



Fines for breaches of Health and Safety Regulations

R v. ESB Hotels Limited (2005) Court of Appeal

The Court of Appeal recently gave guidance on the level of fines that should be payable by companies who were found guilty of contravening health and safety regulations.

In R v. ESB Hotels Limited the Court of Appeal held that when a court imposes a fine against a company for breaches of health and safety regulations (in this case, fire regulations), it must consider the degree and scope of the risk – fire in a hotel was held to be considerable, whether the company had taken steps to reduce that risk, and whether it had ignored any risk assessments. The Court should also take into account whether this was a first offence.

The fines imposed in this case had been assessed on ESB's pre-tax operating profits which did not take into account any deductions. The Court of Appeal did not find this approach attractive. They referred to the Magistrates' Court Sentencing Guidelines which stated that for this type of offence the Court should look at net turnover. Further, previous guidelines stated that the courts should take into account the resources of the defendant company when computing the fine. The Court of Appeal held that when calculating the fine, note should be taken of the pre-tax profits rather than the gross turnover figures.

The intention of the court is to impose fines of a sufficient amount to punish but not to the extent that the company cannot continue in business. However, when faced with a health and safety prosecution, companies will find their accounts being carefully looked at so, company directors beware – make sure the accounts accurately reflect the true situation or you may end up paying more than you can afford.

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Date: March 2005

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