

Health and Safety in the UK Construction Industry

The Corporate Manslaughter and Corporate Homicide Act 2007 has now been in force for five years. Although there have only been a few successful prosecutions in that time, recent reports suggest that the number of investigations into possible offences under the Act has increased significantly over the last couple of years. Another emerging trend is the prosecution of senior managers for other offences alongside their companies. To find out more, *Lawyer Monthly* speaks with barrister Toby Riley-Smith, one of the health and safety specialists at Henderson Chambers. Toby represents businesses and their employees in the various coronial, criminal and civil proceedings that follow accidents at work. He is recommended for his work in this field by both Chambers UK and the Legal 500.

What offence was created by the 2007 Act?

Under the old law, it was difficult to secure convictions against companies for gross negligence manslaughter. Not only did the Crown have to establish that there had been a gross breach of duty of care owed the victim, but that a directing mind of the organisation (that is, a senior individual who could be said to embody the company in his actions and decisions) was guilty of that gross breach of duty.

The 2007 Act created the new offence of corporate manslaughter. An organisation is guilty of such an offence if the way in which its activities are managed or organised causes a person's death and amounts to a gross breach of the relevant duty of care owed by the organisation to the deceased - provided that it can also be proved that the way in which its activities were managed or organised by its senior management was a substantial element of the breach. The offence is triable either way. On conviction, the Crown Court can impose an unlimited fine.

How many cases have been successfully prosecuted?

There have only been three convictions - the most recent of which was Lion Steel in July 2013. In that case, the company pleaded guilty after one of its employees fell through a skylight. In spite of the fact that the company was only just

"holding its own" financially, the company was fined £480,000.

Cases brought under the Act have been slow in coming. This is because they are handled by specialist lawyers and the investigations normally take a long time to complete. For example, the fatality that led to the Lion steel prosecution occurred only a few weeks after the Act came into force in 2008.

Are there many new cases in the pipeline?

Whilst the number of health and safety prosecutions in the UK has remained pretty static in the last few years, there has been a significant recent increase in the number of corporate manslaughter cases. 49 charges were laid in 2011, and 63 in 2012. There are currently 56 prosecutions ongoing, and the number of high profile trials are now listed. Of particular note is the prosecution arising out of the Gleision Colliery Disaster in 2011 - in which four miners lost their lives as a result of flooding. The company that owned and operated the mine-MNS mining Ltd-is facing four counts of corporate manslaughter, and the mine's manager is facing four counts of gross negligence manslaughter.

Can directors or senior managers be criminally liable?

Not under the 2007 Act. But in a number of the recent cases that have come to trial, senior

managers of the companies have also been charged with an offence of gross negligence manslaughter or under health and safety legislation - which offences can attract custodial sentences. This is presumably because such investigations necessarily focus on the role of senior individuals in the company, and coincides with the increasing appetite to hold managers personally accountable for their safety responsibilities.

What will happen in future?

The number of corporate manslaughter prosecutions is likely to increase, as will the number of charges laid against senior managers for gross negligence manslaughter and health and safety offences. It is therefore essential for companies and their senior managers to understand and manage appropriately those aspects of their roles that relate to health and safety. **LM**

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