

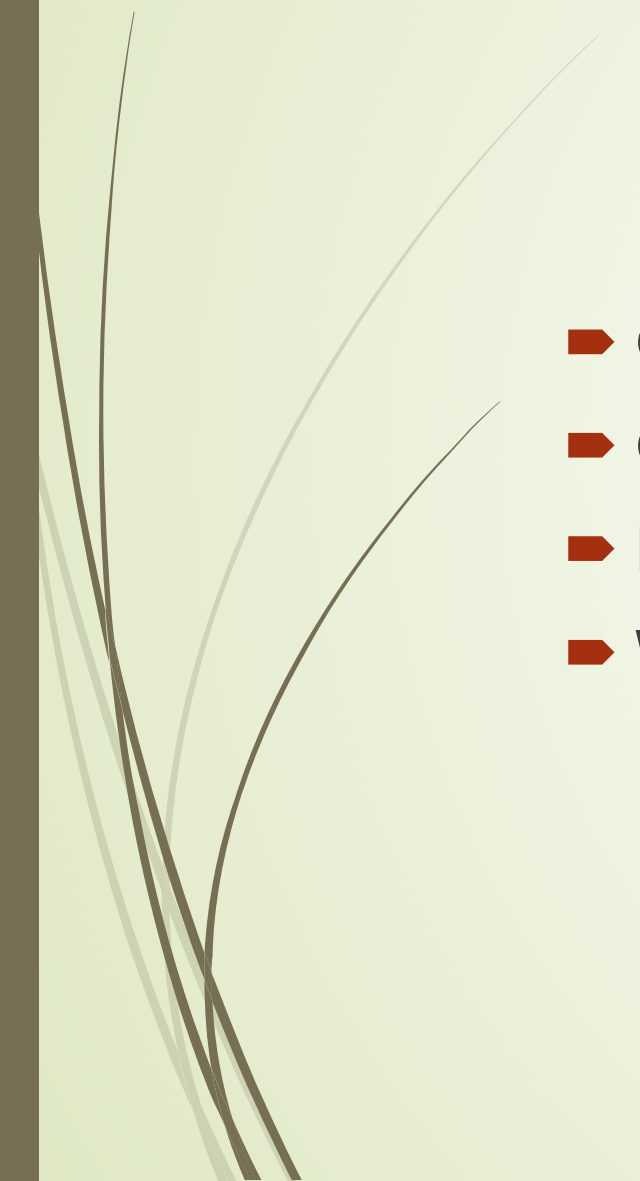


# Sentencing Guidelines

JOHN S CLAXTON

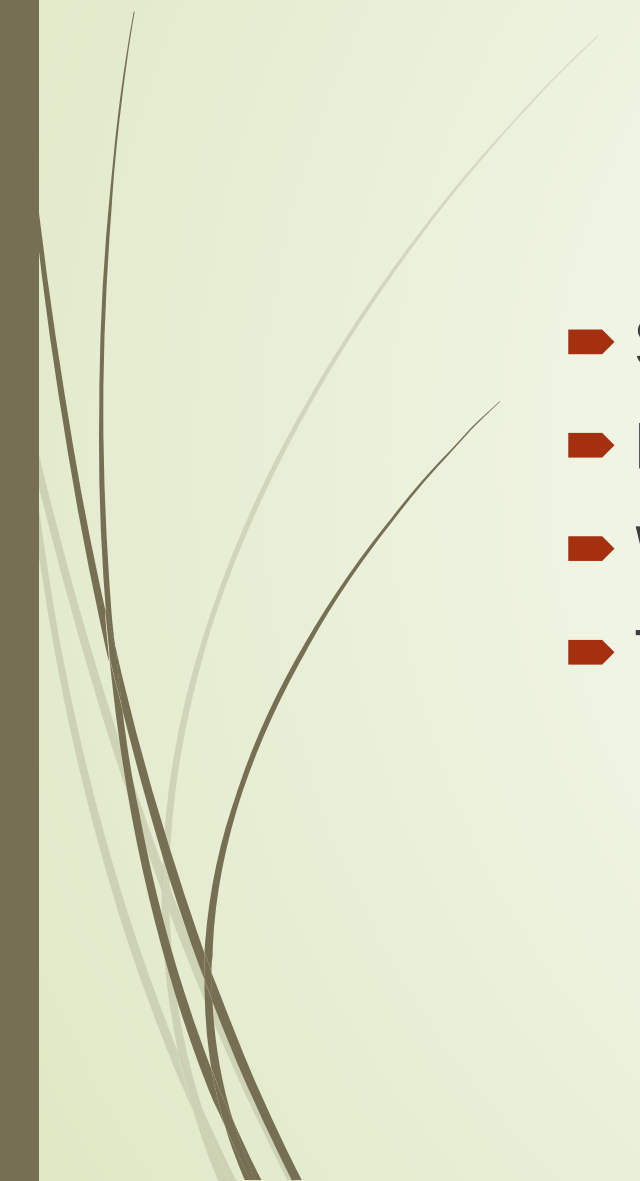


# How did we get here?

- Consensus H & S Fines too low
  - Consensus no one knew what they should be
  - No Guidelines for Courts
  - Wide ranging fines
- 



