

## Corporate homicide

If Mr Andrew Dismore's 10-minute rule Bill were to be enacted (which is unlikely), one result would be a marked shortage of company secretaries. His proposed measure, entitled the Corporate Homicide Bill, was read a first time by the Commons on April 18. There was no debate, just a brief speech by the promoter.

Before becoming a Member of Parliament Mr Dismore, a Labour backbencher, practised as a personal injury lawyer. In doing so he represented many families who had been bereaved by accidents. His clients included people who had lost relatives in major incidents such as the Zeebrugge ferry disaster and the King's Cross fire. Of the latter he told the House: "As I took statements from victims, distraught relatives, firefighters and tube staff, and as I sat through the public inquiry day after day hearing over and over again about the failures of the senior management of London Underground Ltd., it struck me as outrageous that neither the company nor any of its managers would face criminal proceedings over those 31 deaths".

During his inquiry into the 192 deaths on the *Herald of Free Enterprise* at Zeebrugge, Mr. Justice Sheen said:

All concerned in management, from the members of the board of directors down . . . are guilty of fault. From top to bottom the body corporate was infected with the disease of sloppiness . . . The failure on the part of . . . management to give proper and clear directions was a contributory cause of the disaster.

However, Mr Dismore went on, the prosecution in the Zeebrugge case also collapsed owing to those same inadequacies of the criminal law.

The Dismore Bill seeks to enact changes first proposed by the Law Commission. In its report "Legislating the Criminal Code: Involuntary Manslaughter" (Law Com. No. 237), published in March 1996, the Commission recommended a new criminal offence of "corporate killing". Here the Commission disdained two accurate words (the Old English/Norse "manslaughter" and the Latin-inspired "homicide") in favour of the inaccurate "killing", which of course includes (though here that is not intended) such forcible deaths as hounds inflict on foxes.

According to the Law Commission, there appear to have been only four prosecutions of a corporation for manslaughter in the history of English law. Only one of these resulted in a conviction. That was the Dorset canoeing case, where because the corporation was a one-man company the problem of identifying the necessary "controlling mind" did not arise.

The Commission say the problem is that, under the present law, prosecutions for corporate manslaughter can be brought only where a corporation, *through the controlling mind of one of its agents*, does an act which fulfils the requirements of the crime of manslaughter. Usually the effective acts of carelessness are diffused through the company.

The Law Commission saw no reason why companies should continue to be effectively exempt from the law of manslaughter. It thought they should be liable to prosecution for a homicide offence if they caused death through conduct sufficiently blameworthy. The Commission therefore made the following recommendations:

- (1) There should be a specific offence of "corporate killing", broadly comparable to killing by gross carelessness on the part of an individual.
- (2) A corporation should be liable to prosecution for corporate killing if (a) a management failure by the corporation results in a person's death, and (b) that failure constitutes conduct falling far below what can reasonably be expected of the corporation in the circumstances.

- (3) Companies charged with corporate killing should be tried only in the Crown Court.
- (4) Where a company is convicted of corporate killing, the judge should have power (a) to fine it an unlimited sum; and (b) order it to remedy the cause of the death.

In its Fourth Report, published on February 2, 2000, the Select Committee on Environment, Transport and Regional Affairs endorsed this Law Commission proposal. They said that a departmental working group set up to consider the proposal has now submitted recommendations to Ministers, and that there may be a consultation exercise later this year. They added: "We recommend that the Government brings forward legislation to introduce a crime of corporate killing as soon as possible."

Mr Dismore's Bill would also punish individuals. To show the pitfalls involved, I return to what I said at the beginning about those useful functionaries company secretaries. Under the Dismore Bill a company secretary (as well as the chairman, managing director and chief executive) would also be guilty of corporate killing, and liable to a fine and/or imprisonment, if the way the company's operational activities were managed or organised fell far below the reasonable and resulted in death. Company secretaries are not normally concerned in the detail of operational matters. Nor for that matter are company chairmen.

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