

Sentencing remarks regarding failing to discharge a duty to ensure the health and safety of others under section 25 1(a) of the Health and Safety at Work General Guernsey Ordinance, 1987, as amended.

**[2025]GRC040**

**ROYAL COURT  
FULL COURT**

**29 April 2025**

**Before: Catherine Maureen Fooks, Judge of the Royal Court  
and Jurats: Stephen Murray Jones OBE, Claire Helen Le Pelley,  
David John Robilliard MBE, Marilyn Jasmine King,  
Simon Ernest Bodkin, Jillian Clark  
and Ian Michael Brown.**

**THE LAW OFFICERS OF THE CROWN**

**- v -**

**(1) STATES OF GUERNSEY TRADING SUPERVISORY BOARD  
&  
(2) GUERNSEY STEVEDORES LIMITED**

**Crown Advocate C G Dunford appeared for the Crown**

**Advocate S R Geall appeared for Defendant (1)**

**Advocate P T R Ferbrache appeared for Defendant (2)**

**JUDGE OF THE ROYAL COURT:**

**Background**

The defendants appear for sentence on an Indictment containing two counts of failing to discharge a duty to ensure the health and safety of others under section 25 1(a) of the Health and Safety at Work General Guernsey Ordinance, 1987, as amended, (“the Ordinance”) insofar as:

1. The States of Guernsey Trading Supervisory Board (“the Board”) failed to discharge a duty imposed by section 2(1) of the Ordinance, in that it failed to conduct its undertaking in such a way as to ensure, as far as was reasonably practicable, that persons not in its employment who may be affected thereby, including Garie Hewlett, were not thereby exposed to a risk to their health and safety; and
2. Guernsey Stevedores Limited (“the Company”) failed to discharge a duty imposed by section 1(1) and 1(2) of the Ordinance, in that it failed to conduct its undertaking in such a way as to ensure, as far as was reasonably practicable, that persons in its employment, including Garie Hewlett, who may be affected thereby, were not thereby exposed to a risk to their health and safety.

The specific allegation is that, on 3<sup>rd</sup> June 2024, both failed to protect others from contact with moving machinery, such as a grab crane, at St Sampson’s Harbour. The maximum penalty is an unlimited fine.

Crown Advocate Dunford has set out the facts in considerable detail and we have been provided with a considerable quantity of paperwork including various health and safety documents, both generally available and those belonging to the two defendants, the financial accounts of the two Defendants and written submissions on the facts and sentencing principles and authorities. The Court has carefully considered all materials but will only refer to those immediately necessary within these sentencing remarks.

The Company has been trading since 1963 with responsibility for the loading and unloading of vessels at St Peter Port and St Sampson's harbours. It employs 11 stevedores, 2 foremen, an operating supervisor and its managing director.

The Board is a States Committee mandated to oversee all States of Guernsey trading assets. It has no separate legal personality. Authority and control of the Board rests with the States of Guernsey. Its budget is set by the States of Guernsey. Guernsey Ports is part of the Board. Guernsey Ports is responsible for the airport and ports so it has overall control and responsibility for operations at St Sampson's Harbour. We are only concerned with operations at that harbour.

Whilst there are some differences between the parties as to the facts, we consider that they can be simply, neutrally and adequately summarised thus: on 3<sup>rd</sup> June 2024, a cargo ship containing sand was being unloaded at St Sampson's Harbour. It is accepted that the Board and Company were jointly responsible for the unloading operation, with the Board providing the crane and the Company the stevedores. The method in use at the time involved having a small digger and stevedores in the hold of the ship moving the sand into piles so that it could be grabbed by a grab crane being operated from the cabin of the crane and from there loaded into a hopper on the quay.

The photographs in the bundle are helpful in understanding how the operation worked. It can be seen that the crane driver has no visibility of the area of the hold directly under the crane. On 3<sup>rd</sup> June 2024, there were two stevedores working on the side of the hold furthest from the crane and Mr Hewlett was working in the area directly below the crane and so was not visible to the crane operator. The crane driver lowered the crane grab which struck Mr Hewlett on the leg. The other stevedores noticed and shouted which caused the crane driver to stop the crane immediately. It was put this way: the crane driver was not expecting Mr Hewlett to be there and Mr Hewlett was not expecting the grab to come down there.

