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CEC SPECIAL REPORT 2007

CORPORATE MANSLAUGHTER AND HOMICIDE BILL

SPECIAL CEC REPORT TO CONGRESS 2007: CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE BILL.

INTRODUCTION

It has always seemed a moral and legal contradiction that the law concerning workplace deaths in the UK did not extend to the prosecution of either organisations or individuals, except where an organisation was small enough to specify a “controlling” mind. An individual worker could be prosecuted however for something as trivial as stealing a pen from the workplace!

Trade unions, including GMB have for many years sought to rectify this position but it was not until the manifesto commitment of the incoming Labour government of 1997 that we held out any real hope of a Corporate Manslaughter Bill being enacted. This position was restated as part of the Warwick agreement before the last election. Shamefully it has taken almost 10 years for this to be debated, with a view to enactment, in parliament.

HISTORICAL BACKGROUND

Since the introduction of the Health and Safety at Work Act (1974) there has been a general improvement in workplace deaths from over 500 per year to 212 in 2005/6. Indeed these were the best recorded figures ever. However this reduction is not entirely due to improvements in workplace approaches to health, safety and welfare. Certainly the emphasis on a risk assessment based approach has helped but so has the changing nature of British industry.

In the 1970's the UK was a very different place industrially. There was a greater emphasis on manufacturing and heavy industry such as shipbuilding. Obviously more hazardous work often results in more serious injuries and deaths. The paradox in this is that those injuries and deaths are more transparent and recordable as they occur in actual workplaces. Contrast that with the growth in road traffic and the estimation that a third of all road traffic deaths involves someone driving for a living. This is over 1,000 people a year! This is almost certainly an historical high number but of course they are not recorded as workplace deaths and so the bottom line figure will become distorted. Interestingly there have been prosecutions for negligence for employers who have enforced a long hours culture within the road haulage industry but it is still not registered as a workplace death.

Some industries where the work would still be categorised as heavy, such as construction, agriculture or waste collection still have a disproportionate number of deaths and serious injuries. The safety culture within these sectors still leaves much to be desired and there is no doubt that this record indicates that negligence leading to workplace deaths continues to happen.

A recent, horrific, example of such a negligent death happened to the son of a GMB member. Daniel Dennis, from Bridgend, South Wales, was only 17 when he fell through a skylight while working for North Eastern Roofing. His father, Peter, had warned the employer that his son had no experience of working at heights. The company sent him onto the roof without training, with no harness or other protective equipment and no fenced off safety area.

If the devastation from the news of Daniels death had not been enough for the family the decision of the Crown Prosecution Service not to prosecute the company was seen as perverse. Particularly as the inquest jury had only, rightly, taken ten minutes to agree an unlawful killing verdict. The family, with support from GMB, took a judicial review to the High Court in an attempt to overturn this and force the CPS to reconsider. For only the second time in history the CPS were instructed to reconsider their original decision.

There are times when the state does not give enough protection and a trade union may be the only support a member can get. This case also serves to illustrate the need for a comprehensive Corporate Manslaughter Bill on the statute books, where an employers' negligence is fully investigated and prosecuted and the feelings of the family are paramount.

THE CONSULTATIVE PROCESS

The Home Office issued a Consultative Document on the proposed Corporate Manslaughter Bill in the summer of 2005. (Initially the Scottish Executive was to consult and publish their own Bill, titled Corporate Homicide. Perhaps due to the much stronger direction it appeared to be going in terms of definitions and sanctions it was decided that as this related to health and safety matters that this was not a devolved issue and would therefore be legislated from Westminster).

