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Contents

Corporate Crime

- Are Directors Getting Away with Manslaughter? Emerging
Trends in Prosecutions for Corporate Manslaughter 158
Sarah Field & Lucy Jones

International Investment Agreements

- Multinational Companies and the Allocation of
Environmental Risk in International Investment Treaties 164
Janet Dine

International Company Law

- Class Actions under the Indian Companies Act 2013: A
Critique 177
Aravpalli Krishna Thej

Tax Case Note

- A Storm in a Tea Cake? *Lees of Scotland Ltd & Thomas
Tunnock Ltd v. HMRC* 181
Laura Donnellan

Current Comment

- Intellectual Property Patently Obvious 185
David Flint

Publications

In Parliament

188
191

Are Directors Getting Away With Manslaughter? Emerging Trends in Prosecutions for Corporate Manslaughter

*Sarah Field & Lucy Jones**

1 SUMMARY

This paper examines each of the six concluded cases brought under the Corporate Manslaughter and Corporate Homicide Act 2007 to date and queries: why so few cases have been brought to trial, despite workplace deaths remaining in excess of 145 per year; why all six companies have been small companies, and all received fines below the £ 500,000 threshold recommended by the Sentencing Guidelines Council; and, finally, why individual charges of manslaughter against directors were either not brought or abandoned.

2 INTRODUCTION

The Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA) came into force in April 2008.¹ After a slow start – six successful prosecutions under the Act in as many years (one trial; five guilty pleas) – there has been an increase in the number of cases investigated in recent months, and prosecutions under the Act appear to be gaining momentum.² This paper examines each of the six concluded cases to date and notes that while an upwards trend is to be welcomed, a number of questions remain: why so few cases have been brought to trial despite workplace deaths remaining in excess of 145 per year,³ why all six companies have been small companies, and all received fines below the £ 500,000 threshold recommended by the Sentencing Guidelines Council (SGC),⁴ and finally, why individual charges of manslaughter against directors were either not brought or abandoned.

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¹ The Act came into force on 6 April 2008, (Corporate Manslaughter and Corporate Homicide Act 2007 (Commencement No. 1) Order 2008 (SI 2008 No. 401 (C. 15)) with the exception of the provision relating to liability for death in custodial institutions which was brought into force on 1 September 2011, (the Corporate Manslaughter and Corporate Homicide Act 2007 (Commencement No. 3) Order 2011 (SI 2011 No. 1867 (C. 69))).

² There are five cases set for trial in 2014:

PS & JE Ward Ltd, trial commenced 31 March 2014; MNS Mining Ltd, trial commenced 24 March 2014; Sterecycle (Rotherham) Ltd, trial starts 2 October 2014; Cavendish Masonry Ltd, trial starts 12 May 2014; Pyranha Mouldings Ltd, preliminary hearing held on 13 March 2014.

³ See Figure 1, Health and Safety Executive, Annual Statistics Report for Great Britain 2012/13.

⁴ Sentencing Guidelines on Corporate manslaughter and offences which cause death, Sentencing Guidelines Council (SGC), 2010: para. 24. The Sentencing Guidelines Council has since been replaced by the Sentencing Council, an independent, non-departmental public body of the Ministry of Justice.

The offence of corporate manslaughter created by the CMCHA 2007 is committed when the way in which an organization manages or organizes its activities causes a person's death and amounts to a gross breach of a relevant duty of care; it applies to all corporations and some incorporated bodies.⁵ The offence is intended to work in conjunction with other offences such as offences for breach of duties under the Health and Safety at Work Act (HSWA) 1974. Thus, in relation to the same fatality, an organization may face both a corporate manslaughter charge and a charge of breaching the health and safety at work statutory provisions.

The intention of the CMCHA is to enable the corporation as a whole to be held responsible for manslaughter where the death of an individual was caused by a gross breach of a duty of care owed to the individual by the organization. A substantial part of the breach must have been attributable to the way activities were managed or organized by senior management. The management failure need not be the sole cause of death but the conduct which causes the breach must fall 'far below' what could reasonably be expected. Conversely, a corporation will not be liable under the Act where a death occurs but there are reasonable safeguards in the management of the activity in place.

