



EDUCATION SECTOR ALERT

The Offence of Corporate Homicide

According to Her Majesty's Health and Safety Executive, 36 Scottish workers and 12 members of the public incurred fatal injuries during 2004/2005. On 22 December 1999, a family of four in Larkhall were killed in their home by a gas explosion, due to the gross negligence of TRANSCO PLC.

For the first time in Scotland, the High Court held that a corporate body could be charged with the common law crime of culpable homicide. Unfortunately, the corporate veil, allowing corporate bodies a separate legal personality, makes it difficult to successfully convict large corporate bodies of this crime.

To successfully convict a corporate body of culpable homicide, the prosecution must identify an individual (or group of individuals) who can be proved to be guilty of the crime and who comprised the "controlling mind" of the company. The prosecution must also establish that the actions of that individual or individuals and their state of mind could be said to be that of the company i.e. 'the Identification doctrine'. Unfortunately in the TRANSCO case, the prosecution could not identify such individuals due to its vast size, and the action subsequently failed.

Proposed Reform

Following similar failures in England, a draft Bill was introduced in March 2005, applicable only to England and Wales. The main provision of the Bill is to introduce that an organisation would be guilty of corporate manslaughter if any of its senior managers caused a person's death through a gross breach of their duty of care. If found guilty, the maximum conviction is an unlimited fine.

Mirroring the English position, on 20 June 2006, Karen Gillon MSP published the 'Culpable Homicide (Scotland) Bill Consultation Paper'. This proposed Bill would introduce two statutory kinds of culpable homicide into Scots law applicable to both individuals and corporations.

Despite this consultation, the Scottish Executive decided that corporate homicide should be dealt with by the UK Government. As such, the 'Corporate Manslaughter and Corporate Homicide Bill' was introduced in the House of Lords on 20 July 2006.

This Bill makes provision for a new offence of corporate manslaughter or homicide, as it is known in Scotland. The Bill applies to companies together with other incorporated bodies, Government departments and similar bodies and police forces. This would also include certain bodies within the Education sector.

The elements of the new offence are that:

- the organisation must owe a duty of care to the victim;
- the organisation must be in breach of this duty of care as a result of "senior management failure";
- the management failure must have caused the victim's death; and
- the breach of duty must have been "gross" as set out in Clause 1(3)(c) of the Bill.

The test of “gross” breach is whether the conduct that constitutes the failure falls far below what could reasonably have been expected, although various other factors are also considered.

Any court action raised in this respect will only be heard, in respect of Scottish jurisdiction, in the High Court and if a company is convicted on indictment it will be liable to a fine. It should be noted that once this Bill is enacted, it proposes to abolish the application of the common law crime of culpable homicide to corporations.

What does this mean?

Despite the proposed penalty being the same as the penalty under existing Health and Safety legislation, the stigma of being convicted of corporate homicide and any associated fine, is far more damaging to the reputation of a corporation. This could be particularly damaging to Universities and Colleges, which rely on student enrolment for sustainability.

In light of the current common law and likely statutory reform, educational bodies should undertake extensive precautions to ensure the health, safety and welfare of everyone affected by their activities and to avoid prosecution.

In order to do so, the sector would benefit from:

- Undertaking a comprehensive review of health and safety policies with particular reference to sporting activities and excursions;
- Appointing a Health and Safety manager to ensure office holders and employees are complying with health and safety laws and regulations;
- Giving employees adequate training;
- Carrying out regular risk assessments of buildings and procedures;
- Distributing safety manuals to supplement training; and
- Consulting with insurers to know exactly what would be covered when the new reforms are in force.

Want to know more?

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