# Court of Appeal

- ▶ Statutory role to create sentencing principles
  - ▶ Expensive
  - ▶ Wait for the right case
  - ▶ Time consuming
- 



# Sentencing Guidelines Council

- Criminal Justice Act 2003
- Lack of comprehensive guidance
- No consistency in sentencing
- Fines based on net profit
- No deterrent
- Fines still too low



# Snap shot in time

## Health and Safety Offences

- 2013 Sentences:
  - 273 – against organisations
  - 146 – against individuals
- 2013 Fines:
  - £46,009 – average fine
  - 50% fines of less than £8,000
  - 5% fines of more than £225,000
  - £4,325 – average fine for individuals

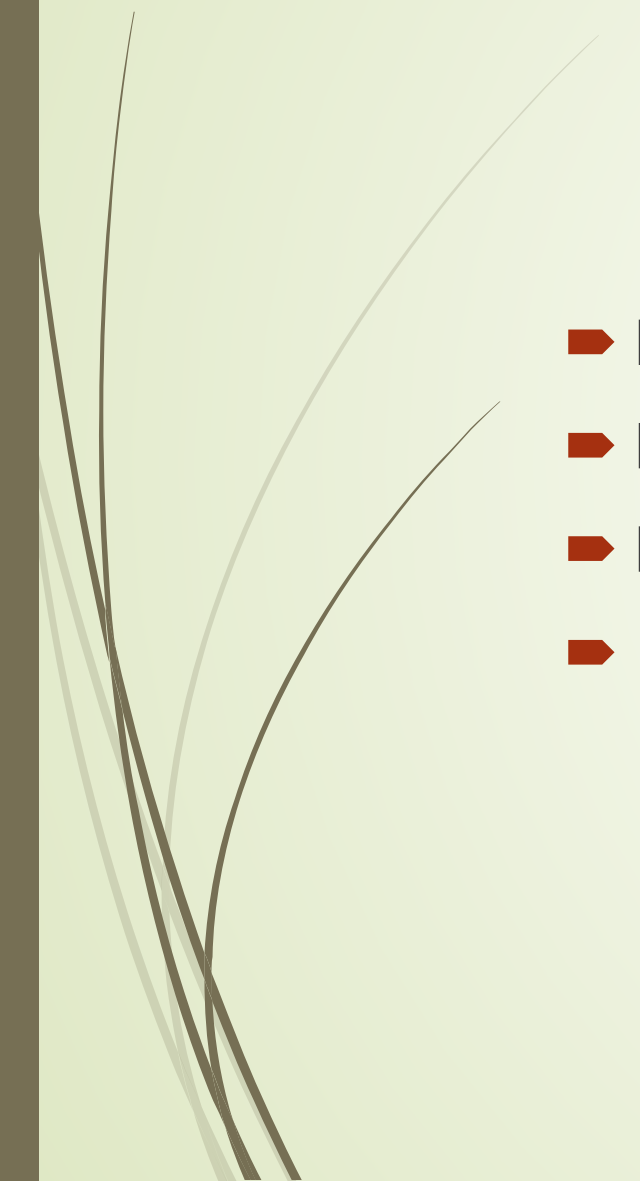


# Sentencing Council

- Coroners and Justices Act 2009
- Independent Body – 14 members
- Lord Chief Justice
- Lord Justice
- 8 Judicial Members
- 6 Non Judicial



# Purpose of Guidelines

- Provide a structured approach to sentencing
  - Promote consistency or approach
  - Promote proportionality across offences
  - Increase transparency
- 



# Guidelines Binding?

- ▶ Every Court
  - ▶ Must follow any relevant sentencing guidelines
  - ▶ Must follow any other guideline if relevant
  - ▶ Can only depart if interests of justice demand
  - ▶ Must give reasons for any departure in court



