

# British government accedes to demands for new corporate killing offence

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Company bosses have been warned that legal loopholes that presently allow them to escape prosecution in Britain for the deaths of employees and members of the public in their charge are to be closed. If found guilty of the proposed offence of corporate killing, directors could face large fines or possibly imprisonment.

Calls for a law of corporate killing stretch back almost 40 years in response to the death of Glanville Evans. He was killed when the bridge he was working on collapsed and he fell into the River Wye. The company that employed him had clearly been reckless, but an attempt to convict it for manslaughter failed. That was in February 1965. Since then more than 31,000 people have been killed at work or through commercially related disasters such as train crashes. Safety reports have shown that management failures are responsible in most cases. However, since the death of Evans only 12 prosecutions for manslaughter have been brought and only three have resulted in a conviction.

A series of horrific and avoidable accidents that have hit the headlines over the past two decades has turned public opinion firmly against big business getting away with lax safety controls in favour of profits. The Herald of Free Enterprise, King's Cross, Paddington, Southall, Clapham and the Marchioness disasters are some of the most notorious examples that never led to a single company facing prosecution. In the face of growing public criticism and a number of campaigns by groups of relatives, the Labour government was forced to promise to introduce a new offence of corporate killing. According to the Home Office, the new law is due "anytime soon".

The move towards legal reform took shape in March 1996, under the previous Conservative government, when the Law Commission published a report on involuntary manslaughter and a draft bill for consultation. The bill recommended that there should be a special offence of "corporate killing", broadly corresponding to the individual offence of death by gross carelessness. It said that, as with the individual offence, companies should be liable to prosecution if the conduct that caused death fell below what could reasonably be expected.

Importantly, the Commission also recommended that, unlike the individual offence, the corporate offence should not require that the risk be obvious or that the defendant be capable of appreciating the risk. For the purposes of the corporate offence, it recommended that a business should be held responsible if death was "caused by a failure in the way in which the corporation's activities are managed or organised to ensure the health and safety of persons employed in or affected by those activities". The Law Commission also said management failure on the part of the corporation could be treated as the cause of a person's death, even if the immediate cause is an act or

omission of the individual.

The Commission's recommendations have been largely accepted by the Home Office, which published its own consultation document in May 2000. If the new offence of corporate killing becomes law, companies face the risk of substantial fines with the prospect of imprisonment for identified individuals held responsible.

However, problems persist with the proposed legislation. One important change that the government did make to the Law Commission's recommendations was that a corporate killing law should apply to a far wider range of organisations including National Health Service trusts, school governing bodies, charities and other public bodies—effectively any business or organisation that employs people. For example, virtually anyone on the board of a school or hospital trust could in future be charged and be sent to prison if a death is deemed to have resulted from "management failure" in the organisation.

"Our proposal would considerably broaden the scope of the offence to about 3.5 million enterprises," said Home Office minister Keith Bradley when he unveiled the government's planned changes.

However, in its consultation paper the Home Office stressed that the proposed offence would not of itself either increase or decrease individual liability. It will merely provide a different basis of criminal liability for corporations. The governing principle in English law on the criminal liability of corporations is that those who control or manage the affairs of the company are regarded as embodying the company itself. Before a company can be convicted of manslaughter, an individual who can be "identified as the embodiment of the company itself" must first be shown to have been guilty of manslaughter. Only if this individual is found guilty can the company be convicted. Where there is insufficient evidence to convict the individual, any prosecution of the company must fail. This principle is often referred to as the "identification" doctrine.

There can often be great difficulty in identifying an individual who is the embodiment of the company, let alone a public body, and who is therefore culpable. The problem becomes greater with larger companies which may have a more diffuse structure, where overall responsibility for safety matters can be unclear and no one individual may have that responsibility. In such circumstances it may be impossible to identify specific individuals who may be properly regarded as representing the directing mind of the company and who also possess the requisite *mens rea* (mental state) to be guilty of manslaughter. In such circumstances, no criminal liability can be attributed to the company itself.

Put simply, this means that the bigger the organisation, the less likely managers and directors will be prosecuted. Conversely,

directors of small and medium enterprises (SMEs) are more vulnerable to prosecution because they can more readily be identified as being the “controlling mind” of the company, particularly if it is a micro-business employing less than 10 people.

This legal position has led to some very high-profile failed prosecutions. The sinking of the *Herald of Free Enterprise* on its March 1987 journey from Zeebrugge to Dover led to the deaths of over 200 people. A jury at the inquest returned verdicts of unlawful killing in 187 cases. The Director of Public Prosecutions launched prosecutions against seven individuals and the company. But the case failed because the various acts of negligence could not be aggregated and attributed to any individual who was a directing mind.

