# Deaths in the dental surgery: individual and organisational criminal liability

C. Wells[1] and D. Thomas[2]

IN BRIEF

- Informs practitioners about the new corporate manslaughter offence.
- Explains its relevance for all organisations that commission or provide dental services.
- Highlights other potential criminal liability of individual and organisational dental providers.

PRACTICE

This paper is intended to update dental practitioners and commissioners of dental services on the significance of the Corporate Manslaughter and Corporate Homicide Act 2007 which came into force in April 2008. The paper places the Act in the context of the potential criminal (as opposed to civil) liabilities of dental providers. It looks in detail at criminal liability, health and safety and gross negligence manslaughter. In particular it explains the essential elements of the new offence: the threshold question of which organisations are covered, the relevant duty of care, when an organisation may be culpable, and what penalties they may face on conviction. The paper concludes that any dental provider may be liable for one of these offences (health and safety, gross negligence manslaughter or the new corporate manslaughter offence) but only a limited number is likely ever to find themselves answering a criminal charge.

## 1. CONTEXT

A visit to a dental surgery is now a routine and (generally) pleasant experience for UK residents. During 2007 62% of the population are reported to have attended a dentist.[1] However, for a small number of the community even the thought of attending for dental treatment fills them with fear and anxiety. This group, along with young children and adults who are incapable of cooperating with dental treatment, has depended on general anaesthesia or, more recently, conscious sedation techniques for their dental treatment. The use of general anaesthesia continues to be associated with an increased risk of morbidity and mortality.

The Curson Report examined deaths in dentistry between 1970-1979; during this period 15 million anaesthetics were given with a total of 100 deaths.[2] In the following decade, 1980-1989, the number of deaths had decreased to 42.[3] It is suggested that this reduction in mortality was largely attributable to a decrease in the number of general anaesthetics rather than to improved standards. After the implementation of the Poswillo Report introducing additional patient monitoring, patients continued to die in dental surgeries at a rate of two per year.[4] Following a Department of Health review of the use of general anaesthesia and conscious sedation in primary dental care, all dental general anaesthetics provided and commissioned in England were moved to hospital premises.[5] In Wales premises used for this purpose have been designated as hospitals. Since 2002 there has been continuing mortality. Although general anaesthesia carries the most significant risk in terms of mortality, dental practitioners should be aware that other clinical situations could in theory result in legal proceedings. For example, if a patient were to have an anaphylactic reaction and the dental practice had an inadequate supply of emergency drugs to deal with this reaction, or perhaps no medical history had been taken from the patient, then it could be argued that the practice had acted negligently. Even non clinical scenarios should be considered, for example if a patient is struck by a loose piece of masonry/roof tile on an inadequately maintained building.

The aims of the current paper are to consider the potential criminal (as opposed to civil) liabilities of dental providers, to explain the significance of the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCH Act) and to consider its relevance to health care providers and commissioners of dental services.

## 2. CRIMINAL LIABILITY

Although on the face of it the Act introduces a wider form of organisational liability for negligently caused deaths than before, it is important to understand where it fits in the broader legal landscape before considering these changes in detail. It is also important to emphasise that the potentially wider liability introduced by the Act may be more apparent than real.

Most professional activities involve the risk of causing death or injury to an employee or a customer or member of the public. The National Health Service is not only the largest employer in the country but also of course its core role means that it runs a greater than average risk that harm may result from its procedures. The NHS devolves operational responsibility to PCTs and Trusts. These bodies are liable to prosecution

[1]Professor of Law, Durham University, 30 Old Elvet, Durham DH1 3BN; [2]*Consultant in Dental Public Health, National Public Health Service, Mamhilad House, Mamhilad Park Estate, Pontypool NP4 0YP
*Correspondence to: Mr David Thomas
Email: david.thomas@nphs.wales.nhs.uk

Refereed Paper
Accepted 7 March 2008
DOI: 10.1038/sj.bdj.2008.349

under the Health and Safety at Work Act 1974 (HSAW Act) when they fail to take reasonably practicable steps to ensure the health and safety of their employees, patients or members of the public (Part 3 below).

Additional legal avenues open up whenever a death results. An individual health care professional who causes a patient's death through gross negligence may be charged with manslaughter. Until the CMCH Act comes into force in April 2008, an NHS Trust could also in some circumstances be charged with the same common law manslaughter offence in relation to the death (Part 4 below).

