

Compass Chambers



Health and Safety Crime Update

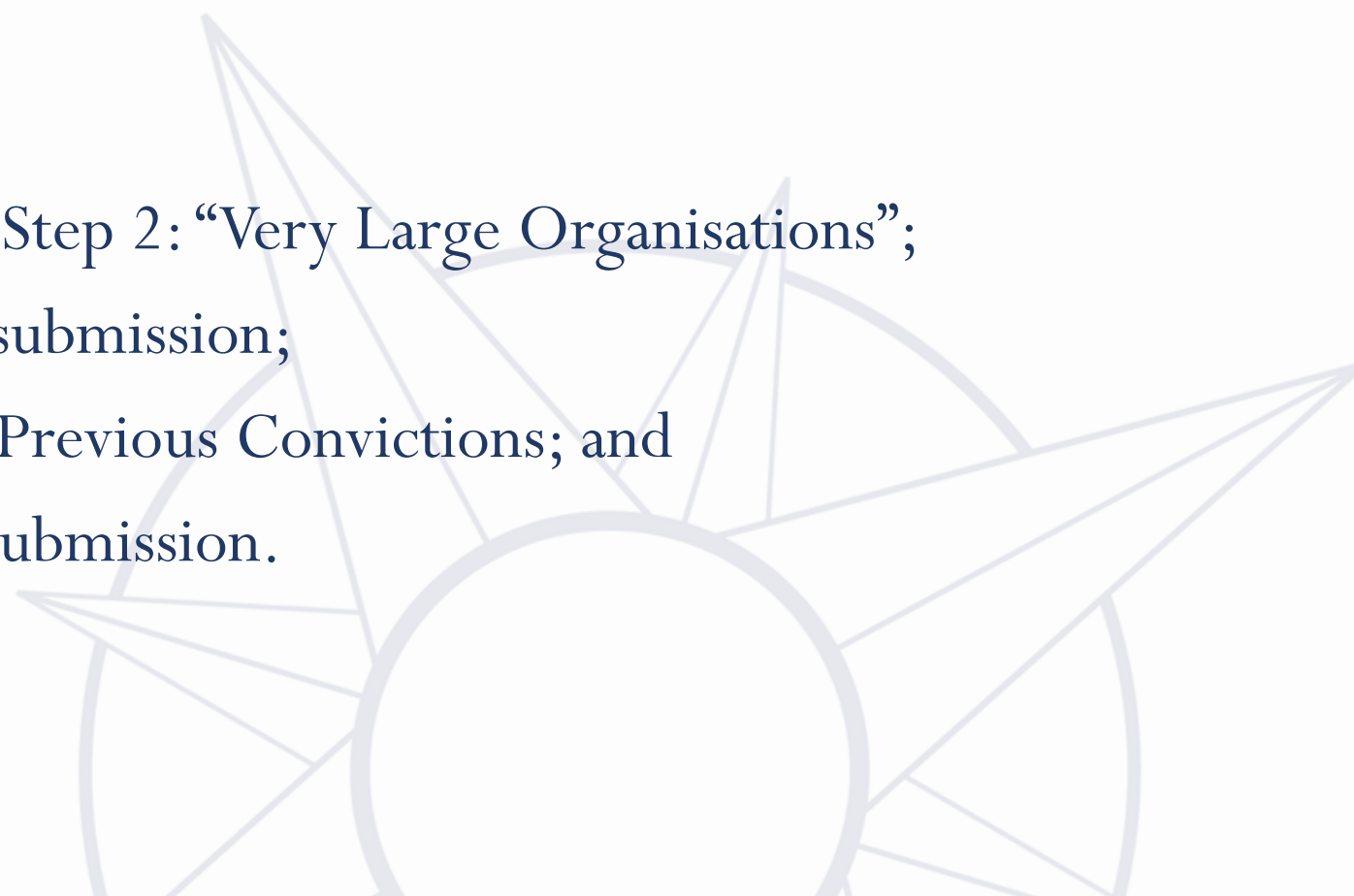
Peter Gray KC

21 November 2025



The H & S Sentencing Guidelines: 10 Years On

- Consider 4 Aspects:
 - Amendment in July 2025 to Step 2: “Very Large Organisations”;
 - Step 1: “likelihood of harm” submission;
 - Step 2: Aggravating Factors: Previous Convictions; and
 - Step 3: the Proportionality Submission.





