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Corporate Manslaughter

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CORPORATE MANSLAUGHTER

On December 8, 1994, OLL Ltd became the first company in English legal history to be convicted of homicide after three school-children were killed whilst canoeing in the 'care' of the company. OLL Ltd was small, so it was relatively easy to find its 'controlling minds', while the risks to which the students were exposed were both serious and obvious, and there was clear evidence that the managing director was aware of these. A handful of such convictions followed, all against small organisations.

The fact that these convictions had all been against very small companies raised the central legal problem in applying the law of manslaughter to a larger corporate entity; the legal test, that of identification, required identifying a company's acts and omissions with those of one or more controlling minds, corporate guilt being dependent on the guilt of one or more senior individuals. There appeared a clear, unjust irony here: while it was easier to apply the law to smaller companies, the very size and complexity of organisations such as P&O, Great Western Trains, and Railtrack, had not simply been a key factor in producing disasters, but were the same features which had rendered attempts at manslaughter prosecutions almost bound to fail.

In 1996, the Law Commission for England and Wales published a fully developed set of proposals for a new law on corporate manslaughter. The aim was simple: to make it easier for companies to be successfully prosecuted where there was sufficient evidence of serious negligence, in breach of health and safety law, which led to the death of workers or members of the public from work-related activities. But the path from these proposals to the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHAct) was full of dead ends, controversies, broken promises and governments succumbing to the lobbying of the Confederation of British Industry, Institute of Directors, and other employers and their organisations (Tombs and Whyte, 2007). It is perhaps unsurprising, that what came out of a 13 year struggle was something that is 'conservative in form and is unlikely fundamentally to change' efforts to hold corporations legally to account for workplace killing. (Almond and Colover, 2012, p1000).

Successful prosecution under the Act requires evidence of serious management failure, not of serious individual failures; it includes a clearer test of whether or not the failure is gross – 'falling far below what can reasonably be expected in the circumstances'; it sets out a clearer set of factors for juries to consider when determining guilt (related to seriousness of the breach); and it introduces some element of corporate culture, through reference to 'the organisation's 'attitudes, policies, systems or accepted practices' (Centre for Corporate Accountability, 2008, p 17). It should also be emphasised that the Act only allows for the prosecution of organisations - individuals cannot be prosecuted for even contributing to this offence, although the ordinary law of manslaughter continues to apply to them (Centre for Corporate Accountability, 2008).

By Spring 2015, there had been just 12 successful prosecutions (Tombs, 2015) and scrutiny of these convictions reveals key failings of the law. First, all of the companies successfully prosecuted thus far have been small enterprises which could have been successfully prosecuted under the common law of manslaughter. Thus, the large, complexly owned companies for which the new law was ostensibly designed, have so far evaded its reach (Tombs, 2015). Perhaps relatedly, all of the convictions secured to date relate to offences involving a single fatality – while a key intention behind the law was to encompass multiple fatality incidents.

Second, the level of fines passed at sentencing has been relatively low. Following the passage of the CMCHAct, the Sentencing Guidelines Council issued ‘definitive’ guidance on appropriate levels of penalties following successful prosecution under the Act, with the key rationale for setting the level of fine being the ‘seriousness of the offence’ and factors contributing to this. Calculated in this way, fines should ‘be punitive and sufficient to have an impact on the defendant’, so that the ‘appropriate fine will seldom be less than £500,000 and may be measured in millions of pounds’ (Sentencing Guidelines Council (2010, p 7). In fact, only *one* fine has so far reached this putative minimum – and this fine of £500,000 was imposed upon a company which at the start of the trial was in fact in administration (Stereocycle [Rotherham] Ltd).

Each year in the UK, up to 50,000 workers die from fatal injuries and work-related illnesses, of which a significant but unknown proportion are likely to be the result of legal breaches by their employers. Thus the rate of convictions under the CMCHAct to date looks like a failure on the part of the Health and Safety Executive, police forces and the Crown Prosecution Service, and it may be that the CMCHAct is another weak, and at best symbolic, attempt to hold to account companies which kill.

STEVE TOMBS

See also: State-Corporate Harm and Victimisation

Readings

Almond, P. and Colover, S. (2012) ‘Communication and social regulation: the criminalization of Work-Related Death’, *British Journal of Criminology*, 52(5): 997-1016.

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Tombs, S. (2015) "Corporate Killing with Impunity", *OU Criminology*, Available at: <https://oucriminology.wordpress.com/>

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