



# No hiding <sup>21</sup> place for directors?

**Fact:** In a two year period, 620 British people were killed at their workplace. On average, 28 workers are killed each year in every region of the country and thousands more are being injured. But, Transport and General Workers Union (TGWU) and the Centre for Corporate Accountability (CCA) research reveals very few directors have been convicted for health and safety offences and *not one single director has faced a jail sentence or disqualification* following those convictions!

The TGWU and CCA examined health and safety data between April 2002 and March 2004 and found that:

- 620 people were killed and 60,177 people suffered major injuries at the workplace.
- On average during this period, 56 workers were killed at work in every UK region (28 per year), ranging from 27 deaths in one region to 104 in another.
- Only 23 directors were convicted of health and safety offences; not one of these directors received a sentence of imprisonment.
- The only penalties imposed were fines with the average fine imposed upon convicted directors just £6,463. In some instances fines for injury have been higher than fines for deaths at work.
- Not one single director was disqualified as a result of these deaths and injuries.

**Draft Corporate Manslaughter Bill:** Whilst the Government made it known, in November last, that it really does take the issue of corporate killing very seriously and is committed to reforming the law by introducing a Corporate Manslaughter Bill it has taken some time for HMG to move on this issue. At last however a Draft Bill has been published and there is an opportunity to contribute to the consultations on its content until 12th June of this year.

This Bill will update existing laws on corporate killing and a proposed new criminal offence of 'corporate manslaughter' will apply when someone has been killed because the senior management of a corporation has grossly failed to take reasonable care for the safety of employees or others. This tackles the key problem with the current law: the need to show

that a single individual at the very top of a company is personally guilty of manslaughter before the company can be prosecuted.

The new offence will mean that courts can look at a wider range of management conduct than at present. It focuses responsibility on the working practices of the organisation, as set by senior managers, rather than limiting investigations to questions of individual gross negligence by company bosses and the new offence will be clearly linked to the standards required under existing health and safety laws.

The criminal liability of individual directors will not be affected by the proposals. Corporate manslaughter is an offence committed by organisations rather than individuals and will therefore carry a penalty of an unlimited fine rather than a custodial sentence. The shareholders will bear the brunt of a successful prosecution - which will no doubt help concentrate the minds of those who are answerable to them, the directors!

Ministers have stressed that no new burdens will be placed on companies that already comply with health and safety legislation and that organisations taking a conscientious approach to their current obligations have nothing to fear.

The proposals will apply to Crown bodies, such as Government departments, as well as the wider public sector and industry. They create a broad level playing field between public and private sectors and will apply when both are carrying out similar activities, for example:

- ensuring safe working practices for their employees (e.g. that staff are properly trained and equipment is in a safe condition);

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## 22 No hiding place for directors?

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- maintaining the safety of their premises (e.g. ensuring that lifts are properly maintained and fire precautions taken); and
- when providing goods and services to members of the public, or when operating commercially (e.g. providing transport services, operating care homes or running hospitals).

The Home Secretary said that “This Government is committed to delivering a criminal justice system that commands the confidence of the public. A fundamental part of this is providing offences that are clear and effective. The current laws on corporate manslaughter are neither, as a number of unsuccessful prosecutions over the years stand testament. The Government is committed to reforming this area of the law and today’s draft Bill marks an important step in delivering that commitment.”

Health and Safety Commission Chairman Bill Callaghan said: “The Health and Safety Commission has long been a supporter of a new and effective corporate manslaughter offence. We are very pleased to see the Home Office proposals, and that they reflect HSC thinking, especially with regards to application to the Crown. This adds emphasis to our message that sensible health and safety is a cornerstone of a civilised society.

“Our strong support for the new proposed offence, is based on the fact that we consider it will increase the deterrent effect already offered by existing health and safety penalties.

“Companies that comply with health and safety law have nothing to fear from any new offence. As now, companies will need to manage risks, not eliminate them. This is sensible health and safety.”