“Very Large Organisation” (1)

- “Where an offending company’s turnover very greatly exceeds the threshold for large companies, courts should **consider fines outside the range** for large companies to achieve a proportionate sentence”.
- “There is no precise level of turnover at which an organisation becomes “very large”...it will be obvious...”.
- Scottish Guidance: *Scottish Power Generation Ltd v HMA (2016) HCJAC 99*.



Scottish Power Generation Ltd v HMA (2016)

- Basis of Appeal: Sentencing Guidelines 2015 should not be adopted.
- One of submissions: virtually no guidance on the nature of any uplift for VLO.
- "Pejorative terms" – "somewhat startling submission" – "bordering on the ridiculous"
- Appeal Court had no hesitation in adopting Guidelines.
- Approach to VLOs may be of assistance.



Scottish Power Generation Ltd v HMA (2016)

- Approach taken by Court:
- £1.4 billion = VLO
- Approach sentence for VLO by applying guidelines within large organization category.
- Don't do so in a mechanistic way.
- Appears that Sentencing Council has adopted the Scottish approach



“Very Large Organisation” (2)

- “In the case of a VLO the appropriate sentence cannot be reached by merely applying a mathematical formula to the starting points and ranges for large organisations”.
- “...the Court must consider:
- the seriousness of the offence with reference to the culpability and **harm factors** and the **aggravating** and mitigating factors”;



Assessment of the Harm Category

- Harm Factors: 2 Stage Process:
 - Level of Harm;
 - Likelihood of Harm.
- How to assess the likelihood of harm:
 - *R v Squibb Group Ltd (2019) EWCA Crim 227*
 - “The rational approach for a court to adopt is to rely on the best evidence it has”. Per Leggatt LJ at para 46.
 - Consider use of expert evidence. Consider use of available statistics.



Aggravating Factors: previous Convictions and Bad Safety Record

- Previous Convictions: When are they an aggravating factor? Relevant and Recent?
- *“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”*
- “When considering the number and frequency of previous convictions it may be relevant to consider the size of the offending organization. For example, a large organization with multiple sites may be more likely to have previous convictions than a smaller organization with only one site”.
- Tie in with submission on safety record – Lost Time Injury Rate



