

## CORPORATE MANSLAUGHTER CHARGE COULD LEAD TO BUSINESS FAILURE

The Corporate Manslaughter Act 2007 has brought the threat of huge fines for companies where the death of a person caused by their failures results in a conviction under the Act.

This warning was given by barrister Bernard Thorogood, one of the UK's leading experts on such matters, during a presentation to an audience of businessmen and women from the private and public sector.



Speaking at a seminar organised by solicitors WH Law LLP in Dudley and sponsored by Yorkshire Bank, Mr Thorogood, from No5 Chambers, said: "A recent consultation document from the Sentencing Advisory Panel suggested a starting point of five per cent of the average annual turnover in the three years prior to sentence. This start point may not be accepted. "For some businesses, this could be a huge and very damaging penalty. In extreme circumstances the company could go out of business. "In addition, damage from a 'publicity order' could be great, forcing businesses to publicise particulars as directed by the Court."

"There is a real desire to bring companies to book where death in the workplace happens and this will not only result in corporate manslaughter charges. The greater depth of enquiry could lead to more individuals being charged with gross negligence manslaughter (or charges contrary to s.37 Health and Safety at Work Act 1974), a charge which was available under the old law.

"The offence will only be proved where the way the organisation's activities are managed or organised by its senior management is a substantial element in the breach of duty of care" said Mr Thorogood.

"Senior management will be in the firing line where conduct falls far below that which could reasonably be expected and the duty includes that owed to employees and as occupiers of premises and in connection with the supply of goods and services.

"Organisations, whether in the private or public sector, which stand accused, may seek to show that there is no direct connection between the way the organisation is managed and the breach.

"The real answer is to raise your game in term of risk management and make sure the culture of your organisation is focused on being risk aware and risk averse."

Sarah Pugh, a partner in WH Law LLP, agreed and urged directors to take action but not to panic:

“This is serious legislation and new measures to reduce risk are needed. Proper planning and advice is essential, as is the elevation of risk management to the top table of organisations” she said.

Ms Pugh cites the case of migrant workers as illustrating the need to go beyond the obvious actions in response to the corporate manslaughter offence. “Such workers may not always have enough grasp of English to understand all the finer points of complex instructions.

“So special communication and training will be needed. This is an extension of the position of employees generally, where consultation, training and involvement are key factors in acceptable risk management” she added.

Other speakers at the seminar, Phil Osborne and Tom Duffin of Chase Management, provided different perspectives to the issue of corporate manslaughter. Mr Osborne gave a sobering and chilling account of his own experiences of facing prosecution due to a death in the workplace. Mr Duffin provided a stimulating discussion on the issue of motivation and how to address change in the workplace.

