

NOTTINGHAM CITY HOMES

REPORT OF THE COMPANY
SECRETARY/SOLICITOR

THE BOARD
15 MAY 2008

CORPORATE MANSLAUGHTER ACT 2007

1 SUMMARY

- 1.1 This report is to update the Board on the main provisions of the Corporate Manslaughter Act 2007.

The main provisions of the Act came into force on 6 April 2008. The Act seeks to make an organisation more accountable to its workers and/or members of the public by simplifying its duty of care towards these individuals.

The Act complements (but is not part of) health and safety law and is linked to existing health and safety requirements. Therefore it is possible for an organisation to be convicted for offences under both the new Act and under health and safety legislation on the same facts.

The key components of the offence are as follows:-

- The organisation must owe a duty of care to the victim that is connected with certain things done by the organisation.
- The organisation must be in breach of that duty in the way senior managers organise activities
- The management failure must have caused the victim's death
- There must have been a gross breach of that duty

2 RECOMMENDATIONS

- 2.1 The Company's Health and Safety Team have already raised awareness of this Act. The Company should therefore continue to look at ways of looks at ways of mitigating the risk of injury and in the case of this Act, fatalities and therefore potential prosecution.

It is recommended that:-

- The Company's health and safety processes and procedures be reviewed and kept under review.
- Adequate training and awareness of this Act be provided

- An assessment of risk
- Training and risk be kept under constant and periodical review.

3 REPORT

3.1 An overview of the Act

The Act creates a new criminal offence as follows:-

“An organisation is guilty of an offence if the way in which its activities are managed or organised by its senior management causes a person's death, and amounts to a gross breach of the relevant duty of care owed by the organisation to the deceased”

Taking the elements of the offence in turn, please note as follows:-

Management and Activities

The Company is only guilty of an offence if something about the way it is managed causes the breach in a substantial way.

Senior Management

The Act makes it clear that no offence will be committed unless a substantial element of the breach lies in the way senior management organised or managed its activities.

The definition of senior management includes those who:-

- Manage activities on the ground
- Play a significant role in the making decisions about how activities are managed or organised.

Therefore those in a strategic or regulatory compliance role such as non-executive directors, will fall within this definition.

Relevant Duty of Care

This duty is owed to virtually anyone as an organisation will owe that duty to its employees, visitors (including trespassers) to its premises or anyone to whom its goods and services are supplied. Therefore the Company will owe this duty to its employees and members of the public alike.

Liability

It should be noted that it is the organisation and not the individuals within it that could be prosecuted under the Act (although individuals could still be liable under existing health and safety legislation).

In considering whether an organisation has been in gross breach of its duty, the jury must consider:-

- Whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach
- How serious that breach was and how much a risk of death it posed.

In assessing the above, a jury would consider the following factors:-

- The organisations attitudes to health and safety,
- Whether there are relevant policies, manuals and systems in place to ensure compliance.
- accepted practices and
- whether guidance and codes of practice are followed.

Penalties

There is no individual liability but a judge could impose on an organisation, an unlimited fine, in addition to:

- a remedial order – obliges the organisation to put right the management failure of which it was convicted and
- a publicity order – requires the organisation to publish specified particulars of the crime and the punishment imposed.

Summary

The Company should be addressing its mind to its Health and Safety policy to ensure that it reflects the business, is wholly endorsed by the Board and that the policy is implemented.

Health and Safety procedures should be audited and kept under review in addition to practices within the Company and whether they could be improved.

4 OTHER OPTIONS

4.1 None recommended.

5 FINANCIAL AND RISK IMPLICATIONS

5.1 The Company has employers and public liability insurance in place and should consider whether this is adequate in terms of covering the legal costs of defending any potential claims under the Act.

However, as any potential breach of the Act imposes criminal sanctions e.g. an unlimited fine it is not possible for an organisation to insure against a fine therefore the Company's exposure to financial risk could be considerable.

6 IMPLICATIONS FOR NOTTINGHAM CITY HOMES OBJECTIVES

6.1 To keep under review health and safety initiatives in their application in the services we deliver to the public and in terms of our responsibilities as an employer.

7 VALUE FOR MONEY AND EFFICIENCY ISSUES

7.1 None recommended

8 EQUALITY AND DIVERSITY IMPLICATIONS

8.1 The Company's legal responsibilities apply to all its service users, servants, agents and to its employees.

9 Background material and published documents referred to in compiling this report

9.1 Not applicable

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