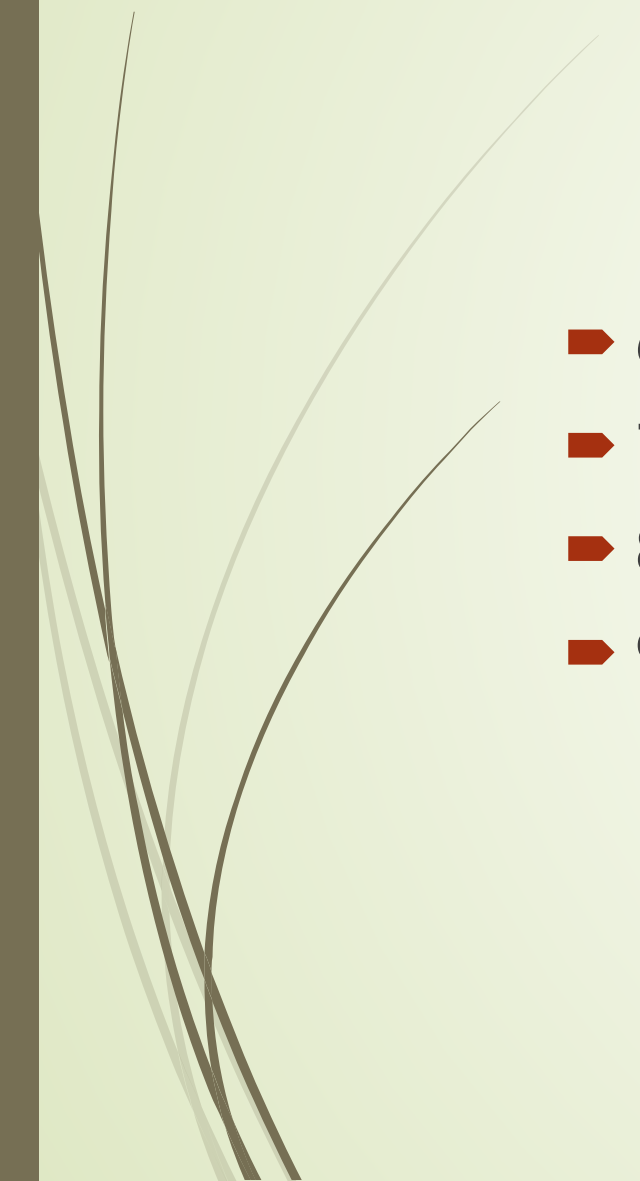


# Decision Making Process Nine Steps

- 1 Offence category - Culpability
- 2 Starting point and category range
- 3 Statutory factors, aggravating/mitigating
- 4 Reduction for Guilty Plea
- 5 Dangerousness

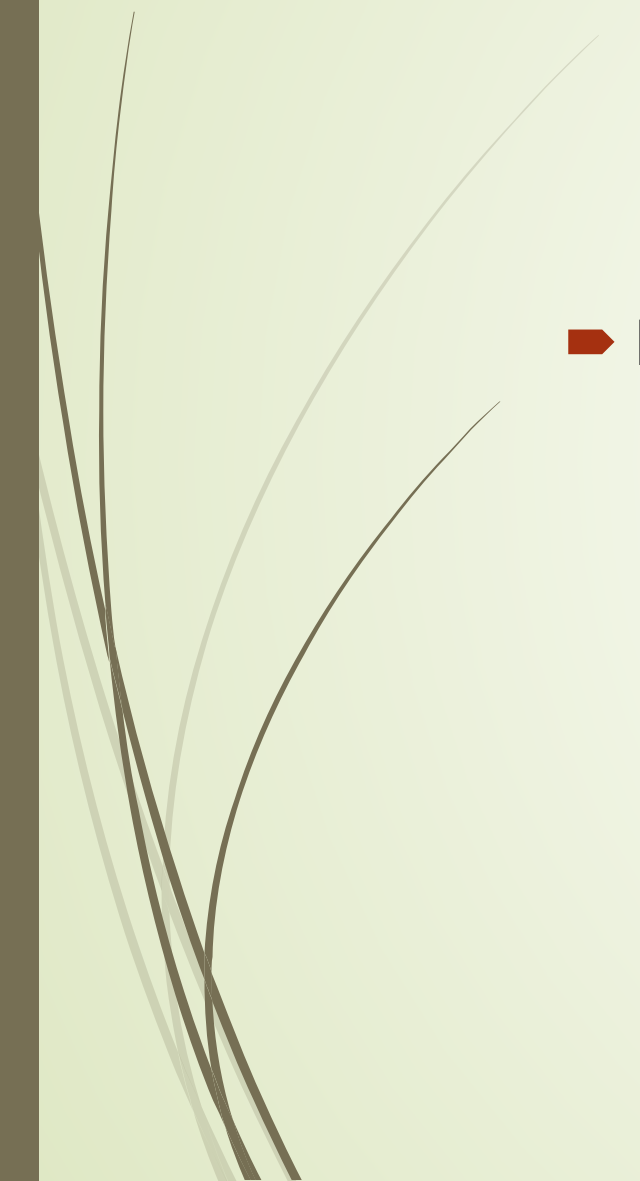


# Decision Making Process Nine Steps

- 6 Totality
  - 7 Compensation Ancillary orders
  - 8 Reasons
  - 9 Remand time
- 



# The New World Dawns!!

- Health and Safety Guidelines
    - Consultation began 13/11/2014
    - Consultation ended 18/02/2015
    - Definitive Guidelines published -/11/2015
    - Implementation date 01/02/2016
- 




# Remember !!!!!

- H & S Offences
  - Do not require harm
  - Based on creation of risk
  - Failure to control risk
  - Guidance focuses on risk of harm



