

University of Sussex – Senior Management Group

*“New challenges in Health and
Safety law and how to stay out of jail”*

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Overview

- Key new risks in Health and Safety
 - Individual H&S Duties / imprisonment for individuals
 - Corporate Manslaughter and Corporate Homicide Act 2007
 - Sentencing guidelines for fatalities
 - Recession
 - Cost Recovery (HSE “FFI” and Defence Costs Orders)
- University H&S Duties
- Case Law update
- Fire Safety
- How to avoid criminal liability – top tips

Key New Risks in H&S

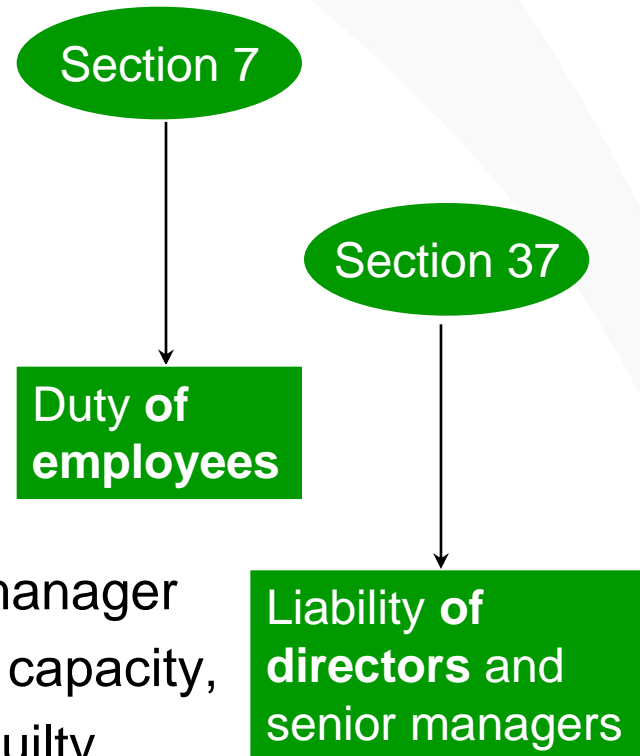


Individual H&S duties (1)

Duty to take reasonable care of self and others affected by work (s.7)

Where an offence... has been committed with the **consent**, **connivance**, or...is attributable to any **neglect** on the part of any director, manager ... or a person who purports to act in that capacity, he/she as well as the company shall be guilty of that offence (s.37)

Individuals



Individual H&S duties (2)

- **Consent** - have knowledge and endorse/direct it
- **Connivance** – have knowledge and ignore it
- **Neglect** – **should** have been aware (even if they are not) and taken action

Individual H&S duties (3)

- **Fines / penalties**

- **Section 7** - £5,000

- **Section 37**

- Magistrates – £20,000
- Crown – unlimited (*typically £50k to 100k*)
- Imprisonment – up to 2 years (or community service!)
- Disqualification for up to 15 years (*typically 5 years*)

Corporate Manslaughter – where are we now? (1)

Corporate Manslaughter and Corporate Homicide Act 2007 – what is it?

- Introduced new manslaughter offence for organisations
- No “directing mind” hurdle
- No new offence for individuals
- Only if accident in the UK
- Penalty – unlimited fine, remedial or publicity orders
- In force since 6 April 2008

Corporate Manslaughter (2)

- Prosecution must prove the way in which activities managed or organised:
 - Caused a person's **death**;
 - Amounts to a **gross breach** of a relevant duty of care owed to the deceased; and
 - **Senior management's** role in the breach was a substantial element in the breach
- Penalties
 - unlimited fine (*multi-million*);
 - remedial order; and / or
 - publicity order

Corporate Manslaughter(3)

Roles & responsibilities scrutinised against policies/procedures/industry guidance

- **Cotswold Geotechnical Holdings** - first company to be convicted under the Act (fine was £385k) – death of geologist after trench collapse
- **JMW Farms Limited** - fined £187k + £13,000 costs in May 2012 following death of a farm worker
- **Lion Steel Ltd** – Employee fell through fragile roof panel, company and three directors prosecuted for manslaughter. Highest fine so far (£480k + £84k costs)
- **PS & JE Ward Ltd** - Horticultural supplier based in Norfolk charged with corporate manslaughter following electrocution of employee at a nursery.
- **MNS Mining Ltd** - owner of a colliery where four miners died has been charged with corporate manslaughter – case adjourned till 25 Feb 2013 for pleas.
- **Prince's Sporting Club Ltd** – young girl fell from a 'banana boat' and died after being hit by the boat towing it. Company charged with corporate manslaughter and s.3 HSWA (director also charged in individual capacity)
- 56 open corporate manslaughter investigations

Corporate Manslaughter (4) - lessons learnt?