The CMCHA does not apply to individuals, nor can individuals be guilty of 'aiding, abetting, counselling or procuring the offence'.⁶ However, individual managers or directors of an organization may – as was the case prior to 2007 – be charged with gross negligence manslaughter arising from the same event.

3 FATAL INJURIES IN THE WORKPLACE

Five of the six successful prosecutions under the CMCHA to date relate to the death of a worker. However, it is pertinent to note that this represents a minute proportion (less than 1%) of the number of fatal injuries to workers: As the data in the table below confirm, since the CMCHA came into force there have in fact been over 880 such fatal injuries.⁷ The annual death toll from deaths in the workplace appears to continue to struggle to command the attention of the prosecuting authorities.

⁵ CMCHA s. 1(2) states that the offence applies to a corporation; a department or other body listed in schedule 1; a police force; and a partnership, or trade union or employers' association that is an employer.

⁶ CMCHA 2007 s. 16(1).

⁷ Health and Safety Executive, Annual Statistics Report for Great Britain 2012/13, together with the latest reported figure of sixty-six fatal injuries to workers April–30 September 2013. <http://www.hse.gov.uk/statistics/fatals.htm> (accessed 18 March 2014).

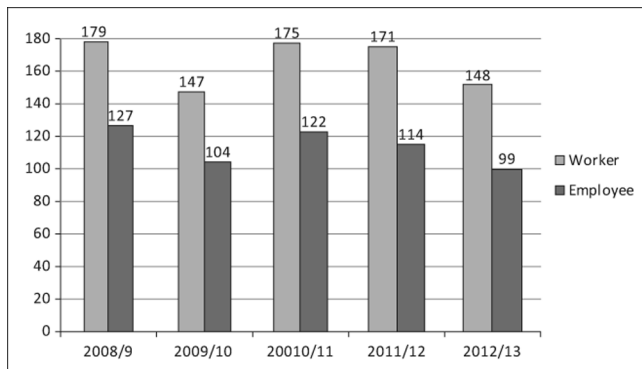
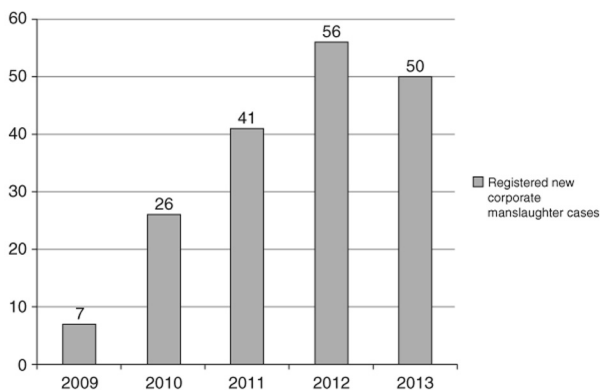


Figure 1 Number of Recorded Fatal Injuries to Workers/ Employees⁸

4 PROSECUTIONS UNDER THE CMCHA

Although recent months have seen a substantial increase in the number of cases investigated and companies charged – as of February 2014 the number of current active cases totalled 48⁹ – an examination of the six successful prosecutions to date reveals that they have been limited, both in number and in terms of the size of the companies prosecuted. Moreover, even though the SGC requires fines to be ‘punitive and substantial’ – ‘seldom... less than £ 500,000 and may be measured in millions of pounds’¹⁰ – none of the fines imposed has met this minimum threshold.

Figure 2 The Number of New Corporate Manslaughter Cases Opened by the Crown, 2009–2013.¹¹



4.1 Cotswold Geotechnical Holdings Ltd

R v. Cotswold Geotechnical Holdings Ltd is a significant case for two reasons: Firstly, it concerned the first company in the UK

⁸ Health and Safety Executive, Annual Statistics Report for Great Britain, 2012/13.

⁹ This includes cases at the advice stage (thirty-seven) and prosecution. CPS, 2014, Freedom of Information Act 2000 Request, Reference 4548.