# Key Terms Relating to Controlling Risk

- Culpability
  - Harm Category
- 



# Step 1

## Culpability – 4 Categories

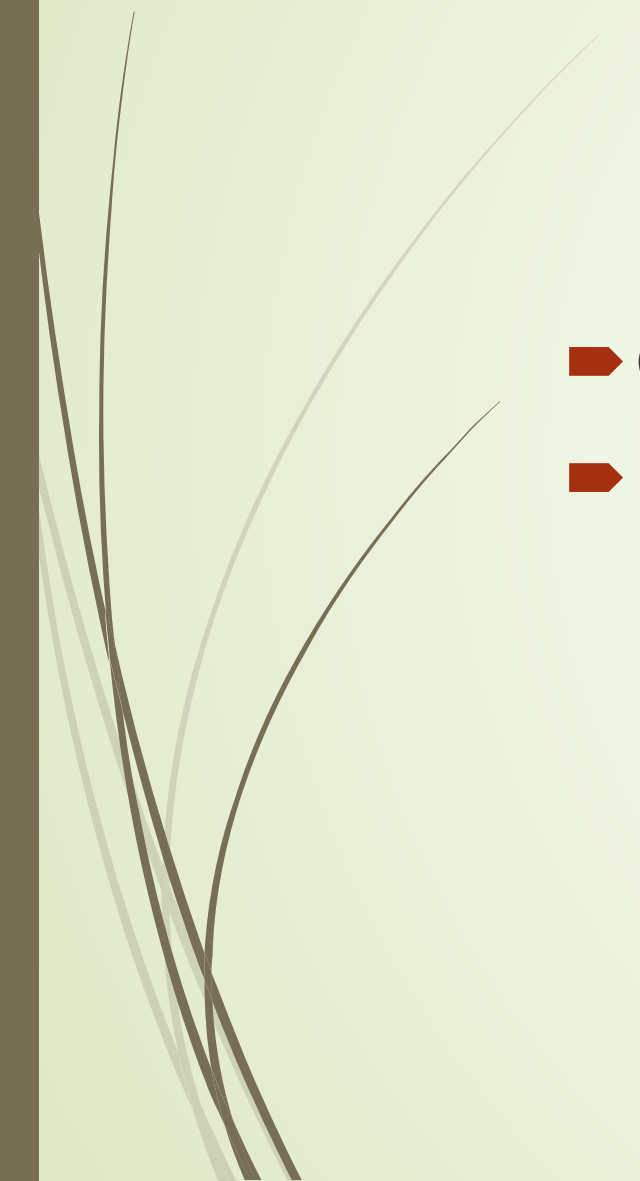
- **Very high** – deliberate or flagrant breach
- **High** “fell far short of the appropriate standard”,  
“evidence of serious systemic failings”
- **Medium** – fell short of appropriate standard,  
but between High and Low categories
- **Low** – “did not fall far short of the appropriate standard”,  
“evidence that failings were minor and not systemic”

# Step 1 Harm

		Seriousness of harm risked		
		Level A	Level B	Level C
Likelihood of harm		<b>Level A</b> <ul style="list-style-type: none"> <li>Death</li> <li>Physical or mental impairment resulting in lifelong dependency on third party care for basic needs</li> <li>Health condition resulting in significantly reduced life expectancy</li> </ul>	<b>Level B</b> <ul style="list-style-type: none"> <li>Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer's ability to carry out normal day-to-day activities or on their ability to return to work</li> <li>A progressive, permanent or irreversible condition</li> </ul>	<b>Level C</b> <ul style="list-style-type: none"> <li>All other cases not falling within Level A or Level B</li> </ul>
	High	Harm category 1	Harm category 2	Harm category 3
	Medium	Harm category 2	Harm category 3	Harm category 4
	Remote	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)



# Key Terms

- ▶ Culpability
  - ▶ Harm Category
- 





## Step 2

- ▶ Starting Point
  - ▶ Sentencing Range
  - ▶ Based on Organisation Gross Turnover
- 



# Gross Turnover

- Very large organizations': "greatly exceeds £50m"
- Large (>£50m)
- Medium (£10-£50m)
- Small (£2-£10m)
- Micro (<£2m)

# Fines table

## Culpability and Harm Category

<b>Medium</b>			
Turnover or equivalent: between £10 million and £50 million			
	Starting point	Category range	
<b>Very high culpability</b>			
Harm category 1	£1,600,000	£1,000,000 –	£4,000,000
Harm category 2	£800,000	£400,000 –	£2,000,000
Harm category 3	£400,000	£180,000 –	£1,000,000
Harm category 4	£190,000	£90,000 –	£500,000
<b>High culpability</b>			
Harm category 1	£950,000	£600,000 –	£2,500,000
Harm category 2	£450,000	£220,000 –	£1,200,000
Harm category 3	£210,000	£100,000 –	£550,000
Harm category 4	£100,000	£50,000 –	£250,000
<b>Medium culpability</b>			
Harm category 1	£540,000	£300,000 –	£1,300,000
Harm category 2	£240,000	£100,000 –	£600,000
Harm category 3	£100,000	£50,000 –	£300,000
Harm category 4	£50,000	£20,000 –	£130,000
<b>Low culpability</b>			
Harm category 1	£130,000	£75,000 –	£300,000
Harm category 2	£40,000	£14,000 –	£100,000
Harm category 3	£14,000	£3,000 –	£60,000
Harm category 4	£3,000	£1,000 –	£10,000

# Examples

- ▶ Large organisation £50m+

- ▶ £4.5m            £2.6-10m

- ▶ £10k            £3-60k

very high culpability range

low high culpability range

- ▶ Medium organisation £10-50m

- ▶ £1.6m            £1-4.0m

- ▶ £3.0k            £1-10k

- ▶ Small organisation £2-10m

- ▶ £450k            £300k-1.6m

- ▶ £700            £100-5k

- ▶ Micro organisation up to £2m

- ▶ £250k            £150-450k

- ▶ £200            £50-2k



## Step 3 Statutory Factors

- Risk based
- Aggravating factors
- Mitigating factors
- Number of people put at risk
- Whether offence was significant cause of actual harm



