

LEGAL ALERT

HEALTH & SAFETY BULLETIN

Rollits
SOLICITORS

DIRECTORS JAILED OVER WORKER DEATHS

In two separate cases, company directors have been sentenced to terms of imprisonment for manslaughter following the death of employees.

In the first case, the managing and sole director of a construction company has been imprisoned following the death of an employee, who fell through a fragile roof light.

The director, who pleaded guilty to charges of manslaughter and a breach of section 37 of the Health and Safety at Work etc Act 1974 ("HSWA"), was sentenced to 16 months imprisonment at Manchester Crown Court.

The director was also convicted under section 37 HSWA, which provides that an individual director, secretary, officer or manager can be liable if an offence by the company was due to their consent, connivance or could be attributed to their neglect.

In this case the company was convicted of breaching section 2 HSWA, in that it failed to ensure, so far as is reasonably practicable, the health, safety and welfare at work of the deceased employee.

In an earlier case, the director of a Kent haulage company was sentenced to seven years imprisonment following the death of one of its employees who fell asleep at the wheel and crashed into several vehicles.

Closer co-operation between, and joint investigations by, the police and the Health and Safety Executive/Environmental Health Departments and the Crown Prosecution Service, under a Joint Investigation Protocol, has in recent years led to a greater number of manslaughter cases being referred to the CPS for prosecution.

As the relevant parties become more expert at implementing the Protocol the number of cases reaching court (and consequently the number of successful prosecutions) appears set to rise.

These cases show that unless companies have an effective health and safety management system and directors and managers (particularly those in small and medium sized organisations) fully understand their health and safety obligations they, as well as their companies face manslaughter or health and safety prosecutions in the event of work-related fatalities or serious accidents at work.



DIRECTORS' RESPONSIBILITIES

As other items in this bulletin demonstrate, the pressure on directors of companies when it comes to health and safety matters is being increased. Directors' attitudes and conduct generally are coming under closer scrutiny. The Health and Safety (Directors' Duties) Bill had its first reading in Parliament on 12th January. The aim of the Bill, according to its sponsor, is to remove the unacceptable low levels of knowledge that directors have (according to the sponsor) when it comes to matters of health and safety. The sponsor says the Bill is designed to increase the responsibility directors have to take for health and safety matters within their

organisation and formally to impose duties upon company directors. The Bill also seeks to allow the Health and Safety Commission to issue and approve Codes of Practice in connection with performance of directors in these duties. There is also the intention to require large companies to appoint a director as Health and Safety Information Director.

Whether the Bill survives is one question, but there can be little doubt that slowly but surely the momentum is gathering for imposition of specific health and safety duties on both directors and companies generally. Be prepared for this as you would any other business change.

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IN THIS ISSUE

DIRECTORS JAILED OVER WORKER DEATHS



DIRECTORS' RESPONSIBILITIES



DIRECTORS BEWARE!



BAD NEWS....TWICE!!



DIRECTORS BEWARE!

Directors who fail to comply with new reporting procedures could face unlimited fines.

In a recent statement to Parliament, the Trade and Industry secretary Patricia Hewitt announced the Government's proposals to implement the Companies Act 1985 (Operating and Financial Review and Directors' Report) Regulations 2004 ("OFR Regulations"), which will come into effect for the financial year beginning on or after 1 April 2005.

The Government intends to introduce into the OFR Regulations a criminal offence of knowingly or recklessly approving a defective Operating and Financial Review ("OFR") and an offence of knowingly or recklessly approving a defective directors' report.



If convicted, directors will face a maximum fine of £5,000 in cases heard in the Magistrates Court and an unlimited fine in the Crown Court.

Directors who fail to sign the OFR will be liable to a summary fine of up to £1,000.

Under the OFR Regulations, directors of large and medium sized companies will be required, at least annually, to prepare a report containing the main qualitative factors which underlie the company's past and future performance. Directors of quoted companies will be required, at least annually, to provide an OFR, which includes directors' reports.

Reports will need to include information on the Board's strategy for dealing with risks to the company and its ability to mitigate those risks. A risk to be managed in any business is health and safety.

Financial losses owing to poor health and safety management, typically fines, increased insurance premiums, claims and other indirect costs such as business interruption or rejection of tenders, clearly can have a significant impact on a company. These too will have to be included in the OFR.

In preparing for the OFR, directors will need to consider all their policies, procedures and practices, including those relating to health, safety and the environment. To avoid the risk of falling foul of the new regulations, directors need to be aware of all the health and safety issues within their company and seek expert advice before drafting directors' reports.

The requirements are getting tougher!

INFORMATION

**If you have any queries on any aspect of Health & Safety law please contact:
Chris Platts at Hull on 01482 323239**

This bulletin is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

**The law is stated as at 10 January 2005
Wilberforce Court, High Street, Hull HU1 1YJ
Rowntree Wharf, Navigation Road, York YO1 9WE**

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BAD NEWS....TWICE!!

Unfortunately the harsh reality of health & safety life is that you could at some stage be facing a charge brought by the Enforcing Authorities for breach of Health & Safety Law.

Many such prosecutions are, for a variety of reasons, difficult to defend successfully, and this is illustrated by the success rate of prosecutions details of which are set out in the Health & Safety Executive's annual Enforcement Report.

In the past, often there could still be good news mixed amongst the bad when dealing with a prosecution. This is in relation to a guilty plea which would attract a 'discount' from the full penalty. It is established that the Court should take into account significant mitigating features just as much as features which had aggravated the offence.

One of those mitigating features was pleading guilty and therefore not having the matter tried fully before a Court or a Court and a Jury. Historically a discount on any punishment would be achieved by a guilty plea at, in reality, whatever stage it was advanced in the prosecution. Often matters could be progressing over a number of months only for a defendant then to plead guilty and still receive the discount on what otherwise would be a fuller punishment.

This is all likely to change now because of new sentencing guidelines which have been issued in relation to all offences which attract a Court sentence on or after 10 January 2005. From that time each Court must have regard to the guidelines when passing a sentence.

Effectively what is now introduced, and what will have to be operated by the Court, is a sliding scale.

What will happen now is that a one third discount will be given only where a guilty plea is entered at the 'first reasonable opportunity' to do so. This means that when a matter comes before a Court thought must be given to this so as to achieve maximum discount if the intention all along is to plead guilty. The phrase 'first reasonable opportunity' does not necessarily, however, have the same meaning in each case. All facts would have to be considered by a Court before it could decide whether the guilty plea had in fact been entered at the first reasonable opportunity.

If that opportunity is not seized then, the discount for pleading guilty is reduced to a maximum of one quarter, but may be less. Where a trial date has been set, there will only be a maximum discount of one tenth if the guilty plea is entered immediately before the trial starts or indeed during the trial itself.

These could be quite significant changes and there will be an even greater need to act decisively, particularly in certain cases when very hefty fines will continue to be levied by the Judiciary for more serious offences.

