

Loss prevention standards

Corporate Manslaughter and Sentencing Guidelines

The UK has the lowest level of workplace and work-related fatalities in Europe. But organisations should identify and satisfy all existing legislative requirements to reduce the risk of serious injuries – and of a subsequent prosecution for corporate manslaughter.



Corporate Manslaughter and Sentencing Guidelines



Introduction

Whether a work-related death involves the death of an employee or a member of the public, it is covered under the [Corporate Manslaughter and Corporate Homicide Act 2007](#) (CMCHA). Prior to the introduction of the CMCHA, there was concern and debate about the small number of prosecutions for corporate manslaughter in the UK. The few successful prosecutions were against smaller companies, while prosecutions of larger firms generally failed.

Historic Position

Before the introduction of the CMCHA, a number of enforcement options were available to the Health and Safety Executive (HSE) and local authorities following a work-related death. These included:

- Prosecution under Health and Safety at Work etc. Act 1974 (HSWA)
 - Section 2: Company, for employee deaths
 - Section 3: Company, for deaths of persons who are not employees
 - Section 7: Individuals, for personal failure
 - Section 37: Senior persons
- Prosecution for gross negligence manslaughter of both the 'directing mind' and the company

In order to pursue a prosecution against a corporate body, it was first necessary to identify a senior person within the **organisation, known as the 'controlling mind' or 'directing mind'**. Only once the 'directing mind' had been found guilty of manslaughter could the company itself be prosecuted.

It was often easy to identify the 'directing mind' within smaller firms, where the managing director or equivalent is closely involved in the day-to-day running of the business. However, in larger organisations such as Public Limited Companies (PLCs), it was much more difficult to establish a close connection between senior management and the activities that resulted in the death – meaning the manslaughter prosecution generally failed.

The CMCHA

The Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA) was introduced with the aim of removing the apparent inequality in punishment following a workplace death. The new legislation allows companies to be charged with corporate manslaughter in England, Wales and Northern Ireland, and corporate homicide in Scotland. It cannot be used to prosecute following work-related deaths outside of the UK.

Organisations covered

A wide range of organisations and corporate bodies are covered by the CMCHA, including:

- Employers
- Partnerships
- Some Crown bodies, including the police

Companies within large groups are regarded as separate entities, so a parent company would not necessarily be prosecuted for management failures within a subsidiary that resulted in a fatality.

Offences

The main offence under the CMCHA is a breach of the ‘duty of care’ which arises from:

- Employing people
- Supplying goods and services
- Ownership and control of premises
- Undertaking any commercial activity, including construction and maintenance work
- Using or keeping vehicles, plant and dangerous substances

Since 2011, deaths in custody have also been included within the scope of the Act. Both State and privately-run organisations, with responsibility for detaining individuals, could be prosecuted if a death was caused as a result of neglect on the part of the organisation.

Basis for conviction

An organisation is liable for conviction if management of these activities falls far below the standard expected. In order to determine if a company is guilty of gross negligence, the courts will consider:

- What legislation applied
- What industry guidance and best practice information was available and should have been followed
- Whether a member of senior management caused or contributed to the cause of a fatal accident through their negligence

Penalties

The CMCHA sets out a number of penalties that may be used following a successful prosecution:

- Fines – The CMCHA allows for unlimited fines, in line with the position under existing legislation which allows for unlimited fines for more major cases and health and safety prosecutions taken in the higher courts
- Remedial Orders – The company may receive a remedial order requiring them to make good the workplace within a specified period. This is equivalent to the existing sanction of Improvement and Prohibition Notices
- Publicity Orders – The court may require the company to publicise details such as the circumstances of the accident that resulted in the workplace fatality, or the particulars of the offence

Individuals and the CMCHA

Although the CMCHA does not provide for the prosecution of individuals, members of senior management could still be charged with health and safety offences and gross negligence manslaughter as previously. It is not possible to charge an individual with ‘**assisting or encouraging**’ the new offence.