¹⁰ SGC, 2010: para. 24.

¹¹ CPS, 2014, Freedom of Information Act 2000 Request, Reference 4548 (2011–13);

<http://www.pinsentmasons.com/en/media/press-releases/2013/new-corporate-manslaughter-cases-opened-by-cps-up-40-in-2012/2009-2010> (accessed 17 March 2014).

to be prosecuted – and convicted – of the offence of corporate manslaughter under the CMCHA (in February 2011)¹², and secondly, it is – and to date remains – the only instance of a concluded full trial under the new legislation.

Cotswold Geotechnical Holdings Ltd was a small company with eight employees¹³ and the sole director of the company (Peter Eaton) exercised full control over the management of its affairs and of the organization of the work. The prosecution originated from an accident in September 2008 when a junior geologist was killed while taking soil samples from inside a pit.¹⁴

In convicting the company, its system of work was berated as being ‘wholly and unnecessarily dangerous’ and the trial judge noted that the gross breach of the company’s duty to the geologist was a ‘grave offence’. He imposed a fine of £ 385,000, which is clearly below the £ 500,000 set by the Sentencing Guidelines Council¹⁵ and in this sense would seem to fail to meet the ‘substantial’ requirement of the Guidelines. However, if one assesses the level of the sanction in relation to turnover, a somewhat different picture emerges. The Sentencing Advisory Panel (which set out the draft sentencing guidelines) had suggested a level of fine of between 2.5 and 10% of a convicted company’s average annual turnover during the three years prior to the offence, with the starting point at 5% of turnover;¹⁶ a proposal that was not adopted. Yet the £ 385,000 fine levied on Cotswold Geotechnical is equivalent to a much higher figure than that proposed: to 250% of the company’s annual turnover in fact, and on this analysis the fine in this case could be regarded as substantial.

Nonetheless, the impact of the fine was significantly reduced in that it was accompanied by an order for it to be payable over ten years at a rate of £ 38,500 per annum.¹⁷ It is also worth noting that the company’s subsequent appeal against sentence was dismissed by the Court of Appeal. Significantly, in its first (and to date, only) pronouncement on the issue, the Court of Appeal determined that the fact that the company would be put into liquidation would be an ‘unfortunate’ but ‘unavoidable’ consequence.¹⁸ It is also clear from the Sentencing Guidelines that in serious cases this is an acceptable consequence.¹⁹

It is pertinent to note however that a separate charge of gross negligence manslaughter against the company’s managing director was abandoned (due to his ill health), as were Health and Safety charges against both the director and the company – a prosecutorial decision that, as will be seen, has been replicated in subsequent cases.

¹² The Times (London, England) 18 February 2011, 16.

¹³ Taylor D., and Mackenzie G. 2013, ‘Staying focused on the big picture: should Australia legislate for corporate manslaughter based on the United Kingdom model?’ *Criminal Law Journal* 37.2 (2013): 99–113.

¹⁴ Crown Prosecution Press Release at: http://www.cps.gov.uk/news/latest_news/107_11/ (accessed 14. March 2014).

¹⁵ SGC, 2010: para. 24.

¹⁶ Sentencing Advisory Panel, *Consultation on Sentencing for Corporate Manslaughter*, 15 November 2007, para. 60, available at <http://www.sentencingguidelines.gov.uk/consultations/closed/index.html> (accessed 7 April 2014).

¹⁷ *R v. Cotswold Geotechnical Holdings Ltd* [2011] EWCA Crim 1337.

¹⁸ *Ibid.*

¹⁹ SGC, 2010: para. 19.

4.2 JMW Farms Ltd

The second conviction for corporate manslaughter was in May 2012 against JMW Farms Ltd, a company based in Northern Ireland with sixty-three employees.²⁰ There was no trial as the company pleaded guilty. A farm worker was killed when he was crushed by a large metal bin, which fell from a forklift operated by Mark Wright, one of the company's directors.

