

## **Comment on Corporate Manslaughter**

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If in doubt, think first about the consequences of your actions.

Good advice that does not appear to have been followed by many of the pundits who have written about the new law of Corporate Manslaughter.

The Corporate Manslaughter and Corporate Homicide Act 2007 changes the basis on which companies, other corporate bodies and certain organisations can be prosecuted for corporate manslaughter (corporate homicide in Scotland).

This includes governing bodies in both foundation schools and further education colleges, and there has been some ill thought comment about the possible implications for governors.

The first ever successful UK prosecution for corporate manslaughter, in 1994, followed the Lyme Bay tragedy, when four teenagers from Southway Comprehensive in Plymouth, died during a canoeing expedition. But it was Active Learning and Leisure, the company that organised the trip, that was prosecuted and fined £60,000 – not the school.

In February, in response to the new legislation, the TES said that the new offence was:

“symptomatic of the trend towards blaming institutions rather than individuals when things go wrong.”

The paper concluded that there was:

“little point in punishing a college found guilty of manslaughter by imposing a fine.”

This reveals a quite spectacular ignorance about the background to the legislation, which has been produced as a much delayed response to the Herald of Free Enterprise disaster in 1987.

That incident, which saw 187 deaths and was followed by an inquest verdict of unlawful killing, was the subject a public enquiry led by Lord Justice Sheen.

The enquiry report identified a “disease of sloppiness” at the Herald’s owners Townsend-Thoresen, and negligence at every level of the company hierarchy.

Calls for changes in the Law centred on the inquest verdict, in which the coroner focused the blame for the tragedy on three employees, rather than on the wider company failings.

The TES reported heads’ organisations describing the new law as ‘bad news’ and further education colleges questioning how they would cope if hit by multi million pound fines.

This is a classic example of an inability to see the wood for the trees; I cannot see Tesco or Sainsbury's making such a PR gaffe. The sensible reaction to the new Law is to say that it reinforces the need for all employers and all public organisations to take safety very seriously indeed.

A prosecution under the new legislation would follow only if an institution was guilty of the grossest ignorance or inattention, or acted recklessly, with a complete disregard to the risk. And vicarious liability does not apply; a rogue employee would not land a governing body in court; a prosecution would have to show that senior managers had been complicit in the risk, or had condoned or even promoted the unsafe practices that had resulted in a death.

And there's the nub. A corporate manslaughter prosecution would only follow if an entire organisation has disregarded safety to the extent that a young person had lost their life in preventable and foreseeable circumstances.

The argument that education institutions should in some way be able to claim exemption from the consequences of their actions or inactions is specious.

Affordability should not even enter this equation. When criminals are prosecuted the courts do not take into account the hurt and upset that may result to the villain's wife and family. Murderers get banged up, armed robbers get sent down.

Teachers, support staff and students would suffer if their school or college were faced with a fine of 10% of the annual budget; but without effective sanctions the Law is an ass, and those same teachers, support staff and students are at far more serious risk if school and college managers are allowed to think that the Law can be disregarded.

In general schools and colleges have an excellent safety record, but there are senior managers who believe in the 'fingers crossed' approach to safety.

"We don't need to do this, we've never had an accident," they will argue.

Technically, this is known as the 'equine' approach to safety, because it is based on the wearing of blinkers and a policy of shutting the stable door after the horse has bolted.

Schools and colleges ought to run good management systems. If there is code of practice or a guidance document then someone needs to ensure that the advice is being followed.

This is the governing body's entire purpose; it's why you are there. Good practice is your safeguard.

If in doubt, think first about the consequences of your actions. And the consequence that should be uppermost in your minds is not the fine, but the funeral.