



Sentencing for Corporate Manslaughter

On 15 November 2007, the Sentencing Advisory Panel (SAP) published its consultation paper on sentencing for the offence of corporate manslaughter.

The consultation closed on 7 February 2008 following which SAP will submit its advice to the Sentencing Guidelines Council following which draft guidelines will be formulated and issued for a further period of consultation leading to the definitive publication of the sentencing guidelines.

The Corporate Manslaughter and Corporate Homicide Act 2007 (CMA), which comes into force on 6 April 2008, creates the new statutory offence of corporate manslaughter. In view of the high risk areas that local authorities have responsibility for, such as highway, housing, leisure and social care where deaths occur, the legislation has a very real bite.

When sentencing an organisation for this offence, the CMA provides for the following sanctions to be imposed:

- an unlimited fine;
- a publicity order; and/or
- a remedial order.

As part of this consultation process, SAP is also proposing radical changes to fines under the Health and Safety at Work Etc Act 1974 (HSWA) for offences involving death.

FINES

The Panel's provisional starting point for a first time offence under CMA after a plea of not guilty is a fine amounting to 5% of the offender's annual turnover during the three years prior to sentencing.

The Court will then take into account any aggravating or mitigating factors, arriving at a fine which will normally fall into the range of 2.5% to 10% of the average annual turnover. Significant aggravating factors or previous convictions may take the fine beyond that range. The court will then consider any mitigation related to the offender (rather than the offence), which may take the fine below the range.

For fatalities involving a breach of the HSWA, SAP is proposing a starting point of 2.5% of the

average annual turnover. Once again, aggravating and mitigating factors will be taken into account such that the fine will normally fall into the range of 1% to 7.5% of average annual turnover.

Aggravating and Mitigating Factors

The panel proposes that the following factors may aggravate or mitigate the seriousness of any offence

Aggravating factors affecting the degree of culpability:

- failure to act upon advice, cautions or warnings from regulatory authorities
- failure to heed relevant concerns of employees or others;
- carrying out operations without an appropriate licence;
- action, or lack of action, prompted by financial or other inappropriate motives;
- corporate culture encouraging or producing tolerance of breach of duty

Aggravating factors affecting the level of harm:

- more than one person killed as a result of the offence
- serious injury caused to one or more others, in addition to the death(s)

Mitigating factors:

- breach due to employee acting outside authority or failing in duties

Offender mitigation:

- ready co-operation with authorities
- good safety record

Implications for Local Authorities

SAP recognises that particular issues arise where the offending organisation is a publicly funded body; this is because any fine imposed may be considered an inefficient recycling of money or worse, if public services suffer as a result. However, SAP considers that it is important that a body that has committed an offence under the CMA or the HSWA does not escape sanction.

Where an offence under the CMA or the HSWA has involved foreseeable harm to a large number of people this will be reflected in the level of seriousness as set out.

The objectives of the fine are to reflect public concern at the harm caused by the offence and to deter the offender from breaching its duties in the future and SAP consider that these objectives are just as important for public bodies as private companies.

The assessment of financial circumstances will seek to ensure that:

- a) the fine is sufficient to have the required impact, in most cases without imperilling either the existence of the organisation or the funds necessary to remedy defective systems; and
- b) where the offender is funded from the public purse, it is recognised that the fine will be paid with public money.

PUBLICITY ORDERS

SAP believes that the ordinarily a publicity order should be imposed alongside a fine, It considers a publicity order to be an effective deterrent, potentially exceeding the effect of a fine, as it can impact upon the public reputation of an organisation through damage to consumer confidence, market share and equity value.

In essence, the order will involve the offender in having to advertise the fact of its conviction, specifying the particulars of the offence, the amount of any fine imposed and the terms of any remedial order that has been made. The court must specify the period in which the advert is to be placed and it may require the offender to provide proof of compliance. Failure to comply with an order will itself be an offence punishable by an unlimited fine.

A court may order that the details of an offence are published in any 'specified manner', giving the court scope to ensure that the publicity reaches its intended audience, such as:

- publication on television/radio and/or in a local/national/trade newspaper, including relevant broadcaster/newspaper websites;
- publication on the organisation's website and in its annual report, informing (potential) customers and those who might be interested in investing in the organisation;
- notice to shareholders; and
- letters to customers and/or suppliers of the organisation.

Implications for Local Authorities

SAP considers that a publicity order should be imposed on every offender convicted of corporate manslaughter. However, SAP recognises that there may be cases where the making of an order may be less appropriate, for example where the offender is providing a local public service in relation to which the public cannot exercise choice. Thus it seems unlikely that an order would be imposed on local authorities. However, because of the problems associated with imposing fines on public bodies, it is possible that Courts may use publicity orders coupled with the imposition of lower fines

REMEDIAL ORDERS

Both the CMA and the HSWA provide for rehabilitation of the offender through a remedial order, setting out steps to be taken to ensure that the failures that led to the death are addressed. As with publicity orders, failure to comply with an order under the CMA will itself be an offence punishable by an unlimited fine

SAP recognises that the similar order available for offences under the HSWA92 is itself rarely used and therefore sees the remedial order as providing an additional safeguarding power for a limited number of cases where the offender has failed to respond to other interventions.

SAP therefore considered it unnecessary to consult on the situations in which it would be appropriate for a court to impose remedial orders under either CMA or HSWA, as such orders will only be imposed after consultation with a relevant regulatory body and will be highly case-specific.

In terms of effect on overall sentence, SAP's provisional view is that the costs involved in complying with the remedial order should not lead to a corresponding decrease in any fine imposed for the same offence.

Further Information

For further information on this topic or any local government law related matter please contact:

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This briefing note is intended merely to provide a summary of the law in this area and is not a comprehensive guide. It is not intended to provide legal advice for specific cases.