In sentencing the company, the Recorder of Belfast referred to the guidelines issued by the SGC, which while not strictly applicable in Northern Ireland, are nonetheless persuasive.²¹ He found that the company had fallen far short of the standard expected in relation to such an operation, and as a director was in control of the forklift at the time of the accident, culpability clearly went to the upper echelons of the company. However, he also appeared to be influenced by the fact that there was no evidence of a 'systematic departure from good practice across the defendant's operations' or of a 'failure to heed warnings or advice', or 'evidence of cost cutting at the expense of safety'.²²

Moreover, and crucially – in contrast to the Court of Appeal's approach in the case of *Cotswold Geotechnical* – the Recorder determined that the fine imposed should not affect the company's 'commercial viability' and 'in particular the employment of other innocent employees'.²³ Thus, although this was a highly profitable company, (with profits after taxation for the year ending 30 September 2011 of £ 1,379,737) he determined that the appropriate fine would be £ 250,000 (half the minimum threshold recommended by the SGC), and after allowing a reduction of 25% to reflect the guilty plea, a fine of £ 187,500 was imposed, payable in six months.²⁴ This represented a mere 13.6% of its most recent annual profits.²⁵

In addition, and in line with the approach of the CPS in the *Cotswold Geotechnical Holdings* case, there was no separate prosecution of the individual director for gross negligence manslaughter or for Health and Safety breaches.²⁶

4.3 Lion Steel Equipment Ltd

In July 2012 Lion Steel Equipment Ltd pleaded guilty to the corporate manslaughter of its employee, Steven Berry, who was employed as a maintenance man, and died in May 2008 after falling through a fragile skylight in the roof at the company's premises.

In sentencing the company, the trial judge applied the tests in the Sentencing Guidelines, noting that the company had failed to adequately address the obvious risk of serious injury or death and had fallen short of the required standards. When looking at the financial position of the company, he considered the company accounts for the period October 2008 to September 2011, which showed that the company had a turnover of ten million per annum and profit before tax

of between £ 187,000 and £ 317,000. However, it was noted that this was not a company where the directors were 'creaming off large salaries' but one that had been set up in 1998 as a management buyout to prevent closure and loss of jobs.²⁷ Although the trial judge believed that 'significant punishment' was required, he echoed the concerns of the court in *JMW Farms* regarding the impact a substantial fine with a short period of payment would have on the viability of the company.²⁸

Thus, after allowing a reduction of 20% to reflect the guilty plea, a fine of £ 480,000 was imposed, to be paid in four instalments.²⁹ On the face of it, this appears significant in that it is the first time a fine has approached the benchmark proposed in the Sentencing Guidelines. Yet, once again the fine was set on favourable terms – payable in instalments – the concern of the court being the continued viability of the company. Moreover, it is also worth noting that the company was the largest prosecuted to date, employing 142 people; this may have been a factor that influenced the level of fine imposed.

Furthermore, it is significant that, in line with the previous two cases, the Health and Safety charges and individual manslaughter charges were also dropped. Originally, the CPS had brought charges under section 2 and section 33 of the Health and Safety at Work Act 1974³⁰ against the company, as well as charges of gross negligence manslaughter and breaches of section 37 of the HSWA against three of the firm's directors.³¹ The court found there was no case to answer against two of the directors on the manslaughter charge. After Lion Steel pleaded guilty to corporate manslaughter, the prosecution offered no evidence against the director still facing a gross negligence manslaughter charge (in addition to dropping all other lesser criminal charges against the directors).³²

4.4 J Murray and Son

In October 2013, J Murray and Son Ltd, another small enterprise (based in rural Northern Ireland) sharing many features of the previous cases,³³ pleaded guilty to the manslaughter of Norman Porter, who had been killed when he was drawn into an animal feed mixer.³⁴ Daniel Murray, the controlling director, had devised the working method of using

²⁰ <http://companycheck.co.uk/company/NI055491/JMW-FARMS-LTD/directors-shareholders#employees> (accessed 25 April 2014).

²¹ *R v. JMW Farms Ltd* [2012] NICC 17 para. 10.

²² *Ibid.* paras 15 & 16.

