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Corporate manslaughter act: new guidelines set £500k floor on fines

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Organisations that are found guilty of corporate manslaughter will be fined "in millions"
Edward Wanambwa

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The body responsible for advising courts on sentencing under the Corporate Manslaughter and Corporate Homicide Act 2007 has issued new guidelines, which are out for consultation until January.

The Sentencing Advisory Panel's previous guidelines said convicted organisations that had pleaded not guilty would normally be fined the equivalent of between 2.5 per cent and 10 per cent of their annual turnover on the first offence. Fines are intended to be punitive.

What's changed?

The final guidelines remove the link with turnover and suggest fines will be "in millions" and will "seldom be below £500,000".

They are also stricter on "publicity orders", which may force convicted organisations to publicise the offence on their websites. Courts are advised to make these orders in virtually all cases, in addition to a fine and, if appropriate, a "remedial order" to correct management failings.

What is the offence?

An organisation is guilty of corporate manslaughter if its senior management manages or organises its activities in a way that causes a death and amounts to a "gross breach" of a relevant duty of care owed to the deceased. An organisation owes a duty of care to its employees and others working for it, and to people who enter its premises or who use its goods or services.

"Gross breach" means conduct falling below what could reasonably be expected of an organisation in the circumstances. Juries must take into account the seriousness of the management failure, the extent to which there was a risk of death occurring, and whether the organisation was in breach of any health and safety legislation.

How will the Act apply?

The Crown Prosecution Service (CPS) authorised the first prosecution under the act against Cotswold Geotechnical Holdings earlier this year, following the death of a junior geologist who was buried under tonnes of mud when a trench he was working in collapsed. One of the company's directors has also been charged with "gross negligence manslaughter" and an offence under the Health and Safety at Work Act 1974.

The case is due to start at Bristol Crown Court in February. Its outcome will give a clearer idea of how the courts will interpret and apply the corporate manslaughter act. But employers should assume the CPS will not be slow to bring similar actions in future.

How can breaches be avoided?

Organisations can take practical measures to reduce the risk of a prosecution by:

- allocating responsibility for compliance and training to a director, senior HR manager or a special health and safety committee;
- making health and safety a standing item for all board meetings;
- engendering a health and safety-conscious culture across the organisation, to encourage individual responsibility;
- instructing an independent specialist to carry out a health and safety audit to identify organisational problem areas;
- developing a rapid response incident plan to preserve evidence and ensure a swift internal investigation.

Further Info

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