

AGENDA ITEM

REPORT TO CORPORATE MANAGEMENT TEAM

12TH May 2008

CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

SUMMARY

This report provides details of the implications of the Corporate Manslaughter and Corporate Homicide Act 2007.

RECOMMENDATIONS

It is recommended that CMT note the report and consider what action the Council needs to take to mitigate those risks which are known, or should be known.

BACKGROUND

1. The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6 April 2008. The Act provides a new offence of Corporate Manslaughter to apply to :-
 - Companies
 - Local Authorities
 - NHS Bodies
 - Government Departments
 - Police forces
 - Organisations incorporated by Royal charter
2. The Act is essentially concerned with health and safety and increases the scope of prosecutions where there is a fatality.
3. Under previous law, a Company could only be convicted of manslaughter where "a directing mind" of the organisation could be identified. In practice that meant a senior individual who could be said to "embody the company in his actions and decisions". Such an individual was easier to identify in a small organisation than a large organisation. This is one of the reasons why manslaughter charges were dismissed against Barrow-in-Furness Borough Council.
4. Barrow-in-Furness Borough Council became the first Local Authority to be charged with Corporate Manslaughter following the deaths from Legionella of seven people in 2002. In that case the Judge expressed doubt that even the Chief Executive could be the "directing mind" of the Local Authority. Despite the charges of manslaughter being dismissed, both the Council and Senior Manager involved were convicted of health and safety offences. The Manager was fined £15,000, the Council £125,000 and the Council was ordered to pay £90,000 in costs. Therefore, it is important to note that the new offence of Corporate Manslaughter will complement and run alongside other charges such as breaches of health and safety legislation and possibly a manslaughter charge against an individual.

THE POSITION OF INDIVIDUALS

5. The offence is concerned with the corporate liability of the organisation itself and does not apply to individual directors, senior managers or other individuals. However, individuals can already be prosecuted for gross negligence manslaughter / culpable homicide and for health and safety offences. The new Act does not change this

THE POSITION OF SUB-CONTRACTORS

6. The new offence applies to all companies and employing partnerships, including those in a contracting chain. However, whether a particular contractor might be liable for the new offence will depend in the first instance on whether they owed a relevant duty of care to the victim. This Act does not impose new duties of care but the new offence will apply in respect of existing obligations on the Main Contractor and Sub-Contractors for the safety of worksites, employees and other workers they supervise.

THE OFFENCE

7. Liability for the new offence depends on a finding of gross negligence in the way in which the activities of the organisation are run. An offence is committed where an organisation owes a duty to take reasonable care for a person's safety and the way in which the organisation's activities have been managed or organised, by its senior management, amounts to a gross breach of that duty and causes the person's death.

Accordingly, there are four elements to prove:-

- the organisation must owe a "**relevant duty of care**" to the victim
- the organisation must be in breach of that duty of care as a result of the way in which the activities of the organisation were managed or organised (known as "**the management failure**")
- the "**management failure**" must have caused the victim's death (however it need not be the sole cause)
- the "**management failure**" must amount to a gross breach of the duty of care

THE DUTY OF CARE

8. The duty of care must arise from specific functions or activities performed by the Council. It will apply:-

- to the Council's employees and to other persons working for the Council eg contractors, secondees and volunteers
- as an occupier of premises
- when supplying goods or services
- when constructing or maintaining buildings, plant or machinery
- when carrying out activities on a commercial basis.

A duty of care will not apply:-

- when responding to emergencies
- to child protection functions (Parts 4 and 5 of the Children Act 1989)
- to decisions of public policy (eg decisions by PCTs about the funding of particular treatments)
- to an "exclusively public function" (this may include the exercise of planning and building controls and the investigation of environmental breaches or food safety issues, however, what is an "exclusively public function" may only become clear as case law evolves)
- to statutory inspections carried out in the exercise of a statutory function
- to policing or law enforcement activities when dealing with terrorism, civil unrest or serious disorder.

IMPLICATIONS FOR LOCAL AUTHORITIES AND SENIOR MANAGERS

9. The Act is designed to target "*management failures*" by senior managers. It focuses on the arrangements and practices made by senior managers for carrying out the Council's functions. Individuals that are identified as being responsible or the cause of the "*management failure*" must play "*significant roles*" in that failure, ie a decisive and influential role, not a minor or supporting role.

"*Senior management*" is defined as those persons who play significant roles in:-

- the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or the actual managing or organising of the whole or a substantial part of those activities.
10. The definition will therefore include strategic decision-makers, ie Chief Executive, Directors and Cabinet Members and those who actually manage the activity or function (Heads of Service and possibly third or even fourth tier Officers).

In terms of risk management, the Council's procedures and risk management systems should :-

- carry out a Corporate risk assessment of the likely exposure under the Act
- consider whether the Chief Executive, Directors, Heads of Service and other senior managers understand their responsibility for ensuring all risks have been adequately identified and mitigated
- Strengthen Leadership on Health & Safety
- ensure correct policies and procedures are established and enforced to prevent serious incidents from occurring and to continually monitor, audit and review Service activities
- ensure that the corporate culture supports and reinforces the policies and procedures
- provide effective training for all relevant employees, agency staff and volunteers
- ensure effective record keeping
- develop an Action Plan to minimise the risks that are identified.

Where Managers have reasonable safeguards in place and a death nonetheless occurs, no liability will arise.

PENALTIES

11. A conviction for Corporate Manslaughter may result in one or more of the following:-

- an unlimited fine
- an Order that requires the "management failure" to be remedied
- an Order requiring publicity about the conviction, the particulars of the offence, the amount of any fine and details of any remedial Order
- an Order for the costs of the legal proceedings to be paid by the convicted party.

Non-compliance with a Court Order is also an offence punishable with an unlimited fine.

Juries will be asked to determine if health and safety laws had been broken, were the consequential risks understood, and did Managers seek to profit from any breaches.

FINANCIAL AND LEGAL IMPLICATIONS

12. The Act increases the Council's legal liability in respect of fatalities arising from a gross breach of the duty of care. Given the Council's broad range of activities, there is the potential for significant fines and costs if the Council is found guilty of corporate manslaughter.

RISK ASSESSMENT

13. There are a number of risks that have been identified by recent events, in particular accidents occurring to refuse operators and the general dilapidation of the Stainton Grove Depot and ancillary buildings, therefore the risk is considered to be Medium.

RECOMMENDATIONS

14. It is recommended that the content of the report be noted and that suitable measures are implemented to ;-

- demonstrate a commitment to the effective Leadership of occupational health and safety.
- ensure effective systems for managing health and safety.

Contact Officer	Derek MacDonald
Telephone no	01642 528195
Email Address	Derek.macdonald@stockton.gov.uk