But after 6 April 2008 there will be a clear division between individual and organisational liability for manslaughter. These changes do not in any way affect liability under the HSAW Act. These various avenues present some problems in relation to investigation procedures, enforcement policies and of potential overlap in punishment. Health and safety offences are investigated and enforced by the Health and Safety Executive, while manslaughter falls under the general criminal remit of the police and the Crown Prosecution Service.

Prosecutions under the new corporate manslaughter offence (Part 5 below) will additionally require the consent of the Director of Public Prosecutions.[6] In order to ensure that work related deaths are properly investigated as potential manslaughter offences, the HSE, the Association of Chief Police Officers (ACPO) and the CPS agreed in 1998 a protocol setting out the principles for effective liaison in such circumstances.[7] The issue of parallel charges is addressed in section 19 of the CMCH Act to the effect that juries may return verdicts on both health and safety and manslaughter charges.

## 3. HEALTH AND SAFETY

It is appropriate to begin with potential liability under the 1974 HSAW Act for two reasons. The first is that all employers, whether individual or corporate bodies, and employees, are subject to its wide ranging provisions. It would paint a misleading and incomplete picture to launch straight into the much more unusual offence of manslaughter. The second is that the CMCH Act uses health and safety regulations and guidance as among the relevant factors for a jury to take into account when considering an organisation's culpability.

The Health & Safety at Work Act 1974 places a general duty upon employers to keep employees, and others (such as patients), healthy and safe at work. Employers owe duties to their employees (section 2) and to the public (section 3) to ensure so far as is reasonably practicable that they conduct their undertakings so that those who may be affected are not exposed to risks to their health or safety. Breach of these duties is a criminal offence (section 33), punishable by an unlimited fine in the Crown Court. In a magistrates' court, breach of any of the general duties under sections 2 to 6 is punishable by a fine of up to £20,000; for most other offences, including breaches of health and safety regulations, the maximum fine is £5,000.

It is not necessary to prove that any particular injury (or death) resulted from the breach though prosecution is more likely where serious injury or deaths have occurred. The HSE prosecutes about 700 cases annually. It is for the employer or organisation to prove (on a balance of probabilities) that they had taken all reasonable precautions. This makes it what is known as a semi strict liability offence. As the HSE only prosecutes in the worst cases, this is rarely an issue and the conviction rate is high (95%). Increasingly large fines are imposed in relation to health and safety offences where deaths have resulted.[8] Network Rail was fined £3.5 million and Balfour Beatty £10 million for breaching health and safety offences that led to the Hatfield rail crash in 2000.[9] But the average fine, although it has doubled in the last six years, is still only £43,000.[10] These suggest that fines imposed for the new corporate manslaughter offence could cover a wide range.[11]

There have been significant shifts in the way health and safety is enforced, and therefore how it is perceived. We are seeing the 1974 Act used as a fall back when an individual manslaughter prosecution cannot be made out, as in the aftermath of the Hatfield rail crash, or the Barrow in Furness Legionnaires' outbreak case,[12] and the most recent example, the de Menezes shooting the day after the failed terrorist bombs in London in July 2005. The Metropolitan Police were fined £175,000 in November 2007 for breach of the duties owed to non-employees under the Health and Safety at Work Act 1974. Taken together we can see a clear change in the symbolic and punitive role of some, if not all, health and safety prosecutions.[13]

## 4. GROSS NEGLIGENCE MANSLAUGHTER

Common law gross negligence manslaughter will apply to individuals (until the CMCH Act came into force this had been the route for potential organisational liability, NHS Trusts etc as well). Professionals (like anyone else) can be liable for manslaughter if death results from gross negligence. There has been an increase in the number of investigations and prosecutions of MHPs, including dental practitioners, with 50 investigations and seven convictions in the last decade.[14,15]

Coincidentally, the leading House of Lords case in this type of manslaughter, *Adomako* (1995),[16] concerned a hospital anaesthetist. The basic ingredients of the common law offence can be summarised in this four stage test:

- Did the defendant owe a duty of care towards the victim who had died?
- If so, has the defendant breached that duty of care?
- Has the breach caused the victim's death?
- If so, was that breach of duty so bad as to amount, when viewed objectively, to gross negligence warranting a criminal conviction?