²³ *Ibid.* para. 20.

²⁴ *Ibid.* paras 22 & 23.

²⁵ Health and Safety Bulletin, 2012, 410:6.

²⁶ Woodley M., (2013) 'Bargaining over Corporate Manslaughter – What Price a Life?' JCL 77: 33.

²⁷ Sentencing remarks in the Manchester Crown Court before his Honour Judge Gilbert para. 36. <http://www.judiciary.gov.uk/media/judgments/2012/r-v-steel-equip-ltd-sentencing-remarks> (accessed 7 April 2014).

²⁸ *Ibid.* para. 42.

²⁹ *Ibid.* para. 4.

³⁰ The HSWA s. 2 imposes a duty on employers to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all their employees. The HSWA s. 33 creates an offence to breach the duty under s. 2.

³¹ The HSWA s. 37 provides that an individual (a director, manager, secretary or other similar officer) can share criminal liability with the company where the offence has occurred as a result of their consent, connivance or neglect.

³² Sentencing remarks in the Manchester Crown Court before his Honour Judge Gilbert paras 12 & 13. <http://www.judiciary.gov.uk/media/judgments/2012/r-v-steel-equip-ltd-sentencing-remarks> (accessed 7 April 2014).

³³ With sixteen employees.

³⁴ *R v. J Murray & Son Ltd* [2013] NICC 15.

the machinery,³⁵ and therefore a substantial element in the breach of duty was unquestionably the way in which the fatal activity had been managed by senior management.

In assessing the appropriate fine, the trial judge referred to relevant elements of the Sentencing Guidelines,³⁶ taking into account that this was the company's first known breach of Health and Safety regulations and that, apart from the failure to incur the cost of installing safety measurements, no aggravating circumstance existed. He appeared to echo the sentiments of the court in *JMW Farms* when stating that a balance needed to be struck between the requirement to levy a 'punitive' fine, which would be 'sufficient to have an impact on the company', and the desire to 'not have the effect of terminating the business'.³⁷ Nonetheless, and in spite of the fact that the company had been trading at a loss for the previous four years, a fine of £ 100,000 was imposed; this represented more than three times the value of its assets (assessed at £ 33,000).³⁸ In line with previous cases, payments were permitted to be made over extended periods of time (five annual instalments of £ 20,000) in order to avoid putting the company's viability at risk.³⁹

Once again – as was the case in previous prosecutions – the individual charge of gross negligence manslaughter against the director was dropped following confirmation of a guilty plea by the company.

4.5 Princes Sporting Club Limited

Princes Sporting Club Limited pleaded guilty to the offence of corporate manslaughter on 22 November 2013 following the death of an 11-year-old girl during a water sports activity in September 2010. In many ways this case is similar to the four previous successful prosecutions under the CMCHA, in that it involved a relatively small company without a complex management structure and with a director who had significant day-to-day involvement in the business. However, this is the only case to date, where a company has been convicted of the corporate manslaughter of a member of the public rather than a worker and also the first such case relating to a company no longer trading.⁴⁰

A report by the Marine Accident Investigation Branch into the accident found that safety procedures at the club were 'flawed at every level',⁴¹ and in sentencing the company, McCreath J stated that he proposed 'to fine the company every penny that it had'; moreover, had the company still been operating, he would have imposed a financial penalty that would have put it out of business.⁴² The company was

ordered to pay a fine of £ 35,000⁴³ – which amounted to the total sum of the company's assets⁴⁴ – within twenty-eight days.

At first glance, this case appears significant as it gives an indication that the CMCHA may in fact have financial teeth. Although the actual sum is still significantly below the £ 500,000 threshold,⁴⁵ the judicial statements were unequivocal: the courts were willing to set fines that would put a company out of business. This stance would appear to reflect the view of the Court of Appeal in *Cotswold Geotechnical* and could be interpreted as signifying a toughening approach of the courts to such offenders, standing as it does in stark contrast to previous decisions (such as those in *Lion Steel* and *J Murray & Son*) where the courts were more concerned about the practical implications of such a fine, rather than issues of whether or not it was justified. However, the significance of the penalty is somewhat compromised given that the firm had already gone out of business by the time the case reached trial.

