The Corporate Manslaughter and Corporate Homicide Act 2007

The Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA) comes into effect on 6 April 2008. The Act aims to ensure that organisations are held to account when a death has been caused as a result of gross failings by its senior management.

The Act will make it easier to prosecute organisations, including NHS bodies, where gross failures in the management of health and safety lead to a death. Trusts that meet their legal health and safety obligations are not likely to be prosecuted under the CMCHA. However they should analyse and address the risks associated with all of their activities. They should also focus on keeping their health and safety management systems under review, in particular, how their senior management team manages and organises these activities.

This Briefing summarises the key points of the CMCHA and its impact on NHS organisations. It also considers what action senior managers should be taking to ensure that their organisation is ready for 6 April and beyond.

Key points

- The CMCHA comes into effect on 6 April 2008.
- The Act will make it easier to prosecute organisations where gross failures in the management of health and safety lead to a death.
- Trusts should keep their health and safety management systems under review – in particular, how their senior management team manages and organises these areas.
- Trusts that take their obligations under health and safety law seriously, are unlikely to be prosecuted for the new offence.

Background

The CMCHA is primarily a response to high profile incidents in work and public places in the UK where numbers of people have lost their lives, such as the fire at Kings Cross Underground and the explosion on the Piper Alpha Platform. The Act does not contain any new duties but it changes the basis on which manslaughter convictions can be made against organisations. It creates a new offence in addition to those already in
place under the Health and Safety at Work etc Act 1974.

It reforms the law so that organisations of any size may be held liable for corporate manslaughter where gross failures in the management of health and safety cause death, and not just for health and safety breaches as in the past.

The Act complements the current common law process under which individuals can be prosecuted for gross negligence manslaughter where there is direct evidence of culpability.

Implications for specific organisations

In addition to implications for all NHS bodies, there are specific implications for the emergency services and, in the longer term, mental health trusts as outlined below.

Emergencies and the emergency services

There is a partial exemption in relation to the emergency response of NHS Trusts (including ambulance trusts). However, duties of care relating to medical treatment in an emergency, other than triage decisions (determining the order in which injured people are treated) are not exempt. The duty for NHS bodies to provide a safe system of work for employees and to secure the safety of their premises applies in full and breach of those duties could, in certain circumstances, result in a corporate manslaughter conviction.

Emergency circumstances are defined as being: life-threatening or causing, or threatening to cause, serious injury or illness or serious harm to the environment or buildings or other property. Circumstances believed to be ‘emergency circumstances’ are also covered, as defined below:

- **Emergency circumstances** means circumstances that are present or imminent and are causing, or are likely to cause, serious harm or a worsening of such harm, or are likely to cause the death of a person.
- **Medical treatment** includes any treatment or procedure of a medical or similar nature.
- **Relevant NHS body** means a Strategic Health Authority, Primary Care Trust, NHS trust (including ambulance service trusts), Special Health Authority or NHS Foundation Trust in England.

- **Serious harm** means serious injury to, or the serious illness (including mental illness) of, a person; serious harm to the environment (including the life and health of plants and animals); and serious harm to any building or other property.

Mental health trusts

In three to five years’ time, the Act will apply to deaths in detention and custody, which includes those persons being held in custody in mental institutions. This part of the CMCHA will not come into force on 6 April 2008.

The NHS Confederation’s Mental Health Network has responded to the Department of Health’s consultation on the timing and the application of the Act to mental health institutions. In particular, its response highlighted two areas that it feels still need to be addressed:

- in relation to patients who are subject to Home Office restrictions on sections of the Mental Health Act whilst living in the community, it is important to clarify whether the new legislation would apply were such people either to kill
A summary of the Act

- The offence is called corporate manslaughter in England, Wales and Northern Ireland, and corporate homicide in Scotland.

- An organisation is guilty of the offence if the way in which it organises or manages its activities causes a death, and this amounts to a gross breach of a relevant duty of care it owed to the victim.

- An organisation will only be guilty of the offence if the way in which its activities are managed or organised by its senior management, is a substantial element of the breach – the senior management test.

- The offence applies where the organisation owed a duty of care to the victim under the law of negligence.

- It will apply to deaths in detention and custody, including those held in custody in mental health institutions, however, this part of the Act will not come into force until it has been further debated in Parliament. This may take as long as 3 to 5 years from 6 April 2008.

- The offence applies to corporations, government departments (listed in Schedule 1 to CMCHA 2007), police forces, partnerships, trade unions and employer associations (where these are employers) but does not apply to “corporations sole”.