The Southall rail crash of September 1997 is another example. Seven people died and 151 were injured. In July 1999 Great Western Trains (GWT) pleaded guilty to contravening the law in that the company failed to ensure that the public were not exposed to risks to their health and safety. It received a record fine for a health and safety offence of £1.5 million for what Mr Justice Scott-Baker described as “a serious fault of senior management”. The judge had earlier ruled that a charge of manslaughter could not succeed because of the need to identify some person whose gross negligence was that of GWT itself.

A more recent example is that of the Crown Prosecution Service’s (CPS) decision at the end of last October not to prosecute any companies or individuals with criminal charges over the Paddington rail crash that claimed 31 lives and left 500 people injured two years previously. Although it accepted that the incident “revealed a history of corporate failings”, the CPS advised British Transport Police to close its investigations because there was insufficient evidence to bring prosecutions.

In that incident, Michael Hodder, 31, driver of a Thames train, went through a red light at Ladbroke Grove near Paddington station in west London and crashed into a London-bound Great Western express. Lord Cullen’s report on the tragedy found that the driver was not wholly to blame and that senior management was guilty of “serious and persistent failure”. The CPS said it was impossible to prove why Hodder went through signal 109 and there was no evidence that if the driver had been better trained and more experienced he would be any less likely to have passed a similar signal. “We cannot identify any individual person as being responsible for driver training and therefore for its deficiencies at Thames Trains. There is no one person that we could properly prosecute,” said the CPS.

The only three successful prosecutions to date all relate to small companies. In December 1994 the leisure company OLL was successfully convicted of corporate manslaughter after four schoolchildren in its care died in a canoeing accident in Lyme Bay in Dorset. It was fined £60,000 and the managing director was jailed for three years (later reduced to two on appeal). In the second case, the managing director of Jackson Transport (Ossett) was sent to prison for a year in 1996 following the death of an employee who inhaled chemicals. The last successful prosecution was in December 1999. Two directors of a haulage firm were given suspended sentences after they were found guilty of ignoring the excessive working hours of their driver who fell asleep at the wheel and killed two motorists in a seven vehicle pile-up on the M25.

In the past few months, hopes of convicting a fourth company of corporate manslaughter have been dashed. At the end of November a company was cleared of causing the death of a student crushed by a mechanical excavator. Simon Jones, an anthropology student at

Sussex University, was “fit and healthy” when he arrived at 8am for the first day of a holiday job at Shoreham Docks, west Sussex on April 24, 1998. The 24-year-old had been sent by an employment agency to work as a labourer unloading stones from a ship. By 10.15am his head had been crushed in the excavator. At the Old Bailey on November 29, Euromin Ltd was found guilty by a jury of two breaches of health and safety regulations and ordered to pay a £50,000 fine and £20,000 costs. But the company and its general manager, Richard Martell, were cleared of manslaughter.

Shortly after the verdict, in a letter to the *Guardian*, Chris and Anne Jones—Simon’s parents—wrote: “It is no surprise that James Martell waddled away; the miracle is that he was ever in the dock. If anyone is guilty of gross criminal negligence, it is Blair’s government. This case, to coin a phrase, has shone new light on matters that have been swept under the carpet for too long. If we had enough money it would be fun to take this government to the European Court of Human Rights for its failure to protect the workforce and the travelling public from corporate cowboys. If Euan Blair [the prime minister’s son] had been decapitated by a crane grab, instead of merely being found drunk in Leicester Square, does anyone imagine that (a) the people responsible wouldn’t be rotting in jail, or (b) that tougher laws on corporate killing wouldn’t have been through parliament within a month?”

At the beginning of January, it was reported that reluctance to mount a prosecution for Scotland’s first-ever case of corporate killing could be behind the two-year delay of a hearing into the death of a family from Larkhall. Detectives and the procurator fiscal’s office have been ordered to conduct a fresh investigation into the gas blast that killed a family of four. But they believe the order has come because it would mean a landmark case which could end with gas company Transco facing fines of several million pounds.

Two children, Stacey, 13, and Daryl Findlay, 11, and their parents, Andrew and Janette, were killed by the huge explosion three days before Christmas in 1999. It was established that a gas main supplying their home in Carlisle Road, Larkhall had a large number of leaks. Sources close to the investigation say the Crown Office has asked for another investigation because it has no desire for a fight. The source said there was no justification for another investigation, as the original had left no stone unturned.

While the new legislation is still nothing but a promissory note, eight years after it was first recommended, the UK’s record of safety at work or at the hands of employers is getting worse. According to Health and Safety Commission figures, fatal accidents at work during 2000/01 were up by a third on the previous year. Nearly 300 workers were killed, compared to 220 in 1999/2000. The rate of fatal injuries now stands at 1.1 per 100,000 workers. Of the 295 fatalities, 106 occurred in the construction industry and 46 in agriculture. Seventy-three deaths were caused by falls from heights, 64 from moving vehicles, 52 from falling and moving objects, and 37 by objects collapsing or overturning.



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