



Corporate Manslaughter

Act

This briefing provides guidance on the implications for schools of the Corporate Manslaughter and Corporate Homicide Act 2007.

What is the offence of corporate manslaughter?

The offence of corporate manslaughter will have been committed by an "organisation", if the way in which an organisation's activities are managed or organised, by the organisation's "senior managers", amount to a "gross breach" of a "duty of care" which caused somebody's death.

> What is an organisation?

Under the Act, both a local Authority and a school governing body counts as an "organisation" under the Act. That means that a governing body or Local Authority could be guilty of this offence if someone dies as a result of the organisation's senior managers failing to properly manage or organise the activities of the school. However, that would only be the case if the governing body or Local Authority's failure amounted to a "gross breach" of a duty of care which it owed to that person.

> Who is classed as a senior manager?

A senior manager is anyone who makes decisions about how the whole or a substantial part of an organisation's activities are to be managed or organised. So, this includes the governing body, head teachers and heads of department who are engaged in managing the activities of the school and who make decisions about the way in which activities are organised.

> What is the duty of care and who is it owed to?

The "duty of care" means the duty of care owed in negligence, to the groups mentioned below (in other words the duty to take reasonable care, which includes the duty to take steps to reduce or eliminate the risk of any foreseeable injury). Further, "duty of care" means the duties owed to the following groups under existing health and safety legislation:

- Employees who work at the school.
- Any other person working at the school.
- Any person entering the school premises such as pupils or any person entering the premises as a visitor of the school including, in a more limited way, trespassers.
- Any one supplying goods or services to the school or carrying out construction and maintenance work at the school.

> Is the duty of care also owed to peripatetic teachers/centrally employed teachers?

Yes. The duty applies to all employees or any person working at the school. This includes peripatetic staff.

> **What amounts to a gross breach of duty of care?**

If there is a breach of a duty of care and somebody dies, that does not automatically render the organisation liable. The reason for this is that in order for the organisation to be liable, the breach must amount to a **gross** breach of the duty of care. So, the organisation's conduct must have fallen far below what could have been reasonably expected. Whether or not there has been a gross breach will depend upon:

- how serious that failure was;
- how much of a risk of death it posed.

In judging this question, the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure will be considered. Further, any health and safety guidance that relates to the alleged breach will also be considered. So, for example, if a local authority issues health and safety guidance in a manual, that health and safety guidance will be taken into account in deciding whether the senior managers of the school e.g. head teachers/SMT took account of that guidance when managing the activities of the school.

> **What would be an example of a gross breach of duty of care?**

Practical examples of a gross breach of a duty of care might be:

- where there has been a failure to ensure that adequate adult supervision has been provided for accompanying children on school trips. If a child died as a result of a failure to manage this activity safely, the organisation could be at risk of committing this offence.
- pupils are known to be coming into schools carrying knives. If the head teacher/SMT failed to put measures in place to deal with this problem and if as a result a pupil was stabbed causing his/her death, this failure by senior management to manage the problem could amount to a gross breach of a duty of care rendering the governing body liable.

Can individuals be liable for the offence of corporate manslaughter?

No. There is no individual liability, but please note that under existing legislation an individual can still be prosecuted for manslaughter caused by gross negligence, in addition to the offences under Section 37 of the Health and Safety at Work Act.

So, any possible proceedings under the Corporate Manslaughter and Corporate Homicide Act 2007 will be taken against an organisation or possibly the school governing body, but not against an individual.

Can senior managers delegate the responsibility for health and safety compliance?

No. Senior managers must ensure their organisation is complying with current health and safety laws.

What steps should head teachers and senior management take?

Head teachers and the senior management team should:

- review their health and safety management systems, ensuring robust health and safety policies and procedures are in place, clearly identifying roles and responsibilities;
- ensure that an up-to-date health and safety policy is available, displayed and signed;
- ensure that all levels of management and staff understand their roles and responsibilities in the effective management of health and safety;
- ensure that suitable and sufficient risk assessments are carried out on all activities which carry risk in the sense that they have the potential to cause harm;
- include health and safety responsibilities within job descriptions;
- if contractors are employed on site, ensure that their health and safety arrangements are satisfactory;
- ensure that suitable and sufficient risk assessments have been carried out before any building work is undertaken;
- ensure that any building work is carried out during periods of school closure and always outside normal teaching hours. Where this is not possible, school management should adopt all necessary safety precautions so that building work is carried out with the minimum of inconvenience, disruption and risk;
- ensure that regular inspections and audits for the place of work are carried out;
- ensure that staff know where to obtain information on health and safety and welfare matters;
- ensure that health and safety performance is considered regularly by the head teacher, governors and other senior managers;
- ensure that health and safety is embedded in the culture;
- ensure written records are kept of all meetings where health and safety is on the agenda;
- ensure that particular protocols for dealing with a fatality are set out.

> What about the duty of care to peripatetic/centrally employed staff?

Senior management should ensure that any health and safety information, including policies and procedure and notices, are brought to the teacher's attention upon arrival at the school. Suitable and sufficient risk assessments should be carried out on all activities which carry risk. So, in order to identify risk, senior management should carry out a review of the peripatetic teacher's activities *before* the teacher arrives at the school. Senior management should then decide whether those activities expose the teacher to a risk of harm. A formal risk assessment should then be carried out, identifying measures that can be taken to eliminate or reduce the risk of harm. The protocol for how teachers should deal with a fatality should also be brought to the peripatetic teacher's attention.

Are there any time limits for taking proceedings in respect of this offence?

No time limit applies for taking proceedings against an organisation for the alleged commission of this offence. So, proceedings against an organisation can be taken years after the alleged offence.

What are the consequences for an organisation of being found liable for the offence?

Possible sentences are:

- remedial order to ensure that the organisation takes steps to remedy the gross breach;
- unlimited fines;
- publicity orders, i.e., the organisation could be required to publicise the fact that they have been convicted of corporate manslaughter.

Checklist for school Health and Safety Representatives

- NUT Health and Safety Representatives should seek to ensure that head teachers and other senior management are taking the necessary steps as outlined on page 3 of this briefing.