

Corporate Manslaughter 2004



An ACES / FPS Report

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INTRODUCTION

Until very recently it was rare for a corporation and/or its directors or senior managers to be charged with corporate manslaughter. However the situation has now been brought into the spotlight as a result of the case involving Barrow-in-Furness Borough Council. The media reports that both a council manager and the council itself have been charged with seven counts of manslaughter and also offences under the Health and Safety at Work Act 1974 following an outbreak of Legionnaires Disease.

Given the potential ramifications, Malcolm Williams, Head of Property Services at Worcestershire County Council felt the issue was one of major topicality and asked if his Council's Legal Services people could arrange a briefing note on the law. The rest of the article reflects the briefing by Legal Services colleague Brenda Loughrey.

MANSLAUGHTER

There is no separate crime of "**corporate** manslaughter": an offence of "corporate killing" has been proposed but is not yet law. Manslaughter is a crime which can be committed by an individual or a company (including a Council) in relation, for example, to a work-related death. The test of whether a company or council is guilty of manslaughter or not is intrinsically linked to whether or not a director or senior manager of the company (a "controlling mind and will" of the company) is guilty of manslaughter. If the director/manager is found guilty, the company is guilty; if the director/manager is found innocent, the company is innocent. This is known as the "identification principle".

The type of manslaughter which may generally affect employees is that of involuntary manslaughter. There are two main categories of killing which come under this criterion:

- Killing by an unlawful act likely to cause bodily harm (not likely to affect an employee in the course of their employment) and
- Killing grossly negligently

MANSLAUGHTER BY GROSS NEGLIGENCE

There is no precise definition of gross negligence. However there has been much debate over the years, and most recently Lord Mackay in the case of *Adomako* [1995] 1AC 171 at 187 set out what he regarded as the essentials of gross negligence:

".....in my opinion the ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died. If such a breach of duty is established the next question is whether that breach of duty caused the death of the victim. If so, the jury must go on to consider whether that breach of duty should be characterised as gross negligence and therefore as a crime. This will depend on the seriousness of the breach of duty by the defendant in all the circumstances in which the defendant was placed when it occurred....."

....The essence of the matter which is supremely a jury question is whether, having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission.

In general a person is guilty of manslaughter if death is caused by his or her criminally negligent act or omission. The sentence, if convicted, can be up to life imprisonment for an individual. A company or council could face an unlimited fine if convicted.

CAN A COUNCIL BE PROSECUTED?

In Attorney General's Reference No. 2/1999 it was held that the identification principle remains the only basis in common law for corporate liability for gross negligence manslaughter. Thus, if there is insufficient evidence to convict the "controlling mind and will" of the company or council, then the company or council itself cannot be liable for manslaughter.



WHO IS THE "CONTROLLING MIND AND WILL"?

Again this area is not clearly defined. It has been said to mean those people who carry out the functions of management and speak and act as the company. Alternatively another definition has been given as a person

" who is in actual control of the operations of a company or of part of them and who is not responsible to another person in the company for the manner in which he discharges his duties in the sense of being under his orders'.

To be convicted of manslaughter it would need to be proved that the employee's acts were grossly negligent. In order to fulfil the "identification principle" to commit a council, it would then need to be shown that the same employee was the "controlling mind" of the company.

Prior to the Barrow case, there have only ever been two large companies which have been prosecuted for manslaughter - and both prosecutions failed. The P&O (Zeebrugge) case failed because there was insufficient evidence to show that any director or senior manager was grossly negligent in carrying out their duties. The Great Western Railways case failed because the CPS tried to prosecute the company without prosecuting any individual. There have been a limited number of small companies which have been convicted.

On the basis of the above, one needs to show clearly that the director or a senior manager was grossly negligent in the carrying out of their duties in order for the Council to be equally criminally liable. One needs to look again to the test set out in Adomako. Did the director or senior manager breach the duty of care towards the victim? If the answer is yes then, was that breach so serious as to be considered grossly negligent?

If less senior managers, who are not seen as the "controlling mind" breach a duty of care towards a victim through their grossly negligent actions then they may be personally prosecuted for manslaughter, but in those circumstances the company or council will not be pursued

HEALTH AND SAFETY ATWORK ACT 1974

Under the Health and Safety at Work Act 1974 an employer has a duty to ensure as far as reasonably practicable the health and safety of employees and non-employees. It is an offence under this Act to fail to discharge this duty.

Where an offence is committed by a body corporate which is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, that person as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

If convicted in the Magistrates Court the maximum penalty is £20,000. However, if convicted in the Crown Court the fine has no maximum limit.