- *CM is a very serious offence met with very high fines*
- *Larger companies should expect **multi-million** pound fines*
- Important for directors/senior managers to ensure:
 - safety management systems are robust
 - they understand their own health & safety obligations and set clear **priorities** for H&S
 - comply with HSE / industry specific guidance



Sentencing Guidelines

Sentencing Guidelines for Fatalities

Fines (Corporate Manslaughter)

- “The appropriate fine will seldom be less than £500,000 and may be measured in millions of pounds”

Fines (HSWA involving death)

- “The appropriate fine will seldom be less than £100,000 and may be measured in hundreds of thousands of pounds or more”



Health & Safety (Offences) Act 2008

- Came into force January 2009
- Imprisonment for up to 2 years for mainstream H&S offences

The Recession

- Pressure on finances – could that impact on safety budget?
- Staff cuts – impact on safety critical roles and site managers' responsibilities?
- Pressure on contractors/service providers
- Impact upon fine if “cost cutting at the expense of safety”

HSE Enforcement – Costs Recovery

- **“Fees for intervention”** (FFI) - what does it mean?
- Definition of “material breach”
- What does it cost? Time period to pay
- Appeal process – independence?
- Problems / issues? Implications of inspector behaviour?



Costs Recovery (2)

- **Loss of Defence Costs Orders**
- From October 2012:
 - Companies no longer able to recover legal costs if acquitted in the criminal courts
 - Acquitted individuals right to recover costs either removed or significantly reduced
- Incentive for clients to defend a prosecution?



University Health and Safety duties

(specifically for academic
/ non-executive members at the University)



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Roles and Responsibilities

- **Council** – manages the University's corporate risks
- **Vice Chancellor** – executive oversight of H&S
- **Registrar / Secretary** – overseeing H&S management
- **Director of H&S** – advising the University on H&S
- **Heads of Schools** – responsible for the H&S of staff, students and visitors / complying with legislation
- **Supervisors / line managers** – key role in delivering good H&S performance
- **Employees & students** – legal responsibility for their own safety and for others / must co-operate with all University measures provided for H&S



Off Campus Responsibilities

- University retains overall responsibility for H&S of its staff and students
- Responsibility may be shared with third parties
- Insurance policies should cover off-campus activities
- **Must have:**
 - Safe system of work
 - Risk assessments / arrangements for practical work
 - Suitable venues / providers (competence?)
- Work placements?

Work Related Stress – Policies

- Stress – inability to cope with demands placed upon them (applies to all levels of the University)
- Legal position
 - Work related stress is not RIDDOR reportable
- HSE Management Standards – not a legal requirement but.....
- *“Management of Work Related Stress Policy” & “Work Related Stress Guidance”* - University documents
- Implications of work related stress?
- Cases?



Case Law



Risk and Reasonable Foreseeability

- Risk? Section 2 & 3 HSWA duties – same level of response
- Relevance of an accident - Evidence of risk, not necessarily an offence
- Foreseeability:
 - The accident (no)
 - The risk in question (yes)
 - The risk of any injury (yes)

Case Law – Health & Safety

HSWA cases – examples of significant fines



- **Apollo / Keepmoat (s.3 HSWA)** - *Company fined following carbon monoxide poisoning (Dec 2012)*
- **UK Power Networks (s.2 HSWA)** - *Company hit with £420,000 bill after explosion death (Jan 2013)*
- **Applied Fusion Ltd (s.2 HSWA)** – *Firm fined £1 for banksman fatality (Feb 2013)*
- **Cheshire Gates (gross neg manslaughter)** - *Director charged over electric-gate child death (Feb 2013)*

Fire Safety



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Fire – Significant Fines

R v New Look Retailers Limited

- Court of Appeal – June 2010
- Upheld fine of £400k – severe but not disproportionate
- No death/injuries
- No causation but failed to manage risks



Chumleigh Lodge Hotel:

- Fire
- After LFB's visit – serious concerns: defective fire doors, blocked escape routes and absence of smoke alarms
- Six charges under the RRO 2005 – total fine of £260k
- Courts imposing significant fines under RRO 2005

Fire - Article 5 (3) duty holders

Christopher Morris - January 2011

- Prosecution of fire alarm engineer (first of its kind)
- Former fire fighter failed to maintain fire alarm system in care home and failed to inform home owners of systems deficiencies
- £5,000 fine plus costs of £6,000



O'Rourke – September 2011

- 2 offences of failing to make suitable and sufficient risk assessment
- O'Rourke purported to carry out fire risk assessments on both properties – “cut and paste job”
- G plea – 8 months imprisonment on each count (concurrent)
- Owner also sentenced to 8 months imprisonment



How to avoid criminal liability



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Top tips to reduce exposure to liability (1)

Key Questions: The Culture Test

Attitude:

- What do the staff think & what would they say to an inspector?
- How seriously does the organisation take H&S?

Systems & Accepted Practices:

- Do systems reflect what happens on the ground ?
- Is implementation the same in Lands End and John O'Groats?

Selection and supervision of contractors:

- What about specialist accredited contractors? Asbestos? Fire Safety? Plumbers / GasSafe?

Top tips to reduce exposure to liability (2)

IoD Guidance

- “Leading Health and Safety at Work – Leadership Actions for Directors and Board Members” (INDG 417)
- Guidance published in October 07
- An agenda for the effective leadership of health and safety
- Applies to all directors, officers and their equivalents

Top tips to reduce exposure to liability (3)

Responding to Incidents

- Is there a duty to investigate accidents? MHSWR 1999
- Privilege – reports **do not have to be disclosed** to Police, HSE, Coroner or PI claimants
- Understanding powers of HSE (voluntary / compulsory / PACE interviews)



ANY QUESTIONS?

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