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# CORPORATE MANSLAUGHTER

## **Implications and Impact of the Corporate Manslaughter and Corporate Homicide Act 2007**

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Henderson Chambers



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# OLD LAW OF CORPORATE MANSLAUGHTER

- Doctrine of identification and concept of a controlling mind.
- Several high profile unsuccessful prosecutions, including Zeebrugge, Ladbroke Grove and Hatfield cases.



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# THE NEW STATUTORY OFFENCE

- Act came into force on 6 April 2008
- Applies to “organisations” including companies, police forces, certain government departments, partnerships and trade unions.



## ELEMENTS OF THE OFFENCE

- Organisation owed a duty of care to the deceased
- Gross breach of that duty
- Failings of senior management a “substantial element” in the breach
- Death caused by the breach



## DUTY OF CARE

- A duty owed under the existing law of negligence, or under the Occupiers' Liability Act or the Defective Premises Act.
- Decision whether duty exists is a question of law for the judge.



# GROSS BREACH

- Test is whether the conduct in question “falls far below what can reasonably be expected of the organisation in the circumstances”.



## FACTORS FOR THE JURY

Jury must consider:

- Whether the organisation failed to comply with any H&S legislation.
- If so, how serious was the failure?
- How much of a risk of death did it pose?



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Jury may also consider:

- “the extent to which the evidence shows there were attitudes, policies, systems or accepted practices in the organisation that were likely to have encouraged” the failure.





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# FAILINGS OF SENIOR MANAGEMENT A SUBSTANTIAL ELEMENT IN THE BREACH

Senior management = persons who play a significant role in the making of decisions about how the whole or a substantial part of the organisation's activities are managed or organised.



# CAUSATION

- Ordinary rules of causation apply.
- Breach must be a (but not the) substantial cause of death.
- Contributory negligence by the deceased no defence.



## POINTS OF NOTE

- Act does not create an offence for directors or other employers.
- Act does not impose any new legal requirement or increase the duty on employers.
- No bar on parallel H&S charges.
- DPP's consent for proceedings required.
- Police and CPS primarily responsible for investigation and prosecution



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# TERRITORIAL APPLICATION

- Harm resulting in death is sustained in the UK
- or if death occurs on a British controlled aircraft or vessel



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# SANCTIONS

- Unlimited fine
- Publicity Order
- Remedial Orders



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## SENTENCING GUIDELINES COUNCIL, DEFINITIVE GUIDELINE

- Applies to the sentencing of organisations on or after 15<sup>th</sup> February 2010.



## SUMMARY OF APPROACH TO SENTENCE

Definitive guideline states at paragraph 37 that the normal approach to sentence should be

- (1) Factors likely to affect seriousness
- (2) Aggravating or mitigating circumstances
- (3) Nature, financial organisation and resources of Defendant
- (4) Consequences of a fine
- (5) Compensation



- (6) Assess fine in the light of all circumstances of the case
- (7) Reduce as appropriate for any plea of guilty
- (8) Consider costs
- (9) Consider publicity order
- (10) Consider remedial order





## FINANCIAL INFORMATION EXPECTED TO BE PROVIDED TO THE COURT

- (1) Companies/partnerships: Audited accounts with attention to (a) turnover, (b) profit before tax, (c) directors or partners remuneration, loan accounts and pension provision.
- (2) Local Authorities, police and fire authorities and similar public bodies: Annual Revenue Budget equivalent of turnover and indication of size of the defendant organisation.
- (3) Health trusts: quarterly reports and annual figures of the financial strength and stability of trusts.
- (4) “Third sector” organisations: annual audited accounts.



## CONSIDERATION OF FINANCIAL CONSEQUENCES OF A FINE

- Effect on employment of the innocent, the provision of services to the public and effect of putting the defendant out of business may be relevant.
- Effect upon shareholders, directors, profits, civil compensation are not normally relevant.
- Appropriate fine for corporate manslaughter “will seldom be less than £500,000 and may be measured in millions of pounds”. A plea of guilty should be recognised by the appropriate reduction.