

Corporate and Individual Manslaughter

- Police Powers over Companies and Executives

September 2008

The new offence of Corporate Manslaughter came into force on 6 April 2008 and sits alongside the offence of individual gross negligence or common law manslaughter, as well as offences under the Health and Safety at Work Act 1974 ("HSWA") which remain unchanged.

The Corporate Manslaughter and Corporate Homicide Act ("CMA") is concerned with the way in which an organisation's activities are managed or organised and whether any failings identified significantly contributed to the death of the individual. The new offence brings into focus the way companies are operated and those in positions of responsibility. It does not impose individual liability on directors or managers themselves. Where there is sufficient evidence, individuals can be prosecuted for gross negligence manslaughter and for health and safety offences in parallel to a CM prosecution. The Act does not change this position.

This briefing summarises the powers available to the police in conducting manslaughter investigations and how individual managers and directors may be called to account. It does not cover the powers of HSE Inspectors.

Following a work related death and where criminal offences (other than those under the HSWA) are suspected the police will lead the subsequent investigation. The initial police focus will be on securing and preserving evidence in relation to offences of manslaughter. They will scrutinise both the actions of individuals and those of the company as a whole. Although it is the police who will investigate criminal offences relating to manslaughter other enforcing authorities such as the Health and Safety Executive ("HSE") may also be involved, either providing technical assistance or in developing their own case for prosecuting separate offences (which may include individual liability). The same case evidence may therefore be used to prosecute a number of different offences, not just manslaughter charges. This co-operation is governed by a protocol between the police, HSE and Crown prosecution Service and others.

Whereas the HSE have wide powers of entry and seizure, the police's powers are actually more limited, being largely subject to those provided by a warrant. Unless a search is made immediately after an arrest, the police require a court warrant to enter premises identified on that warrant, conduct a search and seize material considered relevant to their investigation. This can include items of machinery and computers as well as documents.

An investigation is generally a lengthy process which can take many months (or longer). Individuals may be requested to provide witness statements, i.e. an individual's account of what they saw and heard first hand. If during the process of giving a voluntary witness statement the police interviewers consider that the individual is giving information that could be incriminating, then the interviewers should stop and arrange for the interview to be conducted under caution. In addition, some individuals may be identified at the outset of the investigation to be invited to attend a voluntary interview under caution. Although the individual would not be under arrest, an interview under caution denotes that the individual may be suspected of an offence, rather than being a witness simply providing evidence by way of a statement. An interview under caution is usually conducted at a police station and will be tape or video recorded.

As well as requests for voluntary interviews, individuals may be arrested. This may be conducted without notice or on attendance at a police station following a request to attend for an interview.

Although an individual cannot be arrested for corporate manslaughter, managers and directors may still be arrested for gross negligence manslaughter, although ultimately a prosecution may only be brought against the organisation. The police can arrest individuals they have reasonable grounds to suspect of being guilty of the offence and detain them for interview.

Detention and interview are governed by the Codes of Practice under the Police and Criminal Evidence Act 1984,

which sets out how arrested persons should be treated to ensure fairness and due process. For example, providing the right of individuals to obtain independent legal advice.

The power of arrest also entitles the police to obtain fingerprints and DNA samples. Practice varies. Many forces welcome the opportunity to take samples on arrest. A few only if charges are brought. There is a current Human Rights case challenging the right of the state to keep DNA records if no charges are brought. The result on that is awaited.

Arresting individuals for the purposes of interview allows the police a degree of control which is often helpful to their investigation and should not be regarded as an act which necessarily results in a prosecution of that individual. The reality is that arrest is often used as a convenience. However the law is that for any arrest to be lawful both reasonable cause and necessity to arrest should exist.

As well as considering individual offences the police will be eliciting evidence with regard to the company and its management failings having contributed to the death.

Individuals arrested may be released on police bail to return to the police station if charges are not immediately brought. In practice it is possible for several individuals in a company to be interviewed, each being given long bail dates to allow the police sufficient time to investigate fully before deciding if any individual prosecutions will be brought. This may have an impact on individuals needing to travel abroad, in particular the USA places restrictions on individuals who have been arrested (even if they have not been charged) as they cannot then use the Visa Waivers Programme.

A conviction for corporate manslaughter is against the company and not individuals. The maximum penalty is an unlimited fine, which is likely to be based on a company's gross turnover (possibly 5-10% of turnover – for information on this subject, see separate briefing at http://www.burges-salmon.co.uk/what_we_do/Practices/environment_and_health_and_safety/health_and_safety/Publications/default.aspx). In addition the Court may make a remedial order which forces the company to remedy the management failure that caused

the death and/or a publicity order which forces the company to publicise the conviction. As no cases have been tried under the new legislation as yet it is not possible to anticipate the sort of fine levels which are likely to be imposed. However, it is likely that these will be set at a significantly higher level than for offences under the HSWA involving death.

Prosecutions against individuals for gross negligence manslaughter will continue to be taken where there is sufficient evidence and it is in the public interest to do so. However the intention is that the CMA will focus prosecutions on the company. As such many manslaughter investigations will concentrate on the role of directors and senior management and the consequent liability of those companies.

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