

Corporate Killing as a Corporate Governance Issue

Alice Belcher*

In May 2000 the government proposed the introduction of a new offence of corporate killing founded on the concept of "management failure". Two specific corporate risks are investigated: the risk that the company's operations will kill one of its employees or a member of the public and the risk that the company will be convicted of an offence indicating corporate responsibility for that killing. The article demonstrates, firstly, that the risks associated with corporate killing fall within the ambit of the Turnbull Guidance. More importantly, it uses this particular, not directly financial, example to illustrate the proposition that Turnbull should not be associated with closure; rather it should be associated with the opening of a new level of corporate governance debate that will focus on corporate behaviour rather than corporate policy.

Keywords: Corporate governance, criminal law, manslaughter, corporate responsibility, risk management, health and safety

Introduction

At the time of its publication in 1999, the Turnbull guidance on the internal control provision of the Combined Code was described in *Accountancy* as "the last piece in the corporate governance jigsaw". This description suggests that the UK corporate governance picture should now be clear. However, this article argues that it is wrong to associate Turnbull with closure. Rather it should be associated with the opening of a new level of corporate governance debate that will focus on corporate behaviour rather than corporate policy. During the year 2000, listed companies had to consider how to implement the risk-based approach to designing, operating and maintaining a sound system of internal control described in Turnbull.

In this paper two specific corporate risks are investigated: the risk that the company's operations will kill one of its employees or a member of the public and the risk that the company will be convicted of an offence indicating corporate responsibility for that killing. In England and Wales, it is possible to

convict a company of manslaughter, but successful prosecutions are rare. Under the "identification principle", before a company can be convicted of manslaughter, an individual who can be "identified as the embodiment of the company itself" must first be shown him or herself to have been guilty of manslaughter (*Attorney General's Reference (No 2 of 1999)* [2000] 3 All ER 182). In 1996 a Law Commission Report recommended the introduction of a new offence of corporate killing that does not depend on the identification principle. The proposed new offence is founded instead on the concept of "management failure". This is explained in terms of a failure in the way in which the company's activities are managed or organised. In May 2000 the government took the Law Commission's Report off the shelf and proposed to introduce the offence of corporate killing. Legislation on the proposed new offence was not included in the November 2000 Queen's speech, but pressure for change strengthened in the latter part of 2000 with the Hatfield rail crash and the resulting public pre-occupation with railway safety. The introduction of the

* Address for correspondence: Professor Alice Belcher, Department of Law, University of Dundee, Dundee, DD1 4HN, Tel: 01382 348057; Fax: 01382 228905; E-mail: a.a.belcher@dundee.ac.uk

Corporate Killing

Nicholas Bourne



Corporate Killing:

