

CORPORATE MANSLAUGHTER WHAT DOES IT MEAN IN PRACTICE FOR AUDITORS?

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IT'S POSSIBLY WHAT HAPPENS WHEN IT ALL GOES WRONG?



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WHEN IT'S GONE WRONG IS NOT THE TIME TO BE ASKING

- Am I in the firing line here?
- Could I get my employer in trouble?
- What on earth should I do about it then?

ORGANISATIONS

- Offence of Corporate Killing
- Can be brought irrespective of whether a case can be brought against an individual
- Test –
 - **Duty of care** is owed – largely legal
 - Way in which it's activities are **organised or managed** by senior managers must have:
 - **Caused** the death of a person;
 - Amounted to a **gross breach** of the duty of care

Organisations

- 'management failure' – focuses on arrangements and practices
- Senior Managers
 - **Significant** role over at least a **substantial** part
- Doesn't have to be the only cause – only a significant cause

Gross Breach

- Conduct falling 'far below what can **reasonably be expected**' e.g.
 - H&S legislation
- Knew or ought to have known:
 - Failure to comply
 - Level of risk of death or serious injury
- Seeking to profit

INDIVIDUALS

Individuals who kill when they do not intend to but where they have been:

- Been extremely careless / negligent – Gross Carelessness
- Reckless as to whether death or serious injury occurred – Reckless Killing

WHAT ABOUT ELECTED MEMBERS?

- Separates politics from technical – a duty of care cannot exist to those who may be affected by policy decision making.
- Does not apply to the distribution of resources / funding

BACK IN THE REAL WORLD

- CUTS!
- From a client who wants the impossible / won't listen
- Site and other constraints
- Politicians
- LIFE!



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Murphy's Laws

Success always occurs
in private, and failure
in full view.



ROAD DEATH INVESTIGATION

- Investigate all incidents as 'unlawful killings' until the contrary is proved.
- Ensure the highest level of evidence are presented to the Coroners and Criminal Courts.



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SOME ADVICE

- Do not be drawn
- Answer only what's asked
- Do not use technical language
- Do be certain
- Do your homework
- Know what you said last time

OPTIONS?

- OPTION 1 – Do nothing
- OPTION 2 - Place onerous conditions or working practices on employees to offset liabilities
- OPTION 3 - Continue as before and to rely on legal counsel to protect their interests should things unfortunately go wrong.
- OPTION 4 – Something else

TESTS OF REASONABLE PRACTICE

- Clear Rationale
- Evidence Based
- Appropriate & Proportionate
- Communication
- Records
- Culture

THE GOOD – OFF THE HOOK

- I carried out policy as is
- I realised something wasn't quite right and dealt with it within policy / raised the matter and got a solution / did all I could to get a solution that was reasonable.
- I took advice before changing and did it for agreed and recorded reasons that are reasonable.

THE BAD – YOUR EMPLOYER IS IN TROUBLE

- I didn't know it was a problem
- I can't remember why I changed it
- I couldn't do it because we don't have the money

THE UGLY – YOU ARE IN TROUBLE

- I should have but I didn't and I can't provide a good reason (NEGLIGENT)
- I did it even though I knew it was wrong (RECKLESS)
- What standard? (NEGLIGENT)

DOING IT RIGHT?

- Have policy, procedures and day to day working practices that meet the test of reasonableness
 - Safety
 - Efficiency
 - Priorities
 - Effectiveness
 - Consistency
 - Litigation



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WHERE YOU WANT TO BE

- Know what **MUST** be achieved and **DO IT**
- Know what discretion you have and **DO NOT ACT OUTSIDE IT**
- Know what to do if you have to deviate from policy or procedure
- **ENSURE** all deviations meet the test of 'reasonableness'
- **RECORD IT**
- **COMMUNICATE IT**
- **ENSURE PEOPLE DO IT**