# Examples of aggravating and mitigating





# Aggravating factors

- Cost cutting
- Deliberate concealment of evidence
- Breach of any HSE Notice or Court Order
- Obstructing justice
- Falsifying documentation or licenses
- Deliberate failure to obtain licence/training
- Targeting vulnerable victims - MOP





# Aggravating factors

- Poor H & S record
- Failing to put in place measures recognised as standards in the industry / sector
- Ignoring concerns raised by employees or others
- Failing to make changes after prior incidents
- Allowing breaches to exist over a long period of time





# Mitigating Factors

- No previous convictions
- Evidence taken to remedy problem
- High level of co-operation with investigation
- Good H & S record
- Effective safety management
- Self reporting, co-operation
- Accepting responsibility

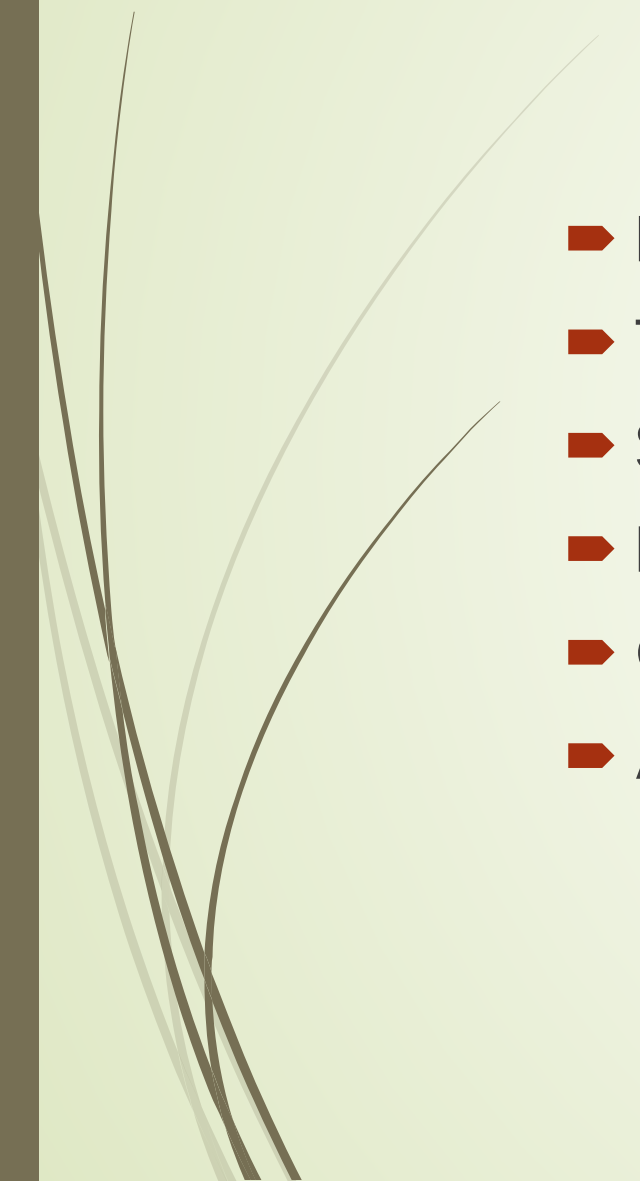


# Mitigating Factors

- Significant efforts were made to address risk but inadequate on this occasion
- No prior event or warning indicating a risk
- Difficult to foresee risk
- Close to industry standards
- Effort to compensate victim