In determining the last of these (the nub of gross negligence), a jury would consider, explained Lord Mackay in *Adomako*, whether:

*'the seriousness of the breach of duty committed by the defendant in all the circumstances in which the defendant was placed when it occurred...* [and] *the extent to which the defendant's conduct departed from the standard of care incumbent upon him, involving as it must have done a risk of death to the patient, was such that it should be judged criminal.'*

Until April 2008 the common law

offence could have been committed by corporations including NHS trusts. However, one of the main drivers for the reform culminating in the CMCH Act 2007 was the difficulty in securing a conviction against large corporate organisations with diffuse management structures. Of the 34 corporate manslaughter prosecutions since 1992 only seven were successful and these were mainly against so called 'one man' companies where the company was merely a legal manifestation of the individual managing director.[17,18] This is a very low conviction rate, bearing in mind that the CPS employs an evidential threshold that there is 'a reasonable prospect of conviction', (that is, a conviction is more likely than not) before bringing any prosecution.[19] High profile failed prosecutions include those against P&O following the *Herald of Free Enterprise* capsize in 1987, against Great Western Trains following the 1997 Southall rail disaster, and against Balfour Beatty following the Hatfield derailment in 2000. The trial proceeded on the HSAW Act charges. In all three cases acquittals were directed by the trial judge.[20] In the light of the Hatfield acquittals, the CPS eventually decided that charges against Railtrack for their part in the Ladbroke Grove crash in 1999 were unsustainable.[21]

Perhaps the closest analogy for the NHS is the Barrow in Furness Legionnaires' case.

Seven members of the public died and 180 people suffered ill health in August 2002 as a result of an outbreak of legionella at a council-owned arts and leisure facility in Barrow town centre. The local authority and its chief architect ('head of building designs') were prosecuted for manslaughter. While the local authority successfully challenged on the grounds that it had no case to answer, proceedings continued against the head of building designs. She was eventually acquitted on a re-trial, the jury having been unable to reach a verdict at the first trial.[22]

In all of these cases, large fines for *health and safety offences* were later justified by the sentencing judges on the grounds that serious management failures had led to the loss of life. All of which now begs the question whether the CMCH Act is likely to be more successful in passing the judicial barricade that seems to be erected whenever manslaughter offences, as opposed to health and safety offences, are prosecuted against organisations.

## 5. CORPORATE MANSLAUGHTER AND THE CMCH ACT 2007

The Act, unusually for a statute dealing with a serious criminal offence, applies to the whole of the UK.[23,24] It introduces a new offence of corporate manslaughter which in Scotland will be known as corporate homicide.[25] It comes into force on 6 April 2008 after which organisations can no longer be prosecuted under common law gross negligence manslaughter.[26]

PCTs, LHBs, NHS Trusts, and many dental partnerships could *in theory* become liable under the Act which is very different of course from saying that they are likely to become liable should they be responsible in some way for the death of an employee, a patient or a member of the public. Much has been written about the Act that is misleading or misguided or both. For example, there is a common misconception that individual directors or senior managers can be liable. They cannot.[27] There is some misunderstanding also of the exemption that applies to public authorities carrying out 'exclusively public functions'. We will explain this further below.

The Act is complex and the offence definition itself is full of ambiguities and interpretive uncertainty. However, in an adaptation of Donald Rumsfeld's famous comment, it is useful to be clear about which parts are clear and about which are not.[28,29] This is what we hope to achieve in our account.

Our discussion is ordered as follows: the offence, the threshold question (to which organisations does the Act apply?), the relevant duty of care, the exemptions for public activities, the conduct element (causing death), the culpability element (the gross breach), and penalties.

### The offence:

An organisation will commit the offence if the way in which it manages or organises its activities both causes a death and amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.[30]

### The threshold question:

All corporations and some unincorporated bodies such as trade unions, employers' organisations, partnerships that are also employers, police forces, and most Crown bodies are covered.[31] PCTs, LHBs, Trusts, and partnerships (so long as they are also employers) all qualify on the initial threshold test.

