

# Health and Safety Bulletin

## Corporate Manslaughter Update

### Articles in this newsletter:

- Corporate Manslaughter Update
- HSE's Go Home Healthy Campaign
- Case law update
- Ladder standard changes

### Useful contacts:

HSE website  
[www.hse.gov.uk](http://www.hse.gov.uk)

HSE Books:  
PO Box 1999  
Sudbury  
Suffolk  
CO10 2WA  
Tel: 01787 881165

Environment Agency  
website:  
[www.environment-agency.gov.uk](http://www.environment-agency.gov.uk)

It is now 10 years since the Corporate Manslaughter and Homicide Act was implemented, and therefore an opportune moment to review whether it has met the original objectives.

### *Why do we have corporate manslaughter legislation?*

A series of accidents that resulted in multiple fatalities to members of the public occurred in the 1990s – all of which, by popular opinion, were the result of large corporations having a sloppy attitude to health and safety and the senior managers failing to appreciate their responsibility. Although some organisations were convicted under the Health and Safety at Work etc. Act, those who had been directly affected felt that the punishment meted out by the courts was not harsh enough to dissuade other organisations from behaving in the same manner.

### *What duties does the Act create?*

The first hurdle of any corporate manslaughter court case involves the judge deciding whether the organisation owed a duty of care to the person who was killed.

The legislation includes a list of activities for which organisations owe a duty of care, including

- Supply of goods and services
- Commercial activities, especially construction and maintenance
- Use and keeping of plant and vehicles

For a successful conviction, the organisation's senior management has to be shown to have managed its activities far below the expected standard (i.e. gross negligence). Senior management are defined in the legislation as anyone who plays a significant role in decision making or in managing activities – this might easily include first line supervision if they are the most senior employee on site at any time (e.g. during night shift).

### *So has it been effective?*

Only SMEs (Small and Medium Enterprises) have so far been prosecuted under the legislation – some examples are included in this Health and Safety Bulletin's Case Law section. This may suggest that it has been effective in that large employers have recognised the long-term implications of being convicted (e.g. poor reputation leading to financial losses) and have therefore increased their focus on health and safety.

Initially the guidance for the Courts was that £500,000 was the minimum fine for conviction. Only two companies successfully prosecuted under the legislation have been fined more than £500,000 so far, with three others being fined exactly £500,000. This fine guidance was updated with the publication of Sentencing Guidelines in February 2016, with the starting point for conviction of large organisations (defined as those with a turnover of greater than £50million) where there was evidence demonstrating a high level of culpability and harm now set at £7.5million.

The other significant means of punishment under the Act – the use of the publicity order – has been used sparingly. One company was instructed to pay for information about their conviction to be displayed in the public notice section of their local newspapers and one was forced to take out an advertisement on the Home page of their trade magazine website. However it is recognised that this means of punishment has the scope to have much greater consequences than a mere fine, since it may well change the behaviour of many organisations, not just the one that was convicted.

### Recently issued health and safety information:

- Website for translating driver instruction cards <http://www.transperants.org/>
- Asbestos essentials updated <http://www.hse.gov.uk/asbestos/essentials/>
- Draft BS 45002 management systems: General guidelines on effective application of ISO 45001 <https://www.barbour-ehs.com/draft-bs-45002-management-systems-general-guidelines-effective-application-iso-45001>
- Summary of EU-OSHA's investigation into the benefits of employing older workers <https://osha.europa.eu/en/highlights/safer-and-healthier-work-any-age-information-sheets-available-various-languages>

## HSE's Go Home Healthy Campaign

As one of their first steps in publicizing the "health theme" of their new five year improvement strategy, HSE have launched a series of videos, highlighting the number of workers affected by the most common work-related health issues.

- Summary video – covering the main work-related health topics <https://www.youtube.com/watch?v=5g4FUXKLi5s>
- Preventing injuries from manual handling – summarizing the practical steps for minimising manual handling risks <http://www.hse.gov.uk/gohomehealthy/msd.htm>
- The impact of work-related stress – why this is a major cause of lost time and which occupations are most at risk <http://www.hse.gov.uk/gohomehealthy/stress.htm>
- A focus on lung disease - videos summarizing the consequences of exposure to hazardous substances <http://www.hse.gov.uk/gohomehealthy/lungs.htm>

### Case Law update

*This issue focuses on two of the Corporate Manslaughter cases that have occurred since 2007*

An autoclave operator at a waste processing plant sustained fatal head injuries when the door to one of the autoclaves failed and blew out under pressure on 11 January 2011. The force of the explosion was so great it blew a hole in the wall of the factory. A colleague also sustained serious life-changing injuries as result of the explosion. The accident occurred because of modifications to the autoclaves - safety devices were removed because they slowed

production; and when breakdowns occurred 'running repairs' were made without ever getting to the root cause of the problems. The employer, Sterecycle, ceased operations in October 2012 after having been placed into administration and although they were fined **£500,000** it is unlikely it was ever paid

A 16 year old apprentice suffered fatal head injuries after he became entangled in an industrial metal lathe in January 2013. He had been placed there on an apprenticeship scheme by Lime People Solutions. The accident occurred when the apprentice was carrying out manual 'deburring', on a computerised

lathe on which the interlock had been defeated, leaving the spinning chuck unguarded. Huntley Mount Engineering Ltd was found guilty of Corporate Manslaughter and failing to ensure the health, safety and welfare of employees and was fined **£150,000**. A Company Director was sentenced to **8 months imprisonment and was also disqualified from being a company director** for 10 years. A Supervisor was **sentenced to 4 months suspended for 12 months, ordered to carry out 200 hours unpaid work** and given a **£3,000** fine. Lime People Training Solutions Ltd. was fined **£75,000** for an offence under the Health and Safety at Work Act 1974

### About Clwyd Associates...

We are a management consultancy, focusing on health and safety, and SAP based in the Midlands.

In business since 2000, we employ consultants with at least 15 years practical experience backed up by recognized professional and academic qualifications - ensuring our clients receive first class service.



### Ladder standard changes

BS EN 131 – the standard covering all types of portable ladders (step, extending and combination) has been substantially revised. There will now only be one standard for ladders because the British Standards, BS 2037 and BS 1129 (often referred to as Class 1 and Class 3 ladders) will now be amended to remove conflicting products, which means that, after a transition period, certified ladders from these standards will no longer be available.

BSEN131 has been amended to include:-

- New dimensions to improve stability
- Increased strength test requirements
- Updated requirements for ladder durability



Orton House  
Overton Close  
Leicestershire  
LE67 8FY

PHONE/FAX:  
01530 837477

E-MAIL:  
enquiries@clwydassociates.co.uk