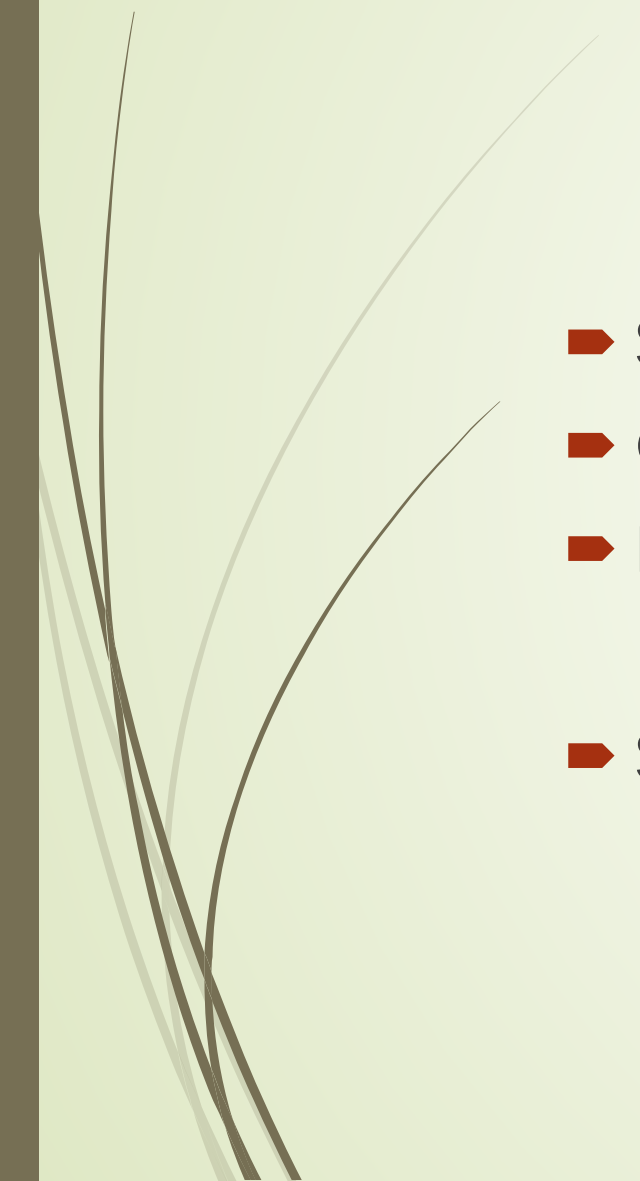


# Alton Towers

- Roller coaster accident
  - Turnover of company £50
  - Starting point £2.4m increased to £7.5m
  - Previous fine for a fatality
  - Credit for Guilty plea, £5.0m fine
  - Appealed fine
- 



# Appeals

- Substantial fines for medium to large organisations
  - Cost of defending and appealing much less
  - Number of Appeals in C of A already
  - So how did Alton Towers fare?
- 



# Alton Towers

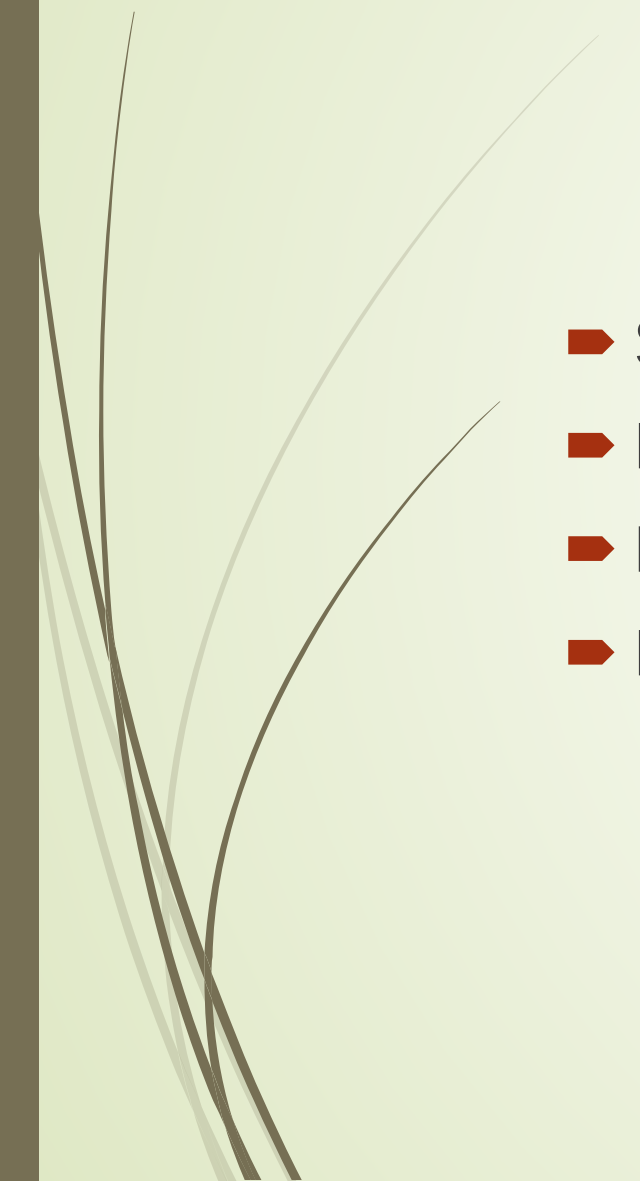
- ▶ Appeal dismissed
- ▶ Court of Appeal said
  - ▶ Fell seriously short of applicable standard
  - ▶ Failed to heed warning of previous fatality
  - ▶ Failed over period of years to carry out necessary mandatory risk assessments

# Individuals

	Starting point	Category range
<b>Very high culpability</b>		
Harm category 1	18 months' custody	1 – 2 years' custody
Harm category 2	1 year's custody	26 weeks' – 18 months' custody
Harm category 3	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 4	Band F fine	Band E fine – 26 weeks' custody
<b>High culpability</b>		
Harm category 1	1 year's custody	26 weeks' – 18 months' custody
Harm category 2	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 3	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 4	Band E fine	Band D fine – Band E fine
<b>Medium culpability</b>		
Harm category 1	26 weeks' custody	Band F fine or high level community order – 1 year's custody
Harm category 2	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 3	Band E fine	Band D fine or low level community order – Band E fine
Harm category 4	Band D fine	Band C fine – Band D fine
<b>Low culpability</b>		
Harm category 1	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Harm category 2	Band D fine	Band C fine – Band D fine
Harm category 3	Band C fine	Band B fine – Band C fine
Harm category 4	Band A fine	Conditional discharge – Band A fine



## Steps 3 & 4

- ▶ Step back and review
  - ▶ Reflect seriousness
  - ▶ Proportionality of fine to offender's means
  - ▶ Reduction for guilty plea
- 