Mr Hewlett was extracted from the hold and taken to hospital. He sustained serious injuries to his leg including three breaks which required surgery and pinning as well as damage to his foot. He has filed two Victim Impact Statements for the Court in which he details the considerable physical suffering caused which has not yet resolved. He has not been able yet to return to full duties. He goes on to detail the considerable trauma and psychological harm which endures in the form of PTSD and depression. His memory of the incident is regularly triggered now that he is back at work. In short, all aspects of his life have been and continue to be affected.

The Guernsey Health and Safety Executive began its investigation that day. Both Defendants have fully cooperated with the process. On 4<sup>th</sup> June the Health and Safety Executive issued a Prohibition Notice to prevent any further working in the hold while the crane was in use in the absence of a safe system to manage the attendant risk of such working. The Company had taken the step of ceasing such working practice anyway and it was confirmed today that that remains the case.

Individuals on behalf of each Defendant were interviewed. The Company's representative gave some information about the Company's general policies and training but declined to comment on the incident itself, as was its right. The Board's representative acknowledged certain issues with the operation, the lack of visibility for the crane driver, the absence of a hatchman or other effective means of communication between the driver and those in the hold and an absence of a safe system of work and he detailed changes which had been made following the incident to improve safety.

There are some matters recorded against both Defendants; in 2012 against the Board (more correctly its predecessor) and the Company in respect of the same incident in which a stevedore's hand was crushed – the Board was fined £10,000 and the Company £3,500; in 2017 against the Board, two matters (which are un-related to this matter) in respect of which it was fined £5,000 on each and in 2020 against the Board relating to inadequate safety barriers at the St Peter Port Harbour, again unrelated, for which it was fined £20,000. There was also mention of an Improvement Notice issued to the Board in 2018 which, again, was not relevant.

## **Sentencing Considerations**

### General

Health and Safety prosecutions are relatively rare in Guernsey. The Court proposes to approach sentencing as it has in the past, by reference to what was, at one stage, the leading English case, which is R v F Howe & Son (Engineers) Ltd [1999] 2 Cr App R 37 and which is still regularly cited in England. In this case, counsel have helpfully provided other English materials and caselaw, including the relevant extract from Blackstone's and the following cases:

- R (on the prosecution by the HSE) v Shrewsbury and Telford NHS Trust [2017]
- R v Southern Health NHS Foundation Trust 2018 citation
- R v Sellafield 2014 EWCA Crim 49
- R v Milford Haven Port Authority (the Sea Empress) 2000

In relation to the sentencing of corporate entities and public bodies, the general principles from those cases seem to this Court to be equally applicable in Guernsey. We will also, as previously, take guidance from the principles and approach contained in the English Sentencing Council Guidelines, which were based on the Howe case. The specific guideline to which we have referred is Organisations: Breach of duty of employer towards employees and non-employees/ Breach of duty of self-employed to others/ Breach of Health and Safety regulations effective from 01 February 2016. In particular, this Court finds of assistance the factors used to identify the level of culpability and harm, in other words, the seriousness of the offence, and the aggravating and mitigating factors from those guidelines. Care must always be taken in referring to the English Sentencing Guidelines as the underlying conditions and policies are not the same as in Guernsey. We will not slavishly follow guidelines which have been designed for use in a different jurisdiction. It has long been acknowledged by the Guernsey Court of Appeal that this Court is correct to sentence on Guernsey considerations. The basic principles of setting fines apply – that the fine must reflect the seriousness of the offence and the Court must take into account the offender's financial and other circumstances.

It is important to be clear that Health and Safety requirements are concerned with risk to health and safety, any actual harm is an aggravating factor. The duty not to expose employees and others to a risk to health and safety is one of strict liability qualified by the words "so far as is reasonably practicable".

It is said in Howe that the sentencing of corporate entities is fact specific. It has the aim of punishing that entity but also of deterring others in the same line of work to ensure the safety of employees and others exposed to risks in similar operations. In calculating the right level of penalty, this Court will look at the consequences of the offending and how far short of the appropriate standards the organisations fell in failing to meet the reasonably practicable test. The financial penalty must have a real economic impact on the company being sentenced but should (in most cases) not have such an impact as to imperil the earnings of employees or cause bankruptcy. In the case of a company, the aim is to bring home the importance of safety to the members, directors and shareholders. In the case of a public body there are no members, shareholders or directors but the message is no less important.

