



National Grid Gas plc hit with £2m fine for health and safety breach

11 December 2015

A sign of things to come?

Background

On 7 December 2015, National Grid Gas plc was ordered to pay a £2m fine and costs of £36,102.90 after pleading guilty to a breach of Section 3(1) of the Health and Safety at Work etc. Act 1974.

On 24 April 2014, an 11-year-old boy, Robbie Williamson and two friends were crossing the Leeds and Liverpool Canal using a pipeline running on the outside of Dugdale Bridge at Lowerhouse Lane, Burnley. Robbie fell from the pipe and into the canal below. He was taken to the Royal Blackburn Hospital, but later died due to drowning and a head injury.

The court heard how the boys were able to access the pipe from a ramped footpath leading from the public road to the canal towpath. Although National Grid Gas plc had a procedure for inspecting the crossing and preventing access to it, their records incorrectly showed the pipe as being buried within the bridge rather than exposed on the outside. As a result, the correct inspections and preventative measures had not been implemented.

Ordinarily, steel fans were fitted around similar exposed pipes to prevent access and, indeed, this step was taken post-accident.

Commentary

This case highlights the importance of an organisation regularly reviewing its written health and safety policies and carrying out regular risk assessments to identify and review risks to its employees and members of the public.

This case is also, perhaps, an indication of higher penalties to come for large organisations in advance of the new sentencing guidelines due to be implemented from February 2016. As recently as September 2015, Hugo Boss was fined £1.2m following the death of a four-year-old boy who suffered fatal head injuries when a large freestanding mirror fell onto him at store premises.

The current sentencing guidelines state, in relation to non-corporate manslaughter offences, that *“where the offence is shown to have caused death, the appropriate fine will seldom be less than £100,000 and may be measured in hundreds of thousands of pounds or more.”*

Any comments or queries?

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Part of the stated rationale behind the new sentencing guidelines is to ensure that fines are more commensurate with the seriousness of an offence and the offending organisation's finances. Whilst the above fines are high by current sentencing guidelines, they are unlikely to impact significantly on the profitability of either company, given the financial position of each. Will the new sentencing guidelines for health and safety offences make a real difference to larger organisations?

So far the general pattern of £1m-plus fines has been against large and well-known organisations for the most catastrophic and high-profile of incidents, eg the train disasters at Hatfield, Ladbroke Grove, Potters Bar and others, and the Buncefield explosion and fire. Marks and Spencer was fined £1m in 2011 after creating a risk of asbestos exposure to employees and customers during the renovation of two of its stores.

The new sentencing guidelines make a direct link between the offending company's turnover and the range of fine to be considered, as well as the seriousness of the risk.

In determining the level of fine for National Grid Gas plc under the new sentencing guidelines, the following steps would have been applied:

- Assess "*Culpability*". As there did not appear to be a "*Deliberate breach of or flagrant disregard for the law*", the "*Very high*" category may not have applied. The case seems closer to the "*High*" category, applicable to "*Serious and/or systemic failure within the organisation to address risks to health and safety*".
- Assess "*Harm*". In this case it would be likely to fall within "*Harm category 1*" due to the "*High likelihood of harm*", given the ease by which the exposed pipe could be accessed. Furthermore, the seriousness of

harm, ie the death of a minor, would place the fine within the category range of £1.5m to £6m with a starting point of £2.4m, given that National Grid Gas plc is clearly, at least, a "*Large*" organisation, that is one with a turnover or equivalent of £50m and over.

National Grid Gas plc's turnover for 2014/2015 was in fact recorded in its annual accounts as £15.2 billion. It is therefore probable that the company would have been classed a "*Very large organisation*", namely one with turnover "*greatly*" in excess of £50m. That being so, the indication in the new guidelines that, for such organisations, "*it may be necessary to move outside the suggested range to achieve a proportionate sentence*", would have had particular resonance.

According to press reports His Honour Judge Mark Brown said that the exposed pipe was "*an accident waiting to happen*" and was critical of National Grid Gas plc stating that "*It seems to me that the defence are seeking to place the blame for the accident upon Robbie himself and overlook the fact that the company exposed him to an obvious risk of injury or death*". That said, the judge seems to have taken into account mitigating factors, such as the guilty plea and that, since Robbie's death, remedial action was taken to ensure that the exposed pipe and others across the network could not be accessed. Furthermore, National Grid Gas plc confirmed that they had contacted other utility companies to ensure similar remedial action.

The fine of £2m to National Grid Gas plc may therefore have been within an appropriate range by reference to the new sentencing guidelines, depending on the extent of any mitigating factors. Equally, however, it might be substantially lower than could be imposed bearing in mind National Grid Gas plc's probable status as a "*Very large organisation*".

The guidelines can be accessed [here](#).

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