# Sentencing Examples







# Ancillary Orders

## Corporate Manslaughter

- **Publicity Order = Discretionary power given to the Court under Section 10 of the 2007 Act**
- **If ordered, the company must publish details of:**
  - ✓ Conviction
  - ✓ Particulars of the offence
  - ✓ Level of fine
  - ✓ Any remedial order made
- **Used in three recent convictions:**
  - ❖ Princes Sporting Club Limited = details published in a powerboat magazine
  - ❖ Mobile Sweepers (Reading) Limited = details published in two local newspapers
  - ❖ Peter Mawson Limited = details published in local paper and on the company's website

# Case studies - Before and now

## R v Network Rail

- Turnover of £6.2 billion and profit of £780,000,000 – although a 'not for dividend' company
- Serious accident at a level crossing – poor visibility and no telephone
- 10 year-old son of the driver suffered life-changing brain damage
- The company pleaded guilty and was fined £500,000

## Guidelines

- Assessment: Large, High Level Culpability, Category 1 Harm
- Starting point: £2,400,000 (albeit reduced at stage 3)

Large Turnover or equivalent: £50 million and over		
	Starting point	Category range
<b>Very high culpability</b>		
Harm category 1	£4,000,000	£2,600,000 – £10,000,000
Harm category 2	£2,000,000	£1,000,000 – £5,250,000
Harm category 3	£1,000,000	£500,000 – £2,700,000
Harm category 4	£500,000	£240,000 – £1,300,000
<b>High culpability</b>		
Harm category 1	£2,400,000	£1,500,000 – £6,000,000
Harm category 2	£1,100,000	£550,000 – £2,900,000
Harm category 3	£540,000	£250,000 – £1,450,000
Harm category 4	£240,000	£120,000 – £700,000
<b>Medium culpability</b>		
Harm category 1	£1,300,000	£800,000 – £3,250,000
Harm category 2	£600,000	£300,000 – £1,500,000
Harm category 3	£300,000	£130,000 – £750,000
Harm category 4	£130,000	£50,000 – £350,000
<b>Low culpability</b>		
Harm category 1	£300,000	£180,000 – £700,000
Harm category 2	£100,000	£35,000 – £250,000
Harm category 3	£35,000	£10,000 – £140,000
Harm category 4	£10,000	£3,000 – £60,000

# Case studies -Before and now

## R v X

- Company turnover of c.£7,000,000, although part of a group structure
- Serious physical and psychological injuries after exposure to chemical substances – death was foreseeable
- Systematic failures; absence of any risk assessment for activities
- The Company pleaded guilty and was fined £10,000 plus costs of c. £700

## Guidelines

- Assessment: Small, Medium Level Culpability, Category 2 Harm
- Starting Point £54,000

<b>Small</b> Turnover or equivalent: between £2 million and £10 million		
	Starting point	Category range
<b>Very high culpability</b>		
Harm category 1	£450,000	£300,000 – £1,600,000
Harm category 2	£200,000	£100,000 – £800,000
Harm category 3	£100,000	£50,000 – £400,000
Harm category 4	£50,000	£20,000 – £190,000
<b>High culpability</b>		
Harm category 1	£250,000	£170,000 – £1,000,000
Harm category 2	£100,000	£50,000 – £450,000
Harm category 3	£54,000	£25,000 – £210,000
Harm category 4	£24,000	£12,000 – £100,000
<b>Medium culpability</b>		
Harm category 1	£160,000	£100,000 – £600,000
Harm category 2	£54,000	£25,000 – £230,000
Harm category 3	£24,000	£12,000 – £100,000
Harm category 4	£12,000	£4,000 – £50,000
<b>Low culpability</b>		
Harm category 1	£45,000	£25,000 – £130,000
Harm category 2	£9,000	£3,000 – £40,000
Harm category 3	£3,000	£700 – £14,000
Harm category 4	£700	£100 – £5,000

