



Legal Focus: Corporate manslaughter

#### Held to account

**Many businesses cite cost as a reason for failing to respond adequately to legal health and safety requirements. However, with the introduction of the Corporate Manslaughter Act earlier this year, Roger Ball asks can this still be a valid excuse?**

Health and safety in the workplace received new focus and attention on 6 April this year with the introduction of the Corporate Manslaughter and Corporate Homicide Act 2007. The Act created a new offence if an organisation fails to manage its activities effectively, resulting in a gross breach of a relevant duty of care that leads to a fatality.

This closed a defect in previous legislation, which required a 'directing mind' in a senior position to also be liable personally. The scope is now extended to those persons with a "significant role", which can include others in relevant operational roles. Therefore, it is key that there is a thorough understanding of responsibility and that effective training and risk management is in place.

However, in the grip of a recession and with major multi-national companies encountering financial difficulties, health and safety, and effective risk management are often the first areas to receive cutbacks. Insurers and brokers must ask if more can be done to help companies comply with the law, even when balance sheets are being stretched more than ever before.

#### Short-term thinking

It is argued by some that cost is the main obstacle for businesses embracing the need for risk assessment. However, this is short-term thinking, as the price of complacency and avoidance in this area can be high. Aside from the moral and direct financial consequences of disruption to a business, a conviction can range from an unlimited fine to a remedial order, with an option of a publicity order requiring the organisation to publicise the conviction and details of the offence. In a tight economic environment with minimal profit margins, this could be the difference between business failure and success.

Implementing risk management measures does not have to be expensive, time-consuming or complicated. In fact, safer and more efficient working practices can often save money - as well as lives. Therefore, the benefits of a sound risk assessment will far outweigh the costs.

A risk assessment may pin-point certain required covers that might be seen as a luxury during good economic times, but these areas can quickly become a necessity in bad cycles - businesses are more at risk from crime when times are tight, for example.

#### Compliance culture

Most organisations understand the importance of having an up-to-date health and safety policy, but how many actually adopt the policy as part of the company culture? A company should have a person who is responsible for the education and guidance of employees, the maintenance of premises, plant and machinery, and communication. The responsibility for education and guidance is critical in the management of health and safety.

Judgements on perceived breaches will likely consider not only an organisation's compliance with health and safety legislation, but also the extent to which it has followed the available guidance and to which its attitudes, policies, systems and practices have encouraged any breach. In the case of bigger organisations, the 'corporate culture' and governance will be closely scrutinised by the Crown Prosecution Service in the course of an enquiry and by a jury in a court hearing on a corporate manslaughter case. The costs to a company of co-operating with this sort of investigation will not be small.

Insurance brokers and companies are in a strong position to promote effective risk management. Aside from the not inconsiderable social consequences of serious 'at work' accidents, there is a financial link between the costs of losses and the premiums charged. The insurance industry itself has a responsibility to help share methods of risk control, as well as work to reduce the numbers of accidents and fatalities. This includes analysing existing data and pinpointing where risk management measures can be most effectively targeted. By working with specialists in these areas, the industry can help minimise the disruption to business, while simultaneously encouraging organisations to meet regulatory requirements. Risk assessment specialists are attuned to asking more unusual questions and understanding where the risks might lie; their job is to ensure the 'what ifs?' are answered.

### **Mitigating the risk**

Many brokers may not have the expertise to identify operational and environmental risks. Nonetheless, they can be proactive and include health and safety risk assessment as part of the ongoing dialogue with their customer; and there is no doubt that a link can be made between liability insurance rates and health and safety risk management. For example, brokers should ask clients if they have undertaken a risk assessment and view a copy of the report. If the report seems in any way inadequate, a broker should advise the customer to seek specialist help. The absence of any report should start alarm bells ringing.

With the increased focus on corporate manslaughter, combined with a pressing need for insurers to stabilise and increase prices, now is the time for organisations to manage their operations in an effective way. Insurers and brokers, with their advice and value added services (often discounted), are in a good position to help companies mitigate the risk.

Managing risk is an essential part of applying sound corporate governance principles. The insurance industry would arguably be failing in its professional duty if its customers are allowed to ignore or become complacent about health and safety in the workplace because the economic climate is tough.

- Roger Ball is commercial motor manager at Allianz Commercial

### **PENALTIES UNDER CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007**

#### **A fine: the size to be determined by the court (there is no upper limit)**

- a) 1999 - Great Western Trains, £1.5m (Southall train crash)
- b) 2003 - Thames Trains, £2m (Ladbroke Grove train crash)
- c) 2003 - Network Rail, £4m (Ladbroke Grove train crash)
- d) 2005 - Transco, £15m (Larkhall fatal explosion)
- e) 2006 - Network Rail, £3.5m (Hatfield train derailment)
- f) 2006 - Balfour Beatty, £7.5m (Hatfield train derailment).

**A publicity order:** requires an organisation to publicise the conviction and details of the offence.

**A remedial order:** requires an organisation to address the cause of the fatal injury.