Corporate Manslaughter and Corporate Homicide Act: Special Report (hard copy) Alex Davies, 2008 **Draft Corporate Manslaughter Bill** Great Britain: Parliament: House of Commons: Home Affairs Committee, Great Britain: Parliament. House of Commons Work and Pensions Committee, 2005-12-20 This joint report by the Home Affairs Committee and the Work and Pensions Committee examines the Government's proposals to reform the law on corporate manslaughter as set out in the draft Bill Cm 6497 ISBN 010164972X published in March 2005 for consultation The report supports the introduction of the draft Bill to address the need for a statutory offence to shift the basis of liability for corporate manslaughter away from the requirement of identifying a directing mind of a guilty company since this identification principle has made prosecutions of large companies almost impossible under the current common law Issues discussed include the application of the offence of corporate manslaughter in relation to corporations government departments and police forces issue of causation the law of negligence relevant duty of care and contractual relationships management failure the role of senior managers and gross breach the removal of Crown immunity territorial application of the offence corporate sanctions individual liability for directors powers of investigation and prosecution including the requirement to obtain the consent of the Director of Public Prosecutions before a private prosecution can be brought and cost issues **Corporate Manslaughter and Regulatory Reform** P. Almond, 2013-01-17 This book provides an account of the international emergence of corporate manslaughter offences to criminalise deaths in the workplace during the last twenty years identifying the limitations of health and safety regulation that have prompted this development **Corporate Manslaughter and Corporate Homicide** Shivam Goel, 2015-06-26 A corporation is an artificial legal person existing only in the contemplation of law having perpetual succession and common seal Can a corporation commit crime for its inability to form mens rea If yes then can it be accused of crimes as grave as homicide Even post the Bhopal Gas Tragedy and the Uphaar Cinema Tragedy absence of legislation such as the Corporate Manslaughter and Corporate Homicide Act 2007 UK is no less a pity Absolute liability theory coupled with deep pocket theory though is an improvisation over the strict liability theory but has failed to ensure corporate criminal deterrence This book is an attempt to ponder over issues relating to corporate criminal behaviour in particular corporate homicide and corporate manslaughter Rethinking Corporate Crime James Gobert, Maurice Punch, 2003-03 Critiques the application of the current criminal law system to corporate wrongdoing and assesses the potential for legal control of corporate criminality **Corporate Manslaughter in the Maritime and Aviation Industries** Simon Daniels, 2016-08-12 This book provides expert analysis of the application of the evolving law in Corporate Manslaughter as it relates to the Maritime and Aviation industries It will prove to be a useful tool for practitioners and students in this specialised area as well as those working in the maritime and aviation industries such as those who will be accountable under the Corporate Manslaughter Act 2007 the Masters and Pilots who manage the risks and the insurers

who underwrite the cost of the risks The author will discuss areas such as The liability towards passengers and employees The Prosecution of offenders Comparative analysis of corporate manslaughter in the wider global industry

Corporate Governance Robert A. G. Monks, Nell Minow, 2011-08-15 In the wake of the recent global financial collapse the timely new edition of this successful text provides students and business professionals with a welcome update of the key issues facing managers boards of directors investors and shareholders In addition to its authoritative overview of the history the myth and the reality of corporate governance this new edition has been updated to include analysis of the financial crisis the reasons for the global scale of the recession the failure of international risk management An overview of corporate governance guidelines and codes of practice new cases Once again in the new edition of their textbook Robert A G Monks and Nell Minow show clearly the role of corporate governance in making sure the right questions are asked and the necessary checks and balances in place to protect the long term sustainable value of the enterprise Features 18 case studies of institutions and corporations in crisis and analyses the reasons for their fall Cases include Lehman Brothers General Motors American Express Time Warner IBM and Premier Oil

Corporate Risk Management Tony Merna, Faisal F. Al-Thani, 2011-03-10 The book analyzes compares and contrasts tools and techniques used in risk management at corporate strategic business and project level and develops a risk management mechanism for the sequencing of risk assessment through corporate strategic and project stages of an investment in order to meet the requirements of the 1999 Turnbull report By classifying and categorizing risk within these levels it is possible to drill down and roll up to any level of the organizational structure and to establish the risks that each project is most sensitive to so that appropriate risk response strategies may be implemented to benefit all stakeholders The new edition of this book provides a clear insight into the intricacies of corporate risk management and the addition of the case study exemplars aids understanding of the management of multiple projects in the real world Professor Nigel Smith Head of the School of Civil Engineering University of Leeds

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When Business Kills Sarah Field, Lucy Jones, 2017-11-21 This book aims to explain in clear accessible language the approach taken by government to corporate offending resulting in a fatality in both the United Kingdom and the United States The key provisions of the statutory offense of corporate manslaughter introduced into the United Kingdom in 2008 are examined and set in context through a consideration of their relationship with prosecution for fatalities at work via the Health and Safety at Work etc Act 1974 Further contextualization is made through comparison with the current position in the United States highlighting both similarities and differences in approach to occupational fatalities The range of potential penalties is discussed with particular focus on the sentencing guidelines that apply after February 2016 Concluded corporate homicide cases are reviewed in order to assess the current regime in terms of financial penalties and to shine light on the evolving approach of the prosecuting authorities and the courts to these offenses

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