



Health and Safety Penalties and Sanctions

Fines

Unite believes that all current fines coming out of health and safety cases are too low. Recent cases taken by health and safety inspectors, under existing health and safety law, have seen fines in the region of only £100,000, where workers have been killed. No individual manslaughter or Corporate Manslaughter charges have been brought in these cases. This puts a very low value on loss of life, and many fines have been much lower than this.

These cases and fines vary according to the circumstances, but they can hardly be seen as adequate when a worker has died. So, we take the view that Corporate Manslaughter fines must be much, much higher. We need to be talking millions of pounds, rather than tens of thousands of pounds. Even a million pound fine may be a relatively small amount to a large organisation. It is worth looking to the financial sector to see what could be expected. The Financial Services Authority can impose fines of up to 10% of the gross turnover of a company. This might be closer to the appropriate level of fines for corporate manslaughter offences.

Another option that should be explored is Equity Fines. These are aimed at Public Limited Companies (PLCs), requiring the company to create shares up to a particular value in a victims compensation fund. An advantage is that this hits shareholders, something a Board of Directors will not be keen to do.

We do recognise a problem in fining public companies. What is the point in Government money being paid back to the Government? It is a tricky issue and needs more thought, but it also points to the need for other forms of sentencing.

So, all of this shows us that fines against corporate bodies, companies or organisations are not enough. Corporate fines do not penalise the senior managers who are often responsible for the organisation's failings.

Individual Directors and Senior Managers

The absence of statutory directors' and senior managers' duties on health and safety hinders the prevention of accidents, injuries and fatalities and

makes it more difficult to secure justice for the victims of health and safety breaches. Only the introduction of statutory health and safety duties on company directors and senior managers, and effective penalties, will ensure that the most senior members of an organisation can be held responsible for health and safety negligence.

We disagree with the view that it would not be appropriate for an offence of Corporate Manslaughter to look at individuals such as company directors. Unite believes that without punitive sanctions against directors and senior managers there would be insufficient deterrent force to any new proposals.

We have put these points to the Home Office, the Department of Work and Pensions and the Health and Safety Executive.

The Corporate Manslaughter Bill should open up the possibility of action, and sanctions, against individual directors and senior managers, where it can be shown that their actions or inactions contributed directly to the gross failings of the organisation on health and safety. Those legal sanctions must include the possibility of directors or senior managers being sent to prison where their gross failures lead to the death of someone at work.

Unite believes there should also be a range of potential non-custodial sentences against individuals. A number of options should be considered, including personal fines, suspension or disqualification of directors, retraining or remedial training orders, and community health and safety service orders against directors or senior managers.

Directors Duties

Furthermore Unite believes that the Government must also look, as a matter of urgency, at the responsibilities of directors and senior managers with a view to tighter regulation. Criminal liability for management applies not only to the corporate body or undertaking concerned, but also to owners, directors, and very senior personnel who are ultimately responsible for the management failure. The existing guidance on Director's Duties on health and safety needs to be reframed as a legal duty, with the clear indication that it applies to directors and senior managers, so that its coverage is in line with that of the Corporate Manslaughter Bill.

Sentencing Organisations

As far as corporate penalties and sentencing are concerned, we think there needs to be more than just large fines. Unite would like to see the Courts exploring more imaginative, additional penalties. We see these as additional, not as alternatives, to fines.

Unfortunately the Government has given no serious consideration to the best way of sentencing companies and other organisations. The Home Office, for its part, has displayed a total lack of imagination in this area. It

might also be recalled that the Government's "Revitalising Health and Safety" report, published in 2000, committed itself to looking at alternative forms of sentences.

The findings of the Macrory Report "Regulatory Justice: Sanctioning in a post-Hampton World" are about to be published, and Unite has submitted detailed comments, based on some of the points made here.

In essence, though, the Corporate Manslaughter Bill is too weak, and more effective sanctions need to be defined.

The only measure identified in the draft Bill is Remedial Orders. Courts already have the power to issue these in relation to health and safety offences, but, as far as we are aware, they have never been used. In practice, we expect health and safety failings to be put right long before companies end up in Court. The Health and Safety Executive generally imposes health and safety improvements through their investigations and interventions under existing health and safety law. So, we are not against remedial orders, but we have some doubts about their practical value.

There are other alternatives that we think might be more effective:

- For organisations we should be considering Corporate Probation. The Court should have the power to place conditions on an organisation. These could include setting periods of time during which the organisation must deliver identified, good health and safety practices. The Court could require companies to employ additional safety advice, or train managers and so on.
- Organisations could also be subject to Corporate Community Service Orders, requiring them to provide health and safety services to workers or to the local community. This would mean putting something back into a community, or to families, or to workers, that have been affected by a workplace death or deaths.
- Another type of order is a Negative Impact Order. This would require a company to pay for prominent advertising informing people that they have been convicted. This is naming, shaming, publicising and then charging! It could be very effective.