- Public policy decisions, exclusively public functions and statutory inspections are excluded from the scope of the offence.

- The Act includes a number of exemptions:
  - certain military activities
  - police and other law enforcement bodies in particular situations, including terrorism and civil unrest
  - in relation to responding to emergencies and for statutory functions relating to child protection and probation functions.

- The Act sets out factors for the jury to consider when deciding if there has been a gross breach of a relevant duty of care. These factors include: the risk of deaths associated with the activities in question; whether health and safety legislation was complied with; whether the culture of the organisation tolerated breaches and any relevant health and safety guidance.

- Consent of the Director of Public Prosecutions is needed for proceedings for the offence to be instituted.

- There is no secondary liability for the offence – so individuals will not be liable for aiding, abetting, counselling or procuring the commission of the offence.

- The Act abolishes the common law offence of gross negligence manslaughter in relation to corporations.

- An organisation found guilty of corporate manslaughter faces an unlimited fine and the courts will have the power to make remedial orders and publicity orders (with the latter expected to come into force in autumn 2008). There are no custodial sentences associated with the offence.
themselves or some other member of the community

• providers of mental health services need to be aware of the importance of undertaking a thorough review both of their own existing procedures relating to health and safety responsibilities, risk assessment, staff training etc. and of joint practices and procedures with any partner agencies, ahead of the new legislation coming into force.

Directors’ responsibilities

Home Office guidance states: “It is imperative that senior managers prepare now, by reviewing current health and safety management systems, or in the absence of such a comprehensive system, by devising and instituting an adequate and effective policy into overall corporate strategy, with particular emphasis on how senior management manage or organise their activities. Companies and organisations must do all that is reasonably practicable to protect people from risks that may cause injury or death.”

“Whilst corporations do not intend to cause death, their

intentional acts, such as failing to put into place a system to ensure the safety of people in their care, may lead to death.”

In October 2007 the Health and Safety Executive (HSE) and the Institute of Directors published guidance on directors’ responsibilities in relation to health and safety Leading health and safety at work – leadership actions for directors and board members. This was produced for the Health and Safety Commission (HSC) to support the implementation of the Act.

Liaison protocol for corporate manslaughter cases

Employers should be aware that a protocol for handling corporate manslaughter cases has been agreed by the HSE, Association of Chief Police Officers (ACPO) and the Crown Prosecution Service (CPS). This protocol called Work related deaths: A protocol for liaison sets out the following principles for liaison when dealing with corporate manslaughter cases.

• The police will conduct an investigation into an allegation of manslaughter.
• The HSE will also conduct an investigation to ascertain if there has been an offence falling under the Health and Safety at Work etc Act 1974.
• The CPS will decide whether to prosecute, in consultation with HSE and taking into account the Code of Practice for Crown Prosecutors.

Advice for boards

Boards should consider taking the following actions before the new Act comes into force on 6 April this year. The CMCHA does not impose any new duties and NHS bodies should already be carrying out most of these actions. We have included details of where Trusts can get further information at the end of this document, if required.

• Audit – conduct a comprehensive audit and review of your complete safety management system.

• Health and safety procedures – ensure the procedures are all properly documented and implemented by all levels of management and staff. See the healthy workplaces section of our website for details of areas that should be covered.

• Risk assessment – ensure that all activities are risk assessed
by a ‘competent’ person as defined by the Management of Health and Safety at Work regulations (1999).

- **Health and safety responsibilities** – ensure that responsibilities at all levels are clear and in writing.

- **Senior management responsibilities** – these will be the key focus of the new Act, so look carefully at the actions of ‘senior management’ and ensure that they are compliant.

- **Director responsibility** – appoint a ‘health and safety’ director at board level although under the new Act, the corporate body (rather than the individual within it) will be liable for any breaches under the Act.

- **Board oversight** – make sure health and safety is on the board’s agenda and ensure that you keep a record of all meetings where health and safety is discussed and that any action points are completed.

- **Emergency action plan** – ensure there is an emergency action plan in place including external communication. Similarly if an incident happens, make sure that all external communication is properly managed.

- **Police investigations** – have a process in place for dealing with the police and HSE inspectors, and be aware of their powers once on site.

- **The law** – keep up to date with the relevant health and safety legislation, which can change frequently.

- **Safety culture** – constantly review and improve your safety culture to ensure continued compliance with relevant health and safety legislation (this should also ensure that employees have a good understanding of the organisation’s approach, if questioned by any investigating authority).

