

Care Homes Briefing

Number 39

Corporate manslaughter health & safety prosecutions

Manslaughter is not governed by statute and, for the time being, remains a common law offence. It is defined as an unlawful killing without intent to kill and can be:

- voluntary, such as a deadly fist fight, or
- involuntary, such as an accident caused by a speeding car.

Involuntary Manslaughter more commonly arises in healthcare where a patient has died unexpectedly. There are two broad categories of involuntary manslaughter:

- manslaughter by an unlawful and dangerous act
- manslaughter by gross negligence or recklessness

There has been much press comment about corporate manslaughter, especially after rail disasters. Presently, a corporate body can only be found guilty of the common law offence of gross negligence manslaughter if a “directing mind” of the corporate organisation is also guilty of gross negligence manslaughter.

This requirement to identify a “directing mind” has proven to be virtually impossible in large organisations including healthcare companies. Deaths caused by companies are generally viewed as resulting from the combined actions of a number of individuals, not a single individual with a “directing mind”. Also, implementation of company health and safety practice is

often delegated to lower levels of management, who are, by definition, not the “directing mind” of the company.

The existing common law of manslaughter has been greatly criticised. The capsizing of the P&O ferry in 1987 and the more recent rail crashes, have fuelled calls for an overhaul of the law governing corporate manslaughter.

Corporate Manslaughter Bill

The Government have published a draft Corporate Manslaughter Bill. Under the draft Bill, an organisation will be guilty of the new offence of Corporate Manslaughter if the way in which any of its activities are managed or organised by its senior managers causes a person’s death through a gross breach of a duty of care. The maximum penalty will be an unlimited fine. There are no sentences of imprisonment.

The new law differs from the existing common law in that it will make it easier for prosecutions to succeed, particularly against large organisations. Primarily, this is because the prosecution will focus on the conduct of the senior management, both individually and collectively, and there will be no need to identify a “directing mind”.

Corporations, as well as most Crown bodies, can be prosecuted under the draft Bill. However,

unincorporated bodies and individuals, including directors, officers or managers, cannot be prosecuted for corporate manslaughter.

Health and Safety Prosecutions

However, although the draft bill is not yet in force, companies can already be prosecuted for fatalities that arise amongst their staff or, (more commonly for healthcare providers) amongst those for whom they care or are affected by their activities.

The main aims of the Health and Safety at Work Act 1974 (HSWA) are to impose on an employer a statutory duty of care for the health, safety and welfare of:

- their employees, and
- other people who may be affected by their activities (eg. service users, the employees of contractors or members of the public)

The maximum penalty is an unlimited fine.

Companies can be prosecuted for failing to comply with existing health and safety legislation, but individual employees, including directors, managers and other healthcare staff may also be prosecuted:

1. General duties of employees at work: 7 HSWA 1974

Section 7 sets out the duty of all employees at work to take reasonable care for the health and safety of

themselves and others. Co-operation is necessary to enable employers to fulfil their duties.

2. Offences by bodies corporate: 37 HSWA 1974

Section 37 makes employers, including directors, and managers, liable to proceedings as well as the company, if the company has committed an offence under the HSWA with the consent, connivance, or due to neglect of any director, manager, secretary or similar office holder.

The Health and Safety Executive are increasingly considering prosecution of healthcare providers, including, both the NHS and private sector, where health and safety regulations are breached. Those have included injuries arising from the improper use of “cot sides” as well as more obvious hazards for example, in R v Whitefields Care Homes Limited, an 85 year old resident suffered serious burns to her legs after they touched a hot radiator near her bed. Whitefields were fined £10,000 plus costs and in addition, a director of Whitefields was fined £7,500 and ordered to pay costs of £15,000.

The proposed new corporate manslaughter law will not affect the provisions of the Health and Safety at Work Act 1974 or its associated health and safety regulations. Prosecuting authorities will be able to consider a prosecution for both Corporate Manslaughter and breaches of existing health and safety legislation. Given increasing media interest in issues relating to the quality of care, it is most likely that they will.

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