GMB, as previously reported to Congress, submitted its' views on the best way forward for the legislation. These are a matter of public record as contained in the Written Evidence of the Home Affairs and Work and Pensions Committees report published in October 2005. The areas of concern raised by GMB were as follows-

- Ensuring that senior managers and directors could be prosecuted and imprisoned for negligence following death
- Clarification on the definition of senior managers
- The imposition of corporate probation with a requirement to improve H&S management systems and practices

- Other sanctions on offenders, including disqualification from directorship, suspension from office and negative impact orders (effectively “name & shame”)
- The imposition of fines commensurate with the seriousness of the offence
- The removal of Crown Immunity for public bodies being exempt from the legislation
- The legislation should apply in some circumstances where offences are committed abroad by UK based companies

Many other respondents, including other trade unions, broadly agreed with much of this submission but it was not surprising that organisations representing employers, such as CBI, IoD and EEF, disagreed fundamentally with the proposal to prosecute directors or senior managers.

GOVERNMENT PROPOSALS

The government published its’ draft Bill in March 2005. The two select committees (Home Affairs and Work and Pensions) published their response after taking oral evidence, in December, the same year. Perhaps surprisingly they were closer to the trade union perspective than the government on issues such as secondary liability, the range of extension into the public sector and the sanctions that should be imposed after an offence.

The government proposals were greeted with a mixed reception.

- *Fundamentally there was to be no individual prosecution for directors or senior managers.*
- *There was a change in that it would be no longer necessary to highlight an individual or controlling mind to prosecute a corporation or an organization.*
- *There would not be prosecutions for offences committed abroad.*
- *There would be an extension of liability into areas controlled by the crown.*
- *Unincorporated bodies such as trade unions would still be outside the scope of the law.*
- *There would not be secondary liability for “aiding and abetting” on individuals.*

From the GMB point of view a mixed bag of proposals with the lack of proposed prosecution for individual directors particularly disappointing.

LEGISLATIVE PROGRESS

As the legislation progressed through both Houses of Parliament it was clear that there was much consensus though many sticking points remained. A cynical viewpoint has been expressed that the opposition parties have largely been supportive in the House of Commons but that there will be wrecking amendments laid down in the Lords. This is currently the position with regard to the proposal to include "Deaths in Custody" within this Bill. GMB do not disagree with the sentiment behind this and the devastating effects such a death can have on families, but would have to agree with the government that this might be better under other legislation and not in a Bill dealing principally with deaths at work. As might be expected the Home Office is currently stating that if the Lords persist with this amendment then the whole Bill will fall.

As this Bill has been carried over from the previous parliamentary session and must receive royal assent by July 1st this year it is not covered by the Parliamentary Bill where the Commons can overturn any final decision of the Lords. **Therefore if these events continue to follow the same path there may be no Bill, no matter how flawed it is!**

GMB and other trade unions, and trade union solicitors have been involved with meetings with ministers and Home Office staff during the legislative process. This has undoubtedly resulted in some (minor) improvements.

Unincorporated bodies will now be covered by the provisions of the Bill.

There will be remedial orders and some form of corporate probation. Details of these may have to await the McCrory report on sentencing guidelines.

There has been a better definition of the senior management test.

CONCLUSION

The proposed Bill is something of a compromise as far as GMB is concerned. Our principal objective has always been the pursuit of justice for the families of victims who suffered an unnecessary death at work by ensuring that senior individuals and organisations took health and safety matters seriously in the workplace. Long before the advent of this Labour government it was a matter for great debate within GMB. To have taken this long, ten years and counting, since the Labour party came to power, perhaps summarises the different priorities between ourselves and politicians.

However the Bill can be viewed as a real step forward in the campaign to ensure better justice and higher standards. It is important that this Bill gets onto the statute book and the concept of prosecuting organisations and corporations without the need to identify an individual is an important one. Already it could be argued that the debate around the Bill has made large organisations more safety conscious. The inclusion of a majority of the public sector and the introduction of remedial sentences are also useful.

It is important that we do not let it end here. Assuming that the Bill is passed in some form GMB should use its provisions as a starting point. In the future there will be an opportunity to lobby and campaign for directors' duties, either through an amendment to the Health and Safety at Work Act or as a separate law on directors after this Bill becomes legislation. GMB will always seek to get improvements in health, safety and welfare for our members and other workers as it remains one of the prime reasons why we operate in the first place.

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