In another 'first', Princes Sporting Club was also the first company to be issued with a 'publicity order' by a court under section 10 of the CMCHA. This sanction requires the company to publicize, in a specific manner, the fact that it has been convicted of the offence, specified particulars of the offence, the amount of any fine imposed and the terms of any remedial order made. In effect, the publicity order requires the offending company to name and shame itself. While the usefulness of such orders had been questioned in previous cases, in this case the Crown Prosecution Service actively sought such an order – the purpose of which was to act as a warning to other operators (it clearly would not have an impact on the company itself since it had ceased trading before the trial). The use of the publicity order appears to have been replicated by the court when passing sentence in the latest case, *Mobile Sweepers Reading Ltd* (below), although it is clearly too early to say that this signals the beginning of a trend. Further, the efficacy of such orders on small firms has been questioned. As Khanna notes, in relation to small companies there may be little or no significant reputation to be lost through stigmatic punishment.⁴⁶

Significantly, once again the Health and Safety charges against the company for breach of section 3 of the HSWA and against the individual director (for breach of section 37, HSWA) were dropped in the face of a guilty plea from the company. According to the Health and Safety Executive, the CPS had determined that it was no longer in the public interest to pursue the lesser offence against the director because the company's guilty plea reflected the culpability of the senior management of the company.⁴⁷ Given that this – as

³⁵ *Ibid*: para. 2.

³⁶ *Ibid*: para. 8.

³⁷ *Ibid*: para. 12.

³⁸ *Ibid*: para. 7.

³⁹ <http://www.bbc.co.uk/news/uk-northern-ireland-24433723> (accessed 7 April 2014).

⁴⁰ Princes Sporting Club Limited had ceased trading in November 2012. The accounts for the year ending 31 March 2013 show a net book value of £ 693,604 and net liabilities of £ 970,912. The parent company, Princes Water Ski Club, made a loss of £ 118,779 with net assets of £ 776,458 on 31 March 2013. Fidderman H., 'Fifth corporate manslaughter case claims first non-worker', HSB [2014] 426:15.

⁴¹ Marine Accident Investigation Branch (MAIB) (2011), 'Report on the investigation of the fatal accident at Princes Club Water Sports Park', www.lexisurl.com/HSB17339 (accessed 10 April 2014).

⁴² The Times, London, [2013] 23 November 2011.

<http://search.proquest.com.ezproxy.brighton.ac.uk/uknews/docview/1460841426/760C3A4104574167PQ/7?accountid=9727> (accessed 10 April 2014).

⁴³ http://www.cps.gov.uk/news/latest_news/london_sports_club_sentenced_for_corporate_manslaughter/ (accessed 10 April 2014).

⁴⁴ Fidderman H., 'Fifth corporate manslaughter case claims first non-worker', HSB [2014] 426:15.

⁴⁵ The fine for corporate manslaughter will seldom be less than £ 500,000 and may be measured in millions of pounds. SCG, para. 10.

⁴⁶ Khanna, VS. 1996. 'Corporate Criminal Liability: What Purpose Does it Serve?' *Harvard Law Review* 109, pp. 1477–1534.

⁴⁷ Fidderman H., 'Fifth corporate manslaughter case claims first non-worker', HSB [2014] 426:15.

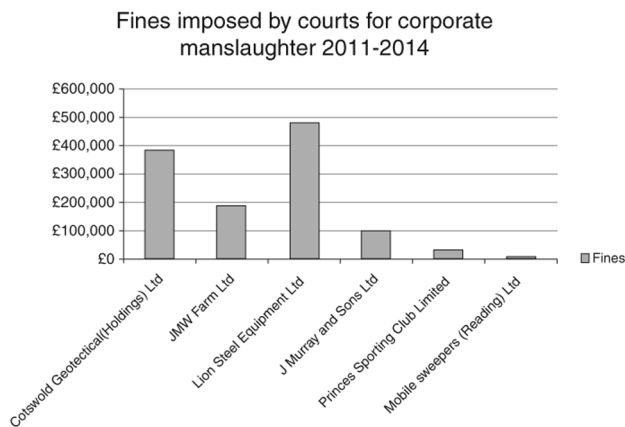
noted above – was also the prosecutorial decision in the previous cases, it may be that this constitutes a worrying pattern.

