



CORPORATE MANSLAUGHTER

History:

Over the last two decades trades unions have been at the forefront of demands for a change in the law relating to corporate killing. The deaths of workers and members of the public in a number of major public tragedies has re-awakened public interest in the issue of corporate accountability and led to demands for a new law of corporate manslaughter.

Amongst the disasters were the loss of 187 lives when the Herald of Free Enterprise capsized in 1987, 31 deaths due to the Kings Cross fire, and also in 1987, 167 deaths in the Piper Alpha oil platform disaster.

Since then, there have been further disasters involving the Marchioness pleasure boat sinking when 51 people died and major train crashes at Hatfield, Clapham, Paddington and Potters Bar.

In addition, since 1997 some 2,000 workers have died in workplace accidents and tens of thousands have been involved in accidents resulting in serious injury.

In 1996 the Law Commission recommended the reform of the law by proposing the creation of a special offence of Corporate Killing.

This recommendation was incorporated into the Labour Party Manifesto in 1997 with the new Home Secretary Jack Straw promising that those who caused the death of innocent people through criminal negligence should be made to pay. This led to a further Home Office Consultation with the publication of government proposals *Reforming the Law on Involuntary Manslaughter* in May 2000.

In the 2001 general election the Labour Party Manifesto again committed the government to reforming the law.

“Law reform is necessary to make provisions against corporate manslaughter.”

In April 2000 Andrew Dismore MP introduced a Ten Minute Rule Bill to create an offence of corporate killing for companies and company officers. Without government support the Bill was unable to proceed. However, during the debate the Minister for Police and Crime Charles Clarke outlined the government's commitment to introducing new legislation

This was reiterated again in June 2001 by Keith Bradley minister for Criminal Justice Sentencing and Law Reform:

“The government remains committed to the introduction of an offence of corporate killing. We will honour our manifesto commitment to reform the law to make provisions against corporate manslaughter. We intend to publish final proposals for the reform of the law on involuntary manslaughter as soon as we have completed consideration of the responses to the consultation exercise. We are determined to bring forward clear and workable legislation that will hold undertakings to account for serious wrong doing and we will legislate when parliamentary time allows.”

Further attempts were made to introduce an offence of corporate manslaughter by amending the Criminal Justice Bill in 2002/2003. This prompted the Home Secretary to again reiterate his commitment to bringing forward a bill. However there was no commitment to a timetable.

In January 2005 there was another unsuccessful attempt at legislation via a private member's bill brought with the support of the TGWU by Stephen Hepburn MP on the issue of directors duties.

However in March 2005 the government at long last introduced a draft Corporate Manslaughter bill. Unfortunately the bill now falls because of the general election. If Labour wins the election it is likely to be resurrected.

The purpose of this briefing is to provide a summary of events so far together with relevant supporting documents, to provide an analysis of the draft bill and to identify areas where amendment is necessary or desirable in order to make the legislation effective.

Statistics:

In the past five years to 2003/4 there have been 2157 deaths at work. On average there are approximately 240 workplace deaths per annum. Despite these figures only 11 directors have ever been convicted of manslaughter. Five of the directors were sentenced to imprisonment and another five had a suspended sentence. One was given a community service order.

During the period 2003/4 there were 159, 809 accidents which did not result in death but which resulted in injury.

Each year around 11,000 enforcement notices are issued. The number of prosecutions is around 1,000 per annum.

The average fine, including fines over £100,000, is currently approximately £13,000.

Each year there are many hundreds of accidents which narrowly avoid death but which often result in severe disabling injury.

The Proposed Legislation:

The draft corporate manslaughter bill is aimed at organisations namely corporations and certain government departments.

The penalty for conviction of the offence of manslaughter is an unlimited fine.

Proceedings can only be brought by the Director of Public Prosecution.

Individuals are exempt from the legislation.

An organisation is guilty of the offence of corporate manslaughter if the way its activities are managed or organised by its senior managers results in a person's death due to a gross breach of its duty of care.

It is a gross breach if the conduct of the organisation falls far below the standard reasonably expected of it.