The Court has read and heard extensively about the operation of unloading a vessel, the applicable standards both in terms of the industry as a whole and the standards which the Board and Company had

set for themselves and what the Prosecution and both Defendants have said amounts to the breach of duty or failings which are material in this case.

We were provided with a wealth of documents including UK Industry standard documentation, which was readily available to both Defendants, and the Defendants' own documents, all of which highlight the dangers of cranes working above operatives, especially if they are not visible and the need for a clear system of work, specific risk assessments, supervision and clear communications with the crane driver, whether via a hatchment or otherwise.

We will refer specifically to only two of those documents:

- Tab 10 the April 2024 assessment of the Company which recognised that the risk to operatives of crushing or impact with grabbers was high and listed control measures; and
- Tab 9 the specific risk assessment document as to the unloading of sand with cranes created by the Board after the event in which it is acknowledged that there was a risk of death.

Both defendants have accepted full responsibility for the incident, this is not a case in which there has been any deliberate breach of regulations or guidance and no concerns have been raised about the working practices previously. Steps were taken to change working practices immediately after the incident with the Board exercising its power to issue the Prohibition Notice and the Company voluntarily changing its practices.

The Court is satisfied that the Board and the Company failed in their duties both generally and specifically in the following respects:

1. a failure to have in place an individual safe system of work to manage the unloading operation for each of the Defendants and specifically to manage the risks in this operation;
2. a failure collectively to manage effectively what was a joint operation;
3. specifically the failure to identify a single person in charge of the operation;
4. permitting the crane driver to operate the crane above operatives who were not within the crane driver's sight and/or permitting him to lower the grab into the area where those operatives were working, without any visibility;
5. the failure to have an effective means of communication between the crane driver and those in the hold, to ensure that the crane was stopped if there were any doubt about the position of operatives, be that via a hatchman or through a more structured communications network involving as many persons as necessary with a clear and planned system for clear line of sight and communication; and
6. inadequate specific risk assessments and an absence of method statements. Such documents as exist are generic, in the case of the States, out of date, and do not address the risks even though they are in some cases identified.

These findings form the factual basis for the assessment of the seriousness of the offending and the appropriate starting point.

We find it helpful to follow the process set out in the English Sentencing Guidelines and so will now consider the issues of culpability and harm.

The first issue to consider is culpability. Advocate Ferbrache for the Company, submits that the culpability level is either medium or low, Advocate Geall for the Board that it is medium. Having considered all the submissions made and considered the matter carefully, we have concluded that the culpability level should be set at medium for both Defendants. Remaining on the process set out in the English Sentencing Guidelines, we now identify an initial harm category by reference to the question

what was the risk of harm created by the offence. We must consider the seriousness of the harm risked and the likelihood of that harm arising. There was considerable discussion during the hearing as to the appropriate level of risk in this case and the relevance of the long period throughout which operations had been undertaken without incident. It could be said that the level of risk is at the highest level, but we are persuaded that the appropriate level of risk of harm in this case is at level B and that the likelihood of harm is medium, which leads to a conclusion, using the English Sentencing Guidelines Table, that the appropriate harm category is 3.

Having set the culpability and harm, the next step in the English Sentencing Guidelines is to establish where the organisations fall in terms of their turnover in order to set the starting point and range of fines in accordance with the table. Whilst it is helpful to follow this step, it is important to note that we are not bound by the table and specifically by the categorisation of organisations and the financial ranges within that table and we sentence on general principles and Guernsey considerations.

### Turnover of the Board

Dealing firstly with the turnover of the Board, it is to be noted that, in England, when sentencing a corporate body which is, in effect, part of and funded by “the State”, the financial status of the “parent” organisation can be taken into account at this stage. Further, later in the exercise there is consideration of the wider impact of any financial penalty on such an organisation.

In England, when sentencing public bodies, reference is made to the Annual Revenue Budget rather than budget. We have helpfully been provided with this for the Board together with an explanatory letter. The headline is that Guernsey Ports is running at a deficit £4.9m in 2023 and an anticipated deficit of £2.6m in 2024 and it has required funding from General Revenue and a loan from Policy & Resources for its continued operation of what is an essential service. It must also be acknowledged that any fine payable in this case will find its way back into General Revenue so there is a circularity to any financial penalty. We note that the average turnover of the Ports accounts (rather than the Board’s accounts) is £10.1 million. Taking into account all of the relevant considerations, we take £80,000 as being the appropriate starting point in this case.