4.6 Mobile Sweepers (Reading) Ltd

The latest successful prosecution under the CMCHA concerns Mobile Sweepers (Reading) Limited, who in March 2014 pleaded guilty to the corporate manslaughter of Malcolm Hinton who was crushed under a road-sweeping truck he was repairing at the firm's premises in 2012.⁴⁸ The firm's sole director was charged with gross negligence manslaughter, and both he and the company were also charged with Health and Safety offences.⁴⁹

At the hearing, the company was fined £ 8,000 – clearly a paltry sum given the severity of the offence, but one which represented 'all it had'. Following in the footsteps of *Princes Sporting Club*, the judge also issued a publicity order requiring the company to publish details of its failings in two local papers. However, it is interesting to note that in this case – unusually – the guilty plea by the company did not result in an abandonment of the Health and Safety charges against the director. In fact, he pleaded guilty to breach of section 37 of the HSWA 1974 and was fined a substantially higher sum than his company (£ 183,000), and disqualified from being a company director for five years. Nonetheless, in line with the decisions noted above, Health and Safety charges against the company and the charge of gross negligence manslaughter against the director were not pursued.⁵⁰

Figure 3 Fines Imposed by Courts for Corporate Manslaughter 2011–2014



5 CONCLUSIONS

The position of criminal law towards corporate liability for manslaughter prior to 2007 was problematic. The 'identification' or 'directing mind' theory formed the basis of

the common law offence of corporate manslaughter according to which criminal liability could be imposed upon a corporation for the actus reus and mens rea of its controlling officers, but only such officers. The difficulty with this approach was that a company could only be convicted if a person in the organization, who was sufficiently senior to represent the 'directing mind' of the company, was proved to have the requisite knowledge and fault required for the offence; in effect the doctrine operated as a legal barrier to potential corporate criminal liability.

Indicative of the problem was the fact that in the twelve years preceding the CMCHA there were only eleven prosecutions of companies for manslaughter and six convictions,⁵¹ all of which related to small companies⁵² – where a conviction was possible because an individual could be identified as the 'directing mind and will' of the company. Notably, in the majority of these cases both the company and directors of the company were prosecuted – the latter receiving custodial sentences.⁵³

The CMCHA 2007 was introduced to remedy the deficiencies in the law and six years on a number of conclusions can be drawn regarding the Act's efficacy and the emerging prosecuting trends under the Act. Firstly, in 2014, an upwards trend appears to be emerging in corporate manslaughter prosecutions. Following only one conviction in over four years, there have now been five further convictions in around a year, with more cases before the courts, prosecutions being brought within a shorter period of time and a significant rise in the number of investigations opened. This is to be welcomed.

However, the fact remains that only small companies have been prosecuted under the CMCHA – and this trend appears set to continue, given that the cases currently before the courts also all concern small companies.⁵⁴ Failed prosecutions and crucially the failure to bring prosecutions because of anticipated problems of proof, were characteristic of the traditional criminal law doctrines regarding corporate liability, and prior to 2007 there were a number of failures to acquire successful prosecutions for large-scale loss of life, attributable to the alleged negligence of corporations.⁵⁵ Yet, under the new legislative structure, and six years on, we have yet to see charges being brought against a large company with complex

⁵¹ Fietag A., 'Health and Safety burden grows' (2010) 21(1) *Construction Law* 17.

⁵² Craig R., 2009. 'Thou shall do no murder: a discussion paper on the Corporate Manslaughter and Corporate Homicide Act 2007'. *Company Lawyer*, 30(1): 17–22.