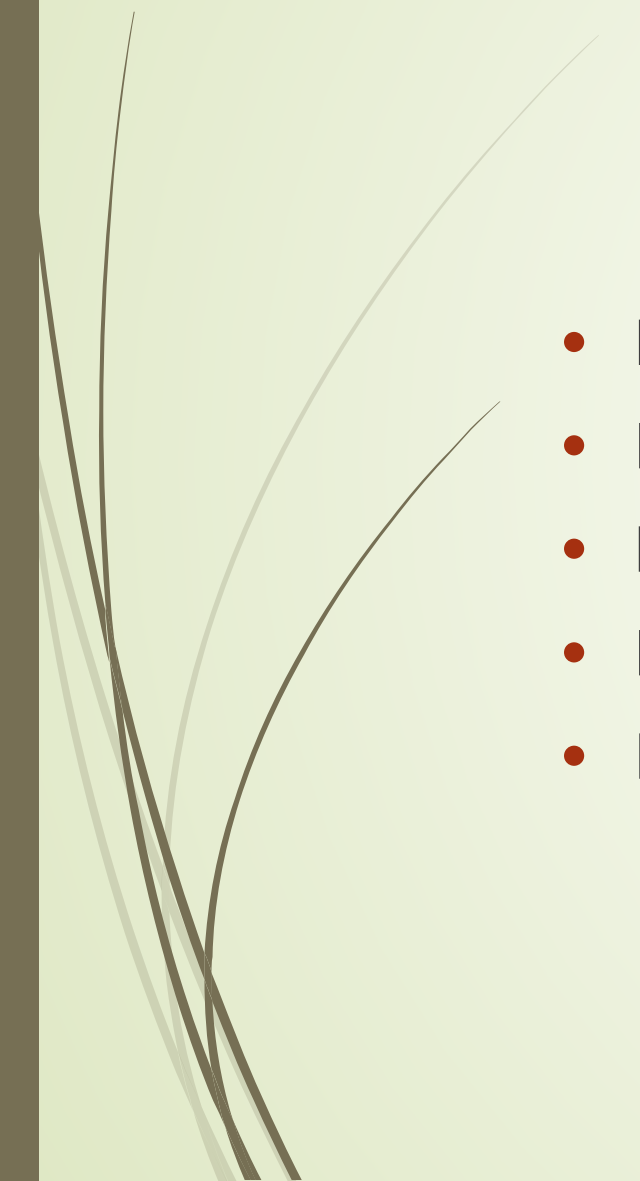


# Corporate Manslaughter ongoing cases

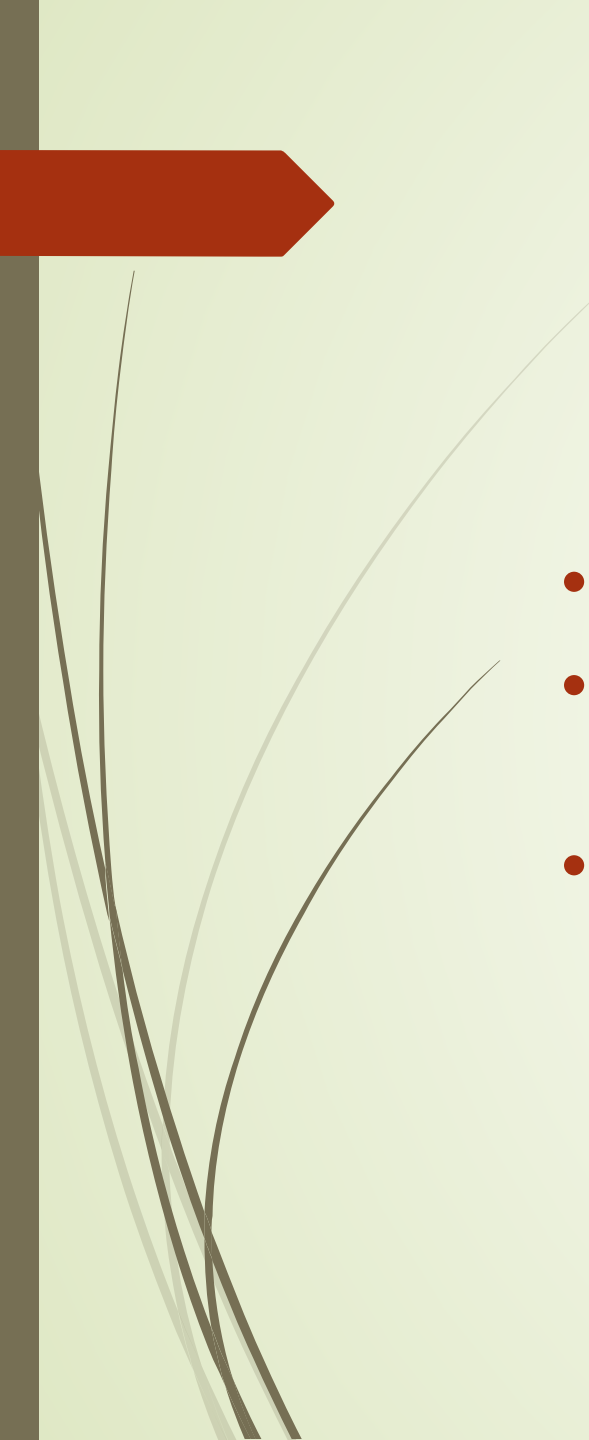
- **Baldwins Crane Hire Ltd:** *employee of Baldwins was killed when a heavy crane he was driving allegedly experienced a malfunction with its brakes, causing it to crash into an earth bank and fall from the road.*
- **McGoldrick Enterprises Limited (NI):** *a patient died suddenly at a private nursing home. McGoldrick was charged with corporate manslaughter, in that it managed or organised activities in a way that amounted to a gross breach of a duty of care owed to the deceased.*
- **Sherwood Rise Limited:** *An elderly woman died shortly after being moved from Autumn Grange Care Home in Sherwood Rise, Nottingham. Alleged that the care home staff failed to provide the deceased with adequate food and drinks and check she was taking fluids.*
- **Maidstone and Tunbridge Wells NHS Trust:** *2 doctors charged with gross negligence manslaughter and NHS Trust charged with Corporate Manslaughter over the death of a woman who died after giving birth by emergency caesarean section in 2012.*



# Considerations for the Future

- Far larger fines
  - Emphasis on 'Culpability and Likelihood of Harm'
  - Plethora of Experts – and costs
  - More trials or more guilty pleas?
  - Higher Defence and Prosecution costs
- 



- 
- Arguments on causation of injury to individuals
  - Potential fines for H & S offences will increasingly move them up the boardroom agenda.
  - Greater focus on corporate governance (Network Rail & Sellafield)