### Turnover of the Company

From the documents provided, the turnover has been increasing in the last 3 years to reach £1.4m (draft accounts only) in 2024 although it is said that a down turn is expected in 2025. On the English Sentencing Guidelines, Advocate Ferbrache submitted that this would place the Company into the micro-organisation category. Having considered everything that was submitted to us and carefully considered the accounts, in our judgment, the appropriate starting point for this organisation is one of £40,000.

### Aggravating and Mitigating Factors

Aggravating and mitigating factors have, again, has been informed by those points which are contained in the English Sentencing Guidelines. We consider that the following aggravating and mitigating factors apply:

- there are previous convictions in this case. In particular, both Defendants have the conviction from 2012 resulting from an accident in which a stevedore was injured, albeit in different circumstances; and
- the actual serious harm which was caused to Gary Hewlett in this case

but there are also a number of mitigating factors

- we consider that both organisations generally have good safety records.
- there is an absence of other aggravating factors as set out by counsel .

- absence of any issues with training, any issues with equipment.
- there is no evidence of any cost-cutting or of a culture where health and safety was considered unimportant.

We also take account of the fact that both Defendants have taken full responsibility for the incident and are voluntarily committed to ensuring that risks would be properly identified and addressed in future operations. It is accepted that the Defendants fully co-operated with the investigation by the Health and Safety Executive.

Having considered the aggravating and mitigating factors in the round, we take the view that the mitigating factors outweigh the aggravating factors and this will be reflected later in the sentencing exercise. The starting points remain as above.

Following the format in the English Sentencing Guidelines, the next step is to review the fine, based on the turnover and taking into account the wider issues, the aims of sentencing in such cases, the offender's financial circumstances and the impact of fines on those organisations, staff, service users and the wider economy. In our judgment, it is important to focus on the principles of sentencing organisations, the importance of protecting others, of setting fines which are at a level which have a real economic impact to bring home to the offender the importance of complying with health and safety requirements. The final fine, as with any sentence, should be proportionate.

In considering the wider impact of the fine, it is always necessary to look at the circumstances and profitability of each organisation and we have considered the financial impact of the fine on both organisations, taking into account the financial circumstances and, in the case of the Company particularly, its profitability.

### Sentencing Public Bodies

A public body owes no lesser duties than any other Defendant, but the Court should be alert to the risk that a fine payable by a public body might harm the public. It might be said that fining the States of Guernsey is a pointless circulation of public funds, but, as was noted by Mr Justice Haddon-Cave in paragraph 86 of R (on prosecution by the Health and Safety Executive) v Shrewsbury and Telford NHS Trust [2017], the answer lies in accountability. Health and Safety legislation applies to public bodies as it does to private organisations and public bodies must be held equally accountable and punished for breaches. Accountability is the reciprocal of responsibility. That said, under English sentencing principles, it is said that a fine on a public body should normally be reduced if it would have a significant impact on the provision of services to the public. The onus of proving such an impact lies on that public body. Advocate Geall submitted that the financial position of Guernsey Ports is "dire" and emphasised its reliance on the Guernsey tax payer to make up its annual and significant operational deficits and he helpfully produced the authorities to which reference was made above as to the approach in England. It is important to consider who will ultimately bear the burden of any fine and what impact that might have on the provision of services at the Harbours and more widely by the Board. This does not detract from the need to mark the offence. Public bodies must remain accountable. The fine in this case will not cause such an impact as to justify any significant reduction.

### **Mitigation**

#### Plea

The Board and Company are entitled to full credit for their respective guilty pleas.

#### General Mitigation

As already stated, we consider that there is significant mitigation on behalf of the Defendants which has already been set out and which justifies a reduction in the fines payable.

## **Sentence**

The purpose of Health and Safety Regulations is to protect employees and others (including the public) from harm from hazardous operations. It is important that those in charge of such operations can see the consequences of breach. Fines must always be proportionate to the circumstances of the offence and the offender.

Taking into account everything that has been said, the fines will be as follows:

- For the Company, the sum of £22,000
- For the Board, the sum of £40,000

payable within 7 days.

The Court has considered the issue of compensation and agrees that this is not an appropriate case for any compensation order from this Court. We wish to send Mr Hewlett our best wishes for his continued recovery.

**Catherine Maureen Fooks**  
**Judge of the Royal Court**

**29 April 2025**