CONCLUSION

Before any charge of manslaughter could be brought against a council, one would need to identify either a director or a senior manager who had acted in a way which was clearly grossly negligent. The case would need to be proven beyond all reasonable doubt. More junior managers, if they have acted in a grossly negligent manner could be prosecuted for manslaughter even though they are not the controlling mind of the company or council.

It has been difficult to prove the gross negligence test in previous cases and therefore the outcome of the Barrow case may be of great significance to local authorities throughout England and Wales and, if successful, may lead to a greater risk of prosecution of public bodies.

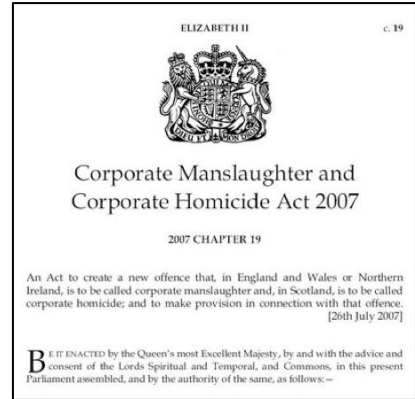
The proposed new offence of "corporate killing" will also prove to be an interesting new area which is likely to have an impact on local authorities. Partly prompted by previous difficulties in securing "corporate" convictions for manslaughter, it is intended that this new offence will make companies accountable in criminal law where they fall far below what can be expected in the circumstances. The suggested penalty is an unlimited fine and an order to correct the original cause of the accident. The proposals are intended to link the negligence of an organisation not to a single individual, but to a management failure by the corporation as a whole. In relation to local authorities it would mean that no longer would it be necessary to identify an individual who is the controlling mind of the company and has acted grossly negligently. If a council's conduct falls far below what is reasonably expected of the corporation in the circumstances then they can be prosecuted.

Brenda Loughrey
Worcestershire County Council

Corporate Manslaughter Act

It became law in April 2008. Since that time no Local Authorities have been prosecuted under the new law although there have been some near misses.

As of February 2015 there are some cases still outstanding and one case has been adjourned for criminal investigations.



Case Law to January 2015

Name	Date	Fine	Persons Convicted	Details
Cotswold Geotechnical Holdings Ltd	Feb 2011	£385,000	Director charged but stayed due to ill health	Worker died when a trench collapsed, company's system did not match the industry standard
JMW farm Ltd	May 2012	£187,500	None	Metal Bin on fork lift truck fell on worker Guilty plea reduced fine by 25%
Lion Steel Equip. Ltd	July 2012	£480,000	Three directors charged, found not guilty	Worker fell through skylight on roof Guilty plea reduced fine by 20%
J Murray & Son Ltd	Oct 2013	£100,000	Director charged but no prosecution	Worker fell into animal feed machine, safety panels had been removed
Princes Sporting Club Ltd	Nov 2013	£134,579 The entire company assets	None	11 year old girl died from injuries after falling from a banana boat ride. Poor attitude to H&S and failure to provide safety equipment
PS & JE Ward	Apr 2014	£50,000 Acquittal of corporate manslaughter	None	Death of worker from electric shock
Mobile Sweepers (Reading) Ltd	Feb 2014	£8,000 Director fined £191,000	Director charged with Gross Negligence	Worker crushed under road sweeping vehicle
MNS Mining Ltd	June 2014	Acquittal		Four workers died in a mine flood
Cavendish Masonry Ltd	Nov 2014	£150,000	None	Worker killed by a slab which fell as a lintol was being lifted into position
Sterecycle (Rotherham) Ltd	Nov 2014	£500,000	None	Worker killed by an explosion in a waste plant
A Diamond and Son Ltd	Dec 2014	£75,000	None	Worker killed operating machinery in a saw mill
Pyranha Mouldings Ltd	Jan 2015	Sentencing not available as yet	None	Worker trapped inside an industrial oven and died In Sept 2013 company fined £50,000 for a H & S Violation
Baldwins Crane Hire	Ongoing		None	Worker killed after a 500 tonne crane ran out of control
Huntley Mount Eng Ltd	Ongoing		Two Directors charged	Apprentice died after getting caught in a metal lathe
G & J Crothers	Ongoing		None	Company charged with Corporate Manslaughter after death of worker
Current active cases	48			

Further Information: <https://www.britsafe.org/sites/default/files//editor/Kevin%20Bridges,%20Pinsent%20Masons.pdf>