

W201 The Individual and the State

Study notes on corporate manslaughter

The present law

The position is governed by the Corporate Manslaughter and Corporate Homicide Act 2007.

Companies are not liable for gross negligence manslaughter. Instead they can be liable for corporate manslaughter under the 2007 Act which is punishable principally by fine.

The 2007 Act seeks to avoid some of the difficulties of the old law which made convictions of large companies for gross negligence manslaughter nigh impossible.

Section 1 explains the elements of the offence:

- an organisation must owe a duty to take care of a person's safety
- the way in which the organisation's activities are managed (by senior management) must amount to a gross breach of that duty
- the breach must cause the death.

"Gross" means that the conduct falls "far below" what could be expected Section 1 (4).

The key change is that the prosecution no longer have to single out a senior director or manager and prove that one senior individual is at fault.

In addition to a fine a court can make:

- a) an order to remedy the breach of duty (Section 9)
- b) a publicity order (Section 10)

The Act imposes no liability on directors or managers. Individuals (as opposed to the company) can still be liable for gross negligence manslaughter and be sent to prison.

The old law

The offence was recognised late by the common law and was difficult to prove.

As recently as 1927 it was said by the Divisional Court that a company could not be guilty of manslaughter **R v Cory Bros & Co Ltd** 1927.

The Divisional Court took a different view in 1989 in **R v H M Coroner for East Kent ex parte Spooner & others** (following the Herald of Free Enterprise disaster) per Bingham LJ when dealing with a judicial review application from a coroner's ruling.

However a corporate manslaughter prosecution of the ferry company later failed because it could not be proved that any one senior member of management had the necessary mens rea. **R v P & O European Ferries (Dover) Ltd** 1991.

Two obstacles lay in the path of a successful prosecution in these cases:

1. The insistence on the identification principle

The prosecution had to find someone in the company structure with the appropriate degree of fault so senior that his conduct could be identified with that of the company.

Lord Denning in **Bolton v Graham** 1956 C A described such people as:

“ ..directors and managers who represent the directing mind and will of the company and control what it does”

This was quoted with approval in **Tesco Supermarkets Ltd v Natrass** 1972 Lords (Trade Descriptions Act prosecution) where the prosecution failed as the only evidence was against a store manager and not against anyone more senior.

The test therefore was - is there a senior executive who represents the directing mind and will of the company - who can be proved to have the fault required.

2. The refusal to adopt the aggregation principle

Sometimes it was possible to show that several senior managers taken together knew enough to ground liability. However in the **P&O** case where this appeared to apply the prosecution failed as the court refused to **aggregate** or add the knowledge of them all together to create liability.

A false dawn?

A successful prosecution for corporate manslaughter followed the Lyme Bay canoe tragedy. In **R v Kite and OLL Ltd** 1994 both the managing director and the company were convicted of manslaughter and sent to prison for 3 years and fined £60,000 respectively.

In this case the prosecution only succeeded because Mr Kite was a sole director and problems of identification and aggregation did not arise.

More significant was **R v Great Western Trains** 1999 where a prosecution for corporate manslaughter arising from the Southall Train Disaster in 1997 failed - the aggregation principle was again rejected and no single director could be shown to have the requisite state of mind or knowledge. In **AG Reference (No 2 of 1999)** C A it was confirmed that the identification principle applied in the Great Western Trains prosecution.

There were further rail disasters at Paddington (Ladbroke Grove) in 1999, Hatfield in 2000 and Potters Bar in 2002. None resulted in prosecutions of companies for corporate manslaughter.

The Law Commission in 1996 proposed a new offence of corporate killing where:

- a) management failure was the cause of death
- b) failure constituted conduct falling **far** below what could reasonably be expected.

The 2007 Act now opens the way for the increased prosecution of companies following gross corporate failure resulting in death.