

Definitive sentencing guidelines came into effect in January, which will have a bearing on how courts apply reductions in sentence according to mitigating factors in health and safety cases, writes **Michael Appleby**.

Hitting the sentencing jackpot

THE FACTS OF THE CASE

It has been established in criminal cases for many years that if a defendant pleads guilty to an offence, he/she should be given credit for this when the court passes sentence. This obligation is now a statutory requirement (see the Criminal Justice Act 2003).

The basic rule is: the earlier a defendant pleads guilty, the greater the reduction in sentence. A number of reasons lie behind this approach: victims avoid the trauma of giving evidence; it takes less time to bring the case to a conclusion; and public money is saved.

Giving credit for an early plea of guilty was recognised by the Court of Appeal in *R v F Howe & Son (Engineers) Ltd* [1999] 2 All ER 249. This case set out guidance on how companies should be sentenced for health and safety offences. The Court gave general factors to be taken into account when sentencing, along with aggravating and mitigating features, and made it clear that important mitigation included a prompt admission of responsibility, and a timely plea of guilty.

Until now there has been no guidance as to how a reduction in sentence should be determined in criminal cases. However, in December 2004, the newly established Sentencing Guidelines Council published a definitive guideline, which came into effect on 10 January 2005.¹

The guideline states that the court should consider mitigating features and any punitive elements of a penalty before applying a reduction to the sentence for an early plea of guilt. Effectively, this amends the *Howe* case, which suggested a timely plea was just one factor to be taken into account as mitigation. In future, the maximum sentence will be determined with reference to the aggravating and mitigating features first (except the plea), and then the reduction will be applied.

The guideline states that the level



Illustration by Arthur Phillips

of reduction of sentence will be gauged on a sliding scale. This ranges from a maximum of one third (where the guilty plea was entered at the “first reasonable opportunity”), reducing to a maximum of one quarter (where a trial date has been set), and to a maximum of one tenth (for a guilty plea entered at the “door of the court”, or after the trial has begun).

The spectrum of culpability in offences pursuant to the HSWA 1974 is wide. In the case of *R v Friskies Petcare Ltd* [2000] Cr App R (S) 401 the Court of Appeal recommended that the prosecution and defence should set out in advance of the sentencing hearing the aggravating and mitigating features. If there is a “disagreement of substance”, then there may be a need for a Newton hearing. This is where the defendant accepts his/her guilt, but the facts alleged by the prosecution are disputed. In the hearing the judge will hear evidence (in other words, as if the trial were taking place) and

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determine the basis of guilt. The guideline states that if the prosecution’s case is accepted this will affect the level of reduction.

On occasions in health and safety prosecutions it is likely that there will be argument as to when the “first reasonable opportunity” to plead guilty arose. An example of this might be where a company is prosecuted for corporate manslaughter and a breach of the HSWA is alleged as an alternative offence.

In *R v GWT* (27 July 1999, unreported), relating to the Southall train crash, the company did not enter a guilty plea to a breach of section 3 of the HSWA until the corporate manslaughter charge had been dismissed, just before the start of the trial. When sentencing, the judge determined the company had pleaded guilty to the HSWA offence at the first reasonable opportunity.

1 The guideline can be found at www.sentencing-guidelines.gov.uk ■