would fall within harm category 1.

As there was actual harm, and the court is unable to move up a harm category, the guideline instructs the court to move up within the category range when assessing the fine.

Although G took the decision to proceed with the work on the dormer roof without the necessary scaffolding and protection, this is unlikely to be considered a contributory event for sentencing purposes as his actions to access the area in the absence of scaffolding would have been reasonably foreseeable to his employer.

HSE inspectors established that the risk assessment undertaken by Drum Construction Ltd and the scaffolding and safety measures provided at the beginning of the project were sufficient and met standards. However, once the dormer roof had been completed the safety requirements on the project changed and the scaffolding and safety measures became inadequate and insufficient. Drum Construction Ltd should have reviewed the measures in place once the dormer extension had been completed and modified arrangements to fit the new circumstances. As it was, there was nothing protecting G against a fall.

Guideline note

Culpability for this offence would be high, as the company failed to put in place measures that are recognised standards in the industry. (Adequate scaffolding for roof work would be considered essential.)

G is now working again for Drum Construction Ltd but he is unable to undertake roof work or any heavy lifting. This has inhibited the range of work he is able to perform in the construction industry. G suffers pain and stiffness from time to time, and has regular hospital check ups on his remaining kidney.

Drum Construction Ltd have expressed their remorse for the accident, and have now reviewed their project management processes and the risk assessments of their contracts.

Guideline note

Evidence of steps taken voluntarily to remedy the problem and acceptance of responsibility are both mitigating factors.

Drum Construction Ltd provided the following profit and loss account.

| | 2014/15 | 2013/14 | 2012/13 |
|---|-----------|-----------|-----------|
| | £ | £ | |
| TURNOVER | 1,015,720 | 928,472 | 928,422 |
| Cost of Sales and Other operating income | (891,073) | (813,942) | (813,992) |
| Administrative expenses | (100,499) | (112,067) | (112,027) |
| OPERATING PROFIT / (LOSS) | 24,148 | 2,463 | 2,403 |
| Interest receivable | 4 | 5 | 5 |
| Interest payable and similar charges | (54) | (67) | (65) |
| PROFIT / (LOSS) ON ORDINARY ACTIVITIES BEFORE TAXATION | 24,098 | 2,401 | 2,343 |
| Tax on profit/(loss) on ordinary activities | (5,589) | (120) | (105) |
| PROFIT/ (LOSS) FOR THE FINANCIAL YEAR | 18,509 | 2,281 | 2,238 |
| Balance brought forward | 29,616 | 27,335 | 25,097 |
| Balance carried forward | 48,125 | 29,616 | 27,335 |

Overall, this offence is likely to be assessed as 'high' culpability, and 'category 1' on the harm scale. The turnover of the company means that it will be sentenced using the table for 'micro' organisations.

Guideline note

Organisations in the 'micro' category are defined as those with a turnover or equivalent of not more than £2 million.

The starting point would be a £160,000 fine, with a range of £100,000 to £250,000. There are no aggravating factors in this case.

Drum Construction Ltd employs 7 full time construction staff, 1 full time and 1 part time administrative staff and there is 1 director.

They state that 2013 was an unusually good year for them owing to a particularly cost-effective project but the calendar year 2014 has been difficult. They may have to make staff cuts if a substantial fine is levied.

Guideline note

Steps three and four of the guideline require the court to 'step back' and review the fine to ensure that it is fair and proportionate in all the circumstances. The court may adjust the fine upwards or downwards including outside the range.

At step three the court would consider the financial circumstances in the round including whether the fine would have the effect of putting the offender out of business.

At step four the court would consider the wider impact of the fine, including on staff. In this case as G is still an employee of Drum it would not be in his interests if the company was put out of business

In this case the court might consider that given the financial circumstances of the business, the potential impact on staff, and the mitigating factors, that it is appropriate to decrease the amount of the fine to the lower end of the range or below the range.

The court would then make the appropriate reduction for a guilty plea.

The court could also order payment in instalments to avoid the danger of job losses.