The draft legislation is available on the Home Office website at <http://www.homeoffice.gov.uk>

**Scots to get in on the Act as well?** Of course the announced legislation only applies to England and Wales and whilst the Scottish Executive acknowledged back in November 2004 public concern about this potential gap in the law and proposed via consultation the specific offence of ‘corporate homicide’ in an analysis of the consultations, the Scottish Executive Justice Minister, Cathy Jamieson, made it clear that sanctions imposed


north of the border would not extend past those already in existence for breach of H&S Work Act 1974.

So, with the announcement of the Draft Bill for England and Wales we may yet face different legislation for either side of the border, unless the Scottish Executive revert to its original pledge to ‘closely follow proposals on English law’ and so ignore their analysis of the consultation undertaken. So, watch this space has to be the watchword! However if the processes go the distance, the UK’s construction industry, one of the biggest killers, is likely to be in the spotlight for prosecutions for corporate killing or corporate manslaughter.

**What Impact on Construction?** So can the construction industry help itself reduce the burden of this legislation? Will the new legislation be more effective than existing laws at bringing to book those companies that cut corners at the expense of lives?

Recent HSE analysis of sector statistics showed that the construction sector had a fatal injury rate of six per 100,000 workers, some 5.5 times the all-industry average and the highest mortality rate of any sector, accounting for about one in three workplace fatalities - with a death toll of 70 workers recorded in the last financial year to 2004.

Increasing the pressure on the industry to improve its record was the Public Accounts Committee’s report, published in December last, which urged the HSE to increase its efforts in this area. Suggestions included conducting visits and follow-up inspections without prior warning to site managers and contractors, as well as the introduction of a ‘name and shame’ process, disclosing health and safety records relating to high-profile buildings.

Of course the HSE has been running ‘get-tough’ campaigns to try to reduce the industry’s mortality rate for some time - using current laws and regulations, which include the potential for unlimited fines on wrongdoers. However the Public Account’s Committee report also criticised the way the Courts tend not to impose the maximum penalties available for health and safety offences and suggested that HSE should ask the Government to recommend new, and presumably tougher, sentencing guidelines in this area. This view is clearly reinforced by the TGWU and CCA research results! 

For almost ten years the principal framework for reducing accident, injury, ill health and death in construction has been the CDM regulations, which created the role of planning supervisor to ensure that potential on-site project hazards were addressed as much as possible from the start and placed responsibility and accountability for health and safety risk management with those who commission, design and construct.

New corporate manslaughter or killing laws could conceivably extend this individual responsibility and accountability, even to the point of prosecutors not having to prove a direct connection between the actions of the people who caused the fatality on site and their companies, as they currently have to do for culpable homicide or manslaughter. However, pinning a charge on individual directors could be difficult, given the sometimes convoluted routes of corporate responsibility existing within organisations. But, only if these responsibilities can be pinned down will the knock-on culture change effects of manslaughter charges work their way through the industry. So a lot will depend on how well the new legislation enables prosecutors to nail to top guys.

What could also give Westminster and Holyrood pause for thought is whether contractors and consultants can cope with the extensive procedures and bureaucracy they might adopt to try to reduce a risk of prosecution which cannot easily be limited. The bureaucracy and paperwork generated by CDM might pale into insignificance compared with these! Could these issues knock back these long heralded developments?

If (and only if) the net result is that there is a step-change reduction in the number of fatalities will the deterrent of possible prosecution have been a success and the inevitable 'back watching' paperwork and procedures justified. After all it is attitudes across organisations that have to change, not just tweaks to top management systems. What is, after all, who bears the real cost of construction deaths, injury and ill-health? Those with responsibility for construction work and workers have to start taking account of the costs to others, not just themselves and their organisations. That is a critical part of the culture change that is needed. Manslaughter charges won't change attitudes *per se* - but perhaps the worry of them will add to changes in attitude at the top - and with a trickle down effect impact on the whole of construction. ■

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