

Corporate Manslaughter: Management Briefing

What is corporate manslaughter?

Corporate Manslaughter (known as Corporate Homicide in Scotland) is an offence committed by a Company or other organisation (including Government Departments and public sector organisations including the police and prison service) where the organisation owes a duty of care to an individual (such as an employee or member of the public) and falls far short of the standard that can reasonably be expected, resulting in the death of the individual. In order for an organisation to be prosecuted, a substantial element of the breach of the duty of care has to be due to the way matters are managed or organised by the senior management of the organisation.

The offence was introduced by the Corporate Manslaughter and Corporate Homicide Act 2007 and replaced the previous common law offence of manslaughter for a corporate organisation.

The offence carries a penalty of an unlimited fine, and Courts have the power to make a publicity order requiring details of the offence to be publicised. Courts can also order remedial action.

The Sentencing Guidelines Council has issued a revised Guideline in November 2015 on fines for these offences in which, for larger organisations, with a high level of culpability, indicate that a fine in the range of £4.8m to £20m with a typical starting point of £7.5m would be appropriate. The Guideline takes effect for sentences passed from 1st February 2016 irrespective of when the offence took place. This represents a substantial increase on fines which have been imposed to date under existing guidelines.

Can individual managers and directors be prosecuted under the Act?

No, as the Act only introduces a corporate offence. However, the common law offence of manslaughter still exists and directors can and have been prosecuted personally for manslaughter where their gross negligence has led to a workplace death. In addition, offences under health and safety legislation can be tried alongside manslaughter offences and, therefore, directors and managers responsible for the corporate failure could be prosecuted personally under health and safety legislation for their consent, connivance or neglect in relation to corporate offences.

Case Law

The first company to be prosecuted under the Act was Cotswold Geotechnical Holdings Ltd, a company that only employed eight staff and had a turnover of approximately £250,000, following the death of an employee in an unsupported excavation. A fine of £385,000 payable over ten years was imposed. A personal prosecution of the managing director for common law manslaughter was also brought but dropped on the grounds of his ill health. Several other prosecutions have followed, all of relatively small companies.

The latest fine imposed to date was following the prosecution of Lion Steel (a company with less than 150 employees) relating to an employee falling through a fragile roof at the Company's factory. A fine of £480,000 was imposed. In several of the cases so far initiated (all of small companies), personal prosecutions for gross negligence manslaughter have been initiated against directors or senior managers of the organisation concerned.

In one recent case a Director was also personally prosecuted under the provisions of the Health and Safety at Work etc. Act 1974 and fined £183,000. He was also banned from being a director of any company for five years.

Legal duties

- The Corporate Manslaughter and Corporate Homicide Act 2007.

Is there a need for wider insurance cover?

It is not possible to insure against a criminal penalty, however, it is possible to insure against the legal costs of defending actions and corporate legal expenses insurances and directors and officers insurance will normally provide such cover.

Are policies and procedures important?

Yes but having adequate policies and procedures without rigorous monitoring and consistent application will not be sufficient. One of the items that a Jury can consider when a case is tried is whether there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged the failure or to have produced tolerance of it. Therefore, the health and safety culture and leadership in the organisation is critical to ensure good health and safety practice.

Recommendations for directors:

- ensure that you have a clear policy, a documented safety management system and clear and effective monitoring supported by employee and management training
- as with the above, ensure that all accidents and near misses are documented and reviewed and ensure corrective measures are taken so that lessons are learnt
- ensure there is formal Board review of health and safety standards and this is documented
- consider the HSE/IOD guidance at Board level and ensure compliance with the key elements
- have a rigorous system of independent health and safety audit and follow through on the actions identified in a timely and efficient manner
- ensure that significant risk issues are reviewed and corrective action is taken
- ensure that each member of the Board has been adequately trained in their legal responsibilities for health and safety
- ensure that management performance measures include health and safety requirements and there is a clear Board expectation of managers meeting required Health and Safety Standards
- ensure that the Board and the Company or Organisation have access to competent and qualified health and safety advice
- ensure that where efforts are being made to create a positive health and safety culture, these are documented or formalised in some way.

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