In considering whether there is a gross breach, a jury will have to consider the seriousness of the breach, and

- what the senior managers knew or ought to have known with regard to complying with legislation or guidance;
- whether they were aware or ought to have been aware of the risk of death or serious harm;
- whether they sought to cause the organisation to profit from the organisation's failure.

The court will have the power to order the organisation, if convicted, to remedy the breach.

A senior manager is one who plays a significant role in the decisions as to how the organisation's activities or a substantial part of them are to be managed or who actually manages those activities or a substantial part of them.

Crown bodies including government departments that are listed in the schedule attached to the bill will be capable of prosecution for the first time.

ANALYSIS OF THE DRAFT BILL

Positive points:

- ❑ **The government has at long last honored its commitment to bring forward a corporate manslaughter bill.**

It has taken the government almost 8 years to bring forward this legislation. The fact that it is a draft bill provides an opportunity for consultation and amendment.

- ❑ **The bill introduces a charge of corporate manslaughter for the first time, which can be brought against senior managers.**

For the first time it will be possible to have companies charged with a specific charge of manslaughter because of the failings by the company of senior management.

- ❑ **The court will be given powers to order convicted organisations to take remedial steps.**

This will be an additional weapon in the courts' armoury. Where there are remedial steps that need to be taken which led to the death, the court can order remedial action be taken. Failure to comply will presumably be a contempt of court.

- ❑ **Crown immunity is abolished for many government bodies and agencies.**

This has been a long standing anachronism. Industry has felt aggrieved for many years that they were subject to laws to which government bodies were exempted. This has long been a feudal inheritance long overdue for abolition.

Negative Points:

- ❑ **The legislation is minimalist.**

The bill provides the bare minimum to justify calling it a corporate manslaughter bill. It creates the offence only. It appears to make no pretence at being legislation whose purpose is to provide a comprehensive framework within which deaths and serious injuries at work can be prevented or deterred.

- ❑ **It doesn't introduce any greater penalties than could already be imposed under existing legislation for lesser offences.**

Companies committed to crown court for offences under the Health and Safety at Work Act 1974 are already subject to unlimited fines. There is legal precedent for the level of fines which should be imposed. There is no directive within the legislation to require a higher level of fine for convictions for corporate manslaughter than for criminal breaches under the Health and Safety at Work Act. Consequently companies convicted of corporate manslaughter may find that they are fined at the same level as before. Existing fines are grossly inadequate. This will undermine the deterrent effect of the legislation.

The power of the court to order remedial action is little different to the powers of the Health and Safety Executive who issue some 11,000 enforcement notices each year. It is difficult to see what real difference this power will make other than the remote possibility of companies being brought back to the court by the DPP for contempt of court.

❑ **It doesn't impose any specific health and safety obligations or duties on company directors.**

The Directors' Duties Bill brought by Stephen Hepburn MP sought to impose important duties on company directors. Firstly it required the appointment of one of its directors as a health and safety director. It then proposed a duty on directors to take all reasonable steps to comply with its various health and safety obligations and also to take account of information and advice provided by the health and safety director.

Importantly, the bill set out clearly the duties of the health and safety director. They would be required to assess the activities of the company and how the activities affected the health and safety of its employees and to consider the safety measures in place and their effectiveness.

The health and safety director was then charged with reporting to the Board of Directors on safety issues, measures, performance, statistics and to make proposals on safety which the board would have to consider.

The bill also required the company to make available to the health and safety director the necessary information and resources to do his job.

These proposals are an essential part of any corporate manslaughter legislation if it is to be effective.

❑ **The definition of senior managers is confusing and restrictive.**

For an organisation to be charged and convicted it is necessary to prove that its activities caused death, that there was a gross breach of duty and that this was caused by the activities of a senior manager who played a significant role in the decisions or management of the activities of the company which led to the death. In larger companies where there is a complex management structure or, for example on construction sites where there may be a number of companies to whom work is subcontracted, it may be no easier to bring a charge of corporate manslaughter than it is at present.

❑ **The focus on senior managers is too narrow.**

The term senior managers is narrow and confusing. Who is a senior manager? The definition is unclear and very restrictive. There are likely to be managers who have an important role in the carrying out of activities and the implementation who are not categorised as senior managers. If their acts or omissions result in a death the company still won't be able to be prosecuted. Just as often happens at present, senior management may turn a blind eye to failures lower down the chain of command. Consequently, many organisations may unjustifiably escape prosecution.

