



Death by corporate negligence

Ignore the new manslaughter act at your peril, warns **Les Bright**

A new law came into effect on April 6. The Corporate Manslaughter and Corporate Homicide Act 2007 arises out of years of parliamentary debate, and a series of high profile tragedies caused by organisational failings, carelessness or disinterest. Frankly, I never thought I'd be writing about such a topic in a column that highlights policy issues relevant to people working in the care of older people. What's the connection?

This reaction is mirrored in a piece of research carried out by the care homes division of insurance broker Smart and Cook (2008). In a survey of 100 owners and managers of care homes, only one in five knew when the act took effect, and 40 per cent had no understanding of it.

Criminal liability

The act means that trusts and other organisations will become criminally liable for deaths where it could be argued that there has been a 'gross breach of the relevant duty of care', because of the way in which their activities are organised or managed. Individual managers cannot be charged under the new act but it seems that there may be situations where the corporate body could face charges, and individuals would be separately charged with breach of health and safety legislation. Only 8 per cent of those surveyed were aware of the provision for unlimited fines where there is a finding of guilt. So as not to be accused of exaggeration, I should make clear that sentencing guidance suggests fines in the range 2.5 per cent to 10 per cent of annual business turnover.

Needless to say, lawyers have differences of opinion on how the act will work in

practice, but it seems highly likely that there will be more police investigations into offences falling under health and safety legislation. Legal counsel suggests that a trial jury considering an offence of corporate manslaughter may be invited by the judge to consider the extent to which attitudes, policies, systems or accepted practices existed within the organisation that were likely to have encouraged a failure of the health and safety system or to have produced a tolerance of it.

In the case of commercial and voluntary organisations providing long-term care, reputational damage could lead to business failure and closure of their facilities.

The Corporate Manslaughter and Corporate Homicide Act 2007

The new law is the result of a ten-year battle by campaigners to make senior management responsible for any death caused by corporate negligence. It's introduction is arguably one of the most significant changes in health and safety law in the past 30 years.

Until now, a single individual, identifiable as the directing mind of the company, has to be personally guilty of gross negligence or manslaughter before an organisation can be convicted of corporate manslaughter. While senior managers may escape a prison sentence, the new power of the courts to order a 'publicity order' will mean that businesses that are convicted risk serious damage to their reputation.

So, what option do organisations have? Minimising the risk of charges being brought under the act starts with feeling confident that your organisation's policies and procedures aimed at protecting people using or working in the service are robust, and will withstand

the detailed scrutiny associated with a police investigation and subsequent trial.

However, it is worth noting that the Commission for Social Care Inspection's annual state of social care report (CSCI 2008) reveals that services perform poorly in relation to safety and risk assessment. Safe working practices – a term which covers health and safety issues such as fire procedures, first aid, infection control and maintenance of gas and electrical systems – is an area that clearly needs attention with only 61 per cent of homes meeting or exceeding the national minimum standards, and even among those that provide nursing care this figure only rises to 63 per cent.

Scrupulous in personal practice

For now it's all speculation as to what awful events might precipitate the first criminal trials under the new act. But the message for those caring for older people is to be scrupulous in our personal practice, and vigilant in relation to any possible breaches. It's likely that our managers will take great care to minimise the risk of being subjects of police investigations, and doubtless there may well be attention given to elements of daily life that previously may have been viewed as relatively unimportant.

Spotting a faulty window restrictor has always been important to ensure a safe environment. Now, getting it replaced could prevent the scales tipping towards criminality in the event of a tragic accident ■

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References

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