



## R v Faltec Europe Ltd

### Court of Appeal Guidance

Faltec Europe Ltd was prosecuted for three offences under sections 2 and sections 3 of the Health and Safety at Work etc. Act 1974, leading to a sentence of £1.6 million in total. Two of the three offences related to two separate legionella outbreaks.

The Court of Appeal ruled that it is for the prosecution to satisfy a sentencing Judge as to the likelihood of harm arising in a particular case to the criminal standard of proof and that assessment will often involve the Judge considering scientific evidence, following the principle in Squibb "It is a scientific question which should be answered, if possible, with the assistance of scientific evidence."

Separately, the Court of Appeal commented that the Court should not have referred to the provision of £1.6 million against potential fine within Faltec's accounts as this may have the unintended effect of discouraging companies from reserving sufficient funds in the event of a likely prosecution. It was also considered as a matter of general application that the resources of a linked organisation should not be taken into immediate account in the sentencing exercise - the starting point is the resource of the actual Defendant, from which additional consideration can exceptionally be given - not that the starting point for a fine is the combined resource of the Defendant and a linked organisation.

#### For more information, please contact:



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