

27.3a *Need for senior person to explain the offending and their response to it*

R v Sellafield and Network Rail 2014 EWCA Crim 49 LCJ The two appeals were heard together. Network Rail pleaded to a section 3 Health and Safety failing. V1 drove onto a gated crossing¹ on a railway line which was operated by the public. He saw a train coming and braked. The car slipped on loose gravel and was hit by a train. V1's grandson, V2, was thrown out of the car and hit his head on the track. V1 was badly bruised and V2 suffered a brain stem bleed which had a devastating effect on him and his future. Held. It was important for Network Rail to ensure the fullest information was provided to the sentencing court. That is highly material when the court assesses the response of the board of the company to the statutory purposes of sentencing, when a fine inflicts no direct punishment on anyone [individual].

R v Southern Water Services Ltd 2014 EWCA Crim 120 LCJ The defendant pleaded to contravening their licence conditions. The company polluted the sea with untreated sewage. The Environment Agency was not notified for ten days and the problem not remedied quickly enough. It was a breach of their licence. There were further discharges later in the year as the repairs were not permanent. The company turnover was £0.75bn and post-tax profit in 2013 of £156.9m. The company had 160 previous offences. Held. In offences of this seriousness it is incumbent on the chief executive and the main board of the company, particularly one with a serious record of minor criminality as here, to explain to the court the cause of the offending behaviour, the current offence and its proposals for protecting the public from further such offending, as set out in *R v Sellafield and Network Rail 2014 EWCA Crim 49*. £200,000 fine upheld.

27.8 *Sentencing Council Guideline*

At page 47 of the *Fraud, Bribery and Money Laundering Offences Guideline 2014*, see www.banksr.com Other matters Guideline tab, there is an identical guideline to the Corporate guideline.

27.14a *Judicial guidance*

Companies and Public Bodies as defendants:Judicial guidance

R v Sellafield and Network Rail 2014 EWCA Crim 49 LCJ para 3 It is important to [apply] the provisions laid down by Parliament. There are the purposes of sentencing set out in [Criminal Justice Act 2003 s 142](#), see [106.13](#). There is the need to consider culpability of the offender and the harm caused etc. when considering the seriousness of the offence, [Criminal Justice Act 2003 s 143](#), see [106.38](#). If the court is considering a fine, the court must take in to account the criteria in [Criminal Justice 2003 s 164](#), see [76.22](#) and [76.23](#). The objective when sentencing for Health and Safety offences was set out in *R v F Howe & Son (Engineers) Ltd 1999 2 Cr App R (S) 37* [at para 44], 'The objective is to achieve a safe environment for those who work there and for other members of the public who may be affected. A fine needs to be large enough to bring that message home where the defendant is a company not only to those who manage it but also to its shareholders.' The fact a company has a £1 billion turnover makes no difference to the basic approach. para 6 The fine must be with the objective of ensuring that the message is brought home to the directors and members of the company/shareholders. For companies with a turnover in excess of £1 billion it will be necessary to examine with great care and in some detail the structure of the company, its turnover and profitability as well as the remuneration of the directors.

¹ This information was from the NetworkRail website.