A precise definition of the term ‘senior management’ is not given in CMCHA, but guidance from the Ministry of Justice states they would be someone who has responsibility for and control over a large or substantial part of the organisation. This includes not only those in central functions, such as a finance director, but also those with senior operational responsibility, such as a works manager, maintenance manager or equivalent.

Case Studies

The Crown Prosecution Service (CPS) reported in a freedom of information release that 25 operations were charged under the CMCHA between 2008 and 2017. Here are some of them:

1. The first company to be prosecuted under the CMCHA was a small firm of geotechnical engineers that employed 8 members of staff and had a turnover of approximately £250,000. Following the death of an employee in an unsupported excavation, the company was fined £385,000, payable over a 10-year period. A prosecution of the managing director for common law manslaughter was also brought, but later dropped on the grounds of his ill health
2. In November 2010, an employee of a farm in Northern Ireland was killed when a metal bin fell from the forks of a forklift truck, which was driven by a director of the farm. After prosecution under the CMCHA, the farm was fined £187,500 with costs of £13,000
3. A shelving and storage manufacturer with fewer than 150 employees were fined £480,000 after an employee fell through a fragile roof
4. Personal prosecutions for gross negligence manslaughter have also been initiated against senior managers. In one such case, a director was personally prosecuted under the provisions of the Health and Safety at Work etc. Act 1974. He was fined £183,000 and banned from being a director of any company for five years

Sentencing Guidelines

The Sentencing Council published its definitive guideline for the CMCHA in November 2015. Replacing the previous guideline published in 2010, it took effect for cases where sentencing was passed on or after 1 February 2016.

The 2015 guideline takes a new approach that has produced a step change in the level of fines imposed for Corporate Manslaughter offences. Fines are based on the seriousness of the offence and the size of the organisation. The former is determined by considering the following questions:

- How foreseeable was serious injury?
- How far short of the appropriate standard did the offender fall?
- How common is this kind of breach in the organisation?
- How widespread was the non-compliance?
- Was there more than 1 death?
- Is there a high risk of further deaths or serious personal injury?

Fine levels

The new guidelines specify both a starting point and a range of fines for organisations of different sizes. For large organisations with a turnover of over £50m, the guidelines indicate that the fine levels may need to exceed this range.

Size of organisation - turnover	Starting point for fines	Range of fines
Over £50m (Large)		
High culpability	£7.5m	£4.8m to £20m
Lower culpability	£5m	£3m to £12.5m
£10m to £50m (Medium)		
High culpability	£5m	£1.8m to £7.5m
Lower culpability	£3m	£1.2m to £5m
£2m to £10m (Small)		
High culpability	£800,000	£540,000 to £2.8m
Lower culpability	£500,000	£350,000 to £2m
Under £2m (Micro)		
High culpability	£450,000	£270,000 to £800,000
Lower culpability	£300,000	£180,000 to £500,000

Aggravating and mitigating factors

The fine is also affected by aggravating and mitigating factors.

Aggravating factors:

- Previous similar convictions
- Cost-cutting at the expense of safety
- Deliberate concealment of illegal nature of activity
- Breach of any court order
- Obstruction of justice
- Poor health and safety record
- Falsification of documentation or licences
- Deliberate failure to obtain or comply with relevant licences in order to avoid scrutiny by authorities
- Offender exploited vulnerable victims

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Mitigating factors:

- No previous convictions, or no relevant or recent convictions
- Evidence of steps taken to remedy problem
- High level of co-operation with the investigation, beyond that always expected
- Good health and safety record
- Effective health and safety procedures in place
- Self-reporting, co-operation and acceptance of responsibility

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Sources and Useful Links

- [Corporate Manslaughter Guidance](#) – Health and Safety Executive
- [Corporate Manslaughter and Corporate Homicide Act 2007](#)

Additional Information

Relevant Loss Prevention Standards include:

- Claims Defensibility
- Legal professional Privilege

To find out more, please visit [Aviva Risk Management Solutions](#) or speak to one of our advisors.

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