If an incident happens:

- **Accident investigations** – make sure these are carefully managed with legal input. The written conclusions will be one of the prosecution’s main exhibits.

- **Legal advice** – if an incident happens, seek legal advice at an early stage. Enforcement steps are often influenced by your response to the investigators at the outset of their enquiries.

- **Constantly improve your safety culture** – no culture is ever perfect.

**Questions and answers**

**When will the new Act come into force?**

The Corporate Manslaughter and Corporate Homicide Act 2007 comes into force on 6 April 2008 and will be called corporate manslaughter in England, Wales and Northern Ireland, and corporate homicide in Scotland.

**Are there any new duties or obligations under the Act?**

There are no new duties or obligations under the Act however, the Act is specifically linked to existing health and safety requirements.

**What do trusts need to do to comply?**

Trusts that take their obligations under health and safety law seriously are unlikely to be prosecuted for (and even less likely to be convicted of) the new offence. However, they should keep their health and safety management systems under review, in particular, the way in which their activities are managed or organised by senior management.
Where does health and safety legislation come in?
Under the Act, health and safety legislation means “any statutory provision dealing with health and safety matters” so it will include transport (road, rail, river, sea, air) and food safety as well as workplace safety as enforced by HSE and local authorities.

Juries will be required to consider breaches of health and safety legislation in determining the liability of corporate bodies for corporate manslaughter/homicide. Juries may also consider whether a trust has taken account of any appropriate health and safety guidance, and the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the trust that were likely to have encouraged any serious management failures or have encouraged tolerance of it.

Who will investigate and prosecute under the new offence?
The police will investigate suspected cases of corporate manslaughter/homicide. Prosecution decisions will be made by the Crown Prosecution Service (England and Wales), the Crown Office and Procurator Fiscal Service (Scotland) and the Director of Public Prosecutions (Northern Ireland).

What is the role of health and safety regulators like HSE and local authorities etc?
As it is now, there will be a joint approach to work-related deaths between all the relevant regulatory authorities, in line with the principles of the Work Related Deaths Protocol.

Will directors, board members or other individuals be prosecuted?
The offence is concerned with corporate liability and does not apply to directors or other individuals who have a senior role in the organisation. However, existing health and safety offences and gross negligence manslaughter will continue to apply to individuals. Prosecutions against individuals will continue to be taken where there is sufficient evidence and it is in the public interest to do so.

Is there any advice or guidance for directors or board members on what they should be doing and what their responsibilities are under health and safety legislation?
In conjunction with the Institute of Directors, the Health and Safety Commission has published guidance for directors on their responsibilities for health and safety called Leading health and safety at work: leadership actions for directors and board members. The guidance sets out good practice for directors and advises boards and their members in the public, private and third sectors how to:

- provide leadership in health and safety to help their organisation meet its legal obligations as an employer under the Health and Safety at Work etc. Act 1974
- gain the business benefits arising from effective and sensible health and safety management.

What penalties will a trust face?
Penalties will include unlimited fines, remedial orders and publicity orders. A remedial order will require a Trust to take steps to remedy any management failure that led to a death. The court can also impose an order requiring the Trust to publicise that it has been convicted of the offence, giving the details, the amount
of any fine imposed and the terms of any remedial order made. The publicity order provisions will not come into force until the Sentencing Guidelines Council has developed relevant guidance, which is expected this year (2008) but the date is still to be confirmed.

**Will the Act be retrospective?**
No. The Act comes into force on 6 April 2008 and will only apply to deaths that occur on or after that date. Deaths that occur before 6 April 2008 will be covered by the current law on corporate manslaughter.

### More information
- [www.nhsemployers.org/practice/practice-2468.cfm](http://www.nhsemployers.org/practice/practice-2468.cfm) – for details on how you can subscribe to NHS Employers healthy workplaces handbook which is the essential NHS guide to health, safety and welfare at work.
- [www.cps.gov.uk/legal](http://www.cps.gov.uk/legal) – for details on how the Crown Prosecution Service will deal with corporate manslaughter cases.
- [www.corporatemanslaughter.net](http://www.corporatemanslaughter.net) – a broad introduction to the Corporate Manslaughter and Corporate Homicide Act.
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- pay and negotiations
- recruitment and planning the workforce
- healthy and productive workplaces
- employment policy and practice.

NHS Employers is part of the NHS Confederation.

Contact us

For information on how to become involved in our work, email getinvolved@nhsemployers.org

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