

## 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.

Sentencing guidelines have been issued and the normal expectation is that fines may range into the millions of pounds, and will rarely be less than £500,000. In some cases, the scale of the fines may be such as to put an organisation out of business.

## 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.

## 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.

## 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 largest 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. The CPS reported that it opened 63 cases of Corporate Manslaughter in 2012, a 40% increase in those opened in 2011. Many more cases are therefore likely to be brought before the courts.

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## 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.

## Legal duties

- The Corporate Manslaughter and Corporate Homicide Act 2007.

## Other relevant Barbour resources

### Barbour Technical Guide on Corporate Penalties

- Barbour Technical Guide on Corporate Manslaughter.

## Other publications

- The HSE/IOD Guide - Leading Health and Safety at Work INDG417 2013.

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