⁵³ For example in the following cases both the companies and one or more of the directors were convicted of manslaughter: *R v Kite* [1996] Cr App R 295 the director was sentenced to two years' imprisonment on appeal; *R v Jackson Transport (Ossett) Ltd* (1996) unreported – the director was sentenced to twelve months; *R v Bowles Transport Ltd* (2000) unreported – two directors were given suspended imprisonment sentences; *R v Teglgard Hardwood (UK) Ltd* (2003) unreported – the director was sentenced to fifteen months' suspended imprisonment; *R v Nationwide Heating Systems* (2004) unreported – the director was sentenced to twelve months' imprisonment. Davies A. (ed), *Corporate Manslaughter and Corporate Homicide Act: Special Report*, Workplace Law Group, Cambridge, 2008, 12–13.

⁵⁴ MNS Mining, for example had a negative net worth of £ 64,996, assets of £ 1,616, and liabilities of £ 66,612.

⁵⁵ G. Slapper, 'Corporate Homicide and Legal Chaos' (1999) 149 *New Law Journal* 1031.

⁴⁸ <http://www.bbc.co.uk/news/uk-england-hampshire-26359482> (accessed 10 April 2014).

⁴⁹ https://www.cps.gov.uk/news/latest_news/corporate_manslaughter_charge_over_man_who_died_from_crush_injuries_at_work/ (accessed 10 April 2014).

⁵⁰ <http://www.osborneclarke.com/connected-insights/blog/court-looks-beyond-limited-company-assets-6th-corporate-manslaughter-case-and-punishes-company-director/#sthash.oTzKdSN8.dpuf> (accessed 10 April 2014).

management structures; the new provisions appear impotent in this regard.

Moreover, on conviction, the fines imposed by the courts have yet to reach the minimum standard set by the Sentencing Guidelines Council, and by imposing weak fines, the courts appear to be lightening the seriousness of corporate killing. The evidence to date suggests that the courts are more pre-occupied with matters of financial viability rather than questions of justice. Such concerns may find particular resonance in the current economic climate; however, it is submitted, they do need to be countered by the greater societal interest in ensuring the safety of employees and the public.

This picture is further compounded if we compare the current approach with the sanctions meted out by the courts to firms and their directors *prior* to the CMCHA. A case in point is *R v. Kite*.⁵⁶ The defendant company shares many of the features of the recently convicted Princes Sporting Club: a small company which ran an activity centre, and which was successfully prosecuted (in 1996) following the deaths of four schoolchildren during a water sports activity.⁵⁷ The company was fined £ 60,000, which was also said to represent its entire assets but in contrast to *Princes Sporting* (and indeed all cases prosecuted under the CMCHA), the managing director was

also prosecuted – and in fact sentenced to three years' imprisonment (reduced to two years on appeal).⁵⁸

Indeed, prior to 2007 in those rare instances when companies were prosecuted – albeit only small companies – individual directors also faced prosecution and punishment alongside their company. Yet, significantly, while the six cases prosecuted under the CMCHA to date represent a 100% conviction rate against the companies, they also represent a 100% failure rate as regards convictions for manslaughter against the directors. While two of the cases were challenged at the close of the prosecution case on the basis that there was 'no case to answer', others were dropped following the company's guilty plea.

This prosecutorial practice raises the spectre of another worrying trend, namely a trade-off between the CPS and defendants: a guilty plea by the company in exchange for an abandonment of the charges brought against individuals. However, the CMCHA was not introduced to *substitute* prosecution of companies for corporate manslaughter for that of individual directors for gross negligence manslaughter or other criminal offences. Nonetheless, the current picture would suggest that directors are in fact escaping prosecution, and thus being treated *more* leniently than was the case prior to the CMCHA. Directors are indeed 'getting away with manslaughter'; hardly the desired outcome of the much heralded new legislation.

⁵⁶ [1996] 2 Cr. App. R. (S) 295.

⁵⁷ Evidence established that the company routinely employed unqualified staff and did not train them, and that the supervision of the canoeing trip was grossly inadequate.

⁵⁸ Mujih E., 'Reform of the law on corporate killing' (2008) 29 *Company Lawyer* 76.