❑ **The criteria for determining a gross breach is confusing and restrictive.**

The definition is sufficiently clear. However, the questions to be put to the jury will make it difficult to convict. For a jury to convict they will have to be certain that:

- *senior managers knew or ought to have known that the organisation was failing to comply with legislation or guidance*
- *were aware or ought to have been aware of the risk of death or serious harm posed by the failure to comply*
- *sought to cause the organisation to profit from that failure.*

Where there is a complex management structure, or a multi site operation or a site with a number of subcontracted companies operating this will be difficult. Why should it be necessary to show the senior managers sought to cause their organisation to profit from the failure? This will be difficult to prove and confusing. Presumably profit can amount to more than financial profit. However, this is not clear. Surely all that should be required is that the organisation be in breach of its health and safety obligations, that the breach in the whole be a gross breach, the consequence of which was death or serious harm. The limitation of these obligations to senior managers is a significant weakness in the legislation.

❑ **The bill fails to consider other more imaginative forms of penalty which could be imposed.**

The bill only provides two sanctions. One is an unlimited fine. The other is a remedial order. There are already unlimited fines for lesser offences. There may be no difference in fine for offences of corporate manslaughter than there are for breaches under the Health and Safety at Work Act 1974 and the Health and Safety Executive already have the power to make remedial orders.

Consideration should be given to significantly expanding the armory of penalties available to the court:

- *requiring fines to be commensurate with the offence and significantly higher than for convictions under the 1974 Act*
- *linking fines with profitability of the company*
- *retaining the option of imprisonment*
- *disqualification of directors*
- *probation orders*
- *punitive awards of compensation to be paid by the company to the families of the deceased worker.*

The current level of fines are grossly inadequate and have little if any deterrent effect. It is often more cost effective to ignore safety obligations and to pay a fine. Consequently, some organisations do profit, directly or indirectly from their failure to implement safety obligations.

Fines should be significantly increased for corporate manslaughter and the legislation should specifically require this.

Consideration should be given to fines which are linked to the profitability of the company. For example a company could be ordered to pay 10% of its profits for the next three years with a minimum amount being specified. This would have the effect of creating a significant deterrent but would also require directors to have to explain to their shareholders why profits and dividends were being adversely affected due to the company's failure to implement its safety obligations.

Directors of companies with poor safety compliance should not be allowed to be directors.

Consideration should be given to giving the court the power to make probation orders against organisations. A company could therefore be put on probation, and required to ensure it is compliant with its safety obligations and its operation in accordance with those obligations. The Health and Safety Executive could be given the role of "probation officer" and required to report back to the court periodically for the duration of the order.

Consideration should be given to giving the courts power to award punitive damages to be paid by the court to the victims family. The level of damages could be determined by the Jury as is the case currently with claims against the police. This would be in addition to any civil damages entitlement the family might have. All too often the victims of a fatal accident are the surviving family. Punitive damages is not only a deterrent it is also a way of providing some justice to the victim's family who are all too often forgotten.

Conclusions:

The main objective of any legislation such as the corporate manslaughter bill must be to achieve some degree of change in behaviour which will result in a reduction in the number of deaths and serious injuries at work.

It can seek to achieve this by making companies and their directors accountable for their actions. Encouragement and self regulation have had some effect in the past but on their own are clearly inadequate. Many companies do take their safety obligations seriously and continually work with trades unions to improve safety. This legislation is primarily aimed at those who do not.

Consequently the bill has to have regard to all the different aspects of a company's activities that it is seeking to effect in order to achieve those objectives. That must include the role of the directors of companies, accountability for breaches of safety at every level, not just senior managers, and a proper range of penalties which will have proper impact on the company and if necessary provide a significant deterrent.

The bill as it stands is unimpressive. It is unlikely to have any significant impact on health and safety compliance or on the number of accidents and deaths at work.

However, with significant amendment it has the capacity to be an important and effective piece of legislation

It will be necessary to ensure the bill is resurrected after the general election and that the consultation and lobbying process is used to ensure the bill is substantially amended.

For further information and background documents contact Mick Antoniwi on 029 2044 5339.