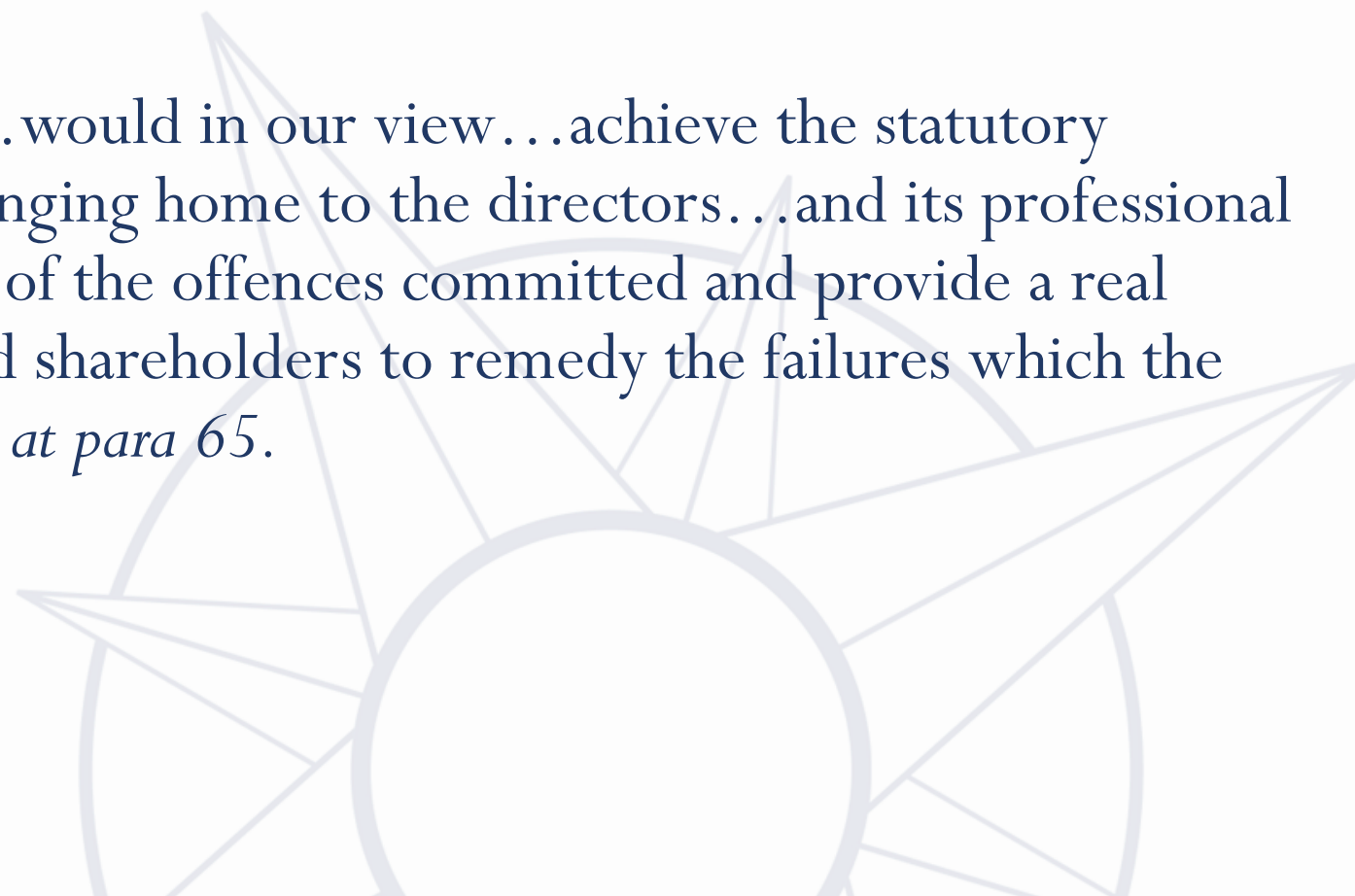
“Very Large Organisation” (3)

- The Court must consider:
- “the purposes of sentencing including punishment and deterrence, and the financial circumstances of the offending organisation”.
- “Particular regard should be had to making the fine proportionate to the means of the organization, sufficiently large to constitute appropriate punishment **depending on the seriousness of the offence**, and sufficient to **bring home to the management and shareholders** the need for regulatory compliance”.



R v Sellafield Limited, R v Network Rail Infrastructure Limited (2014) EWCA Crim 49

