CORPORATE MANSLAUGHTER

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

Kenneth Hamer
Henderson Chambers
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.
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?
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.
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
TERRITORIAL APPLICATION

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

• Unlimited fine
• Publicity Order
• Remedial Orders
SENTENCIING GUIDELINES COUNCIL, DEFINITIVE GUIDELINE

• Applies to the sentencing of organisations on or after 15th 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.