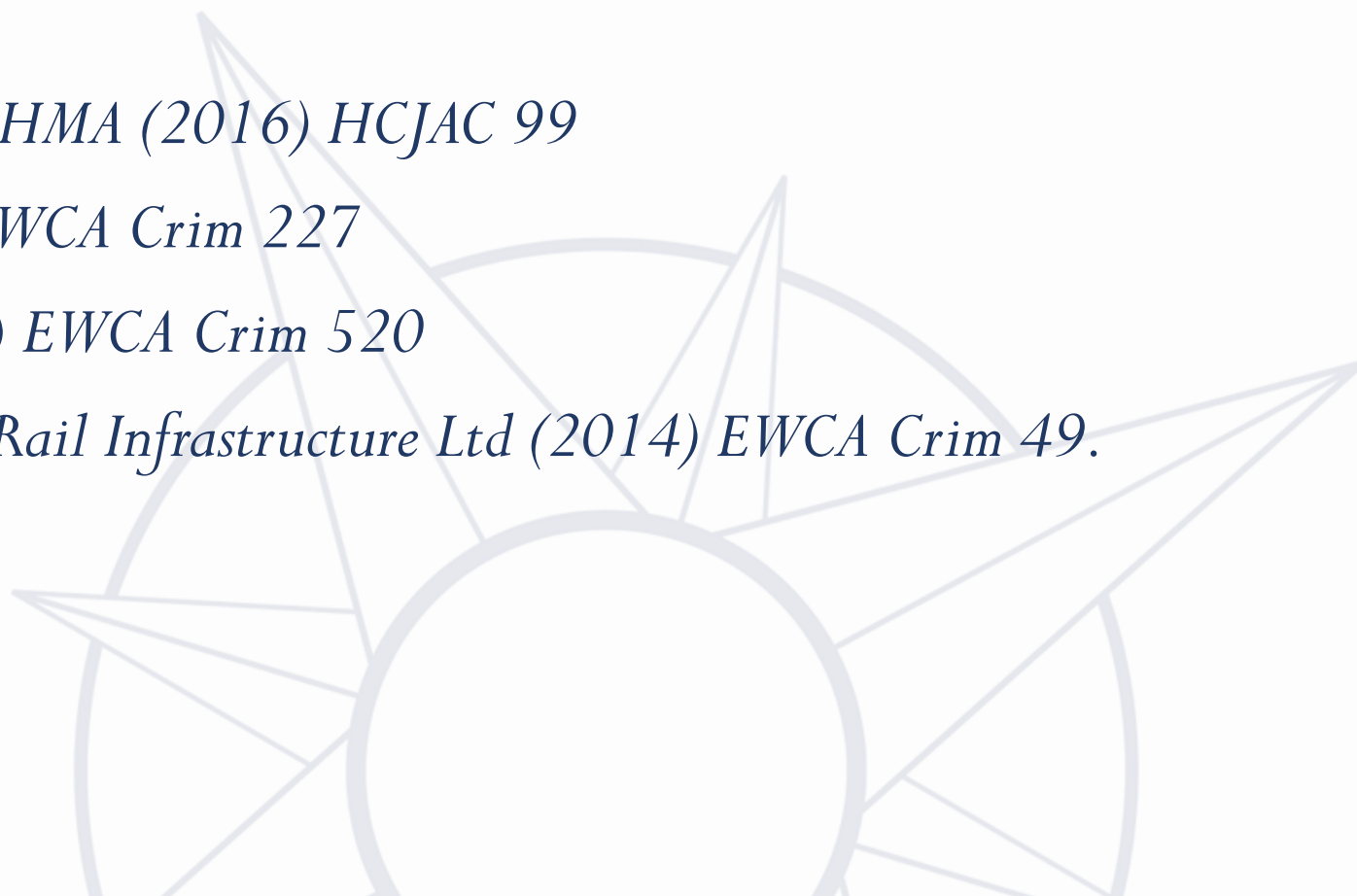
- “A fine of the size imposed...would in our view...achieve the statutory purpose of sentencing by bringing home to the directors...and its professional shareholders the seriousness of the offences committed and provide a real incentive to the directors and shareholders to remedy the failures which the judge found existed”. *Per LCJ at para 65.*





List of Authorities

- *Scottish Power Generation Ltd v HMA (2016) HCJAC 99*
- *R v Squibb Group Ltd (2019) EWCA Crim 227*
- *Faltec Europe Ltd v HSE (2019) EWCA Crim 520*
- *R v Sellafield Ltd, R v Network Rail Infrastructure Ltd (2014) EWCA Crim 49.*



Compass Chambers



Parliament House

Edinburgh

EH1 1RF

DX 549302, Edinburgh 36

LP 3, Edinburgh 10

www.compasschambers.com

Peter Gray KC

peter.gray@compasschambers.com

Gavin Herd

Practice Manager

Phone: 0131 260 5648

Fax: 0131 225 3642

gavin.herd@compasschambers.com