The death (or the harm which led to the death) has to occur in the UK. In other words a contract with a provider outside the UK would not be covered.[32]

### The relevant duty of care:

The core of the definition relates the relevant duty to the private law of negligence.[33] The notion of breach of duty of care appeared in the leading House of Lords case on common law manslaughter.[15] It is difficult to see what purpose the phrase serves there and indeed it did not feature in the Law Commission's restatement of the offence.[34] However, it is spelled out to include the duty owed to employees, as occupier of premises, as a supplier of goods or services, construction or maintenance or other commercial activity, and to those detained in custody. In the case of HCPs and their employers or commissioning bodies a relevant duty of care is not going to be difficult to prove. When an LHB, for example, commissions a clinical service, they are likely to be said to be supplying a service and therefore owe a duty of care.

### The exemptions:

The Act does, however, circumscribe when a public authority, as opposed to a commercial organisation, may be liable. Section 3 (1) states that a 'duty of care owed by a public authority in respect of a decision as to matters of public policy (including in particular the allocation of public resources or the weighing of competing public interests) is not a "relevant duty of care".' Thus, if the issue is whether the commissioning body should have provided more dental services in a particular area, or of a particular type, then this would not give rise to liability should a death be attributable to that decision. Subsection 2 goes on to state that 'any duty of care owed in respect of things done in the exercise of an

exclusively public function is not a "relevant duty of care" where it concerns the provision of a service.' In other words, exclusively public functions in relation to duties owed as employer, as occupier or in relation to those held in custody could give rise to liability under the Act. We have spelled this out in detail as it is one of the parts of the Act that can be misinterpreted unless the precise terms are fully understood. It may seem for example that an NHS Trust or an NHS dentist is providing an exclusively public function. But they are not.

An exclusively public function is one that either falls within the Crown prerogative (clearly not so for the NHS) or is 'by its nature, exercisable only with authority conferred by or under a statutory provision'.[35] The Explanatory Notes explain that this means 'the *nature* of the activity involved must be one that requires a statutory or prerogative basis, for example licensing drugs or conducting international diplomacy.' It would not cover an activity 'simply because it was one that required a licence or took place on a statutory basis.'[28] In other words, merely because a function is carried out by a public body or free of charge to the public does not make it 'exclusively public'. Indeed if the Act is interpreted to mean anything else it would render almost nugatory any role in relation to public authorities other than as employer or occupier. It would mean that any NHS liability that currently exists under the common law for gross negligence manslaughter would be removed altogether.

## Causing death:

Assume then that we have an NHS or other organisational provider, or commissioner of dental services. In what circumstances might they be liable for corporate manslaughter? In other words, what are the ingredients of the offence that the prosecution must prove beyond reasonable doubt? Clearly there would need to be a death of a person to whom a duty was owed. We accept that the risk is small because deaths do not frequently occur. But that is so in relation to many work or public service related deaths. No doubt Barrow in Furness local authority would have said that the risk of deaths to members of the public walking outside one of its leisure centres was small.

Taken from the prosecutor's standpoint, the Act does not make things easy in terms of causation. It requires proof that a death was caused 'by the way that an organisation managed or organised its activities'. The difficulty is that of course organisations act through individuals, through frontline workers as well as through managers. In anticipation of the potential difficulties in showing how an organisation causes a result, the Law Commission had included an explanatory provision that a management failure 'may be regarded as a cause of a person's death *notwithstanding that the immediate cause is the act of omission of an individual*.'[36] In its wisdom, the government argued during the scrutiny of the draft Corporate Manslaughter Bill in 2005, that causation is no longer a difficult issue in criminal law. This was an extraordinary statement. Both in civil and in criminal law causation is fraught with problems. The House of Lords, in quashing a conviction for manslaughter, recently commented that 'Causation is not a single unvarying concept to be mechanically applied without regard to the context in which the question arises.'[37] Because dental services are generally provided by small units, causation may be less of a hurdle than in large public authorities or corporations. Nonetheless it is curiously under defined in an Act which over defines, as we have seen, in relation to threshold and to culpability issues, which we now discuss.

## The culpability element:

Suppose then that a death has occurred and that it can be said to have been caused by the way that the dental provider's activities were managed or organised. In addition it must be shown that there was *a gross breach of a relevant duty*. Before we get any further though we have to enter one of the trickier bits of the Act, which attempts to limit gross breaches of duty to situations in which 'senior management' have played a substantial role in the breach.[38]

## Senior management:

This in turn means we need to know to whom or what 'senior management' refers. The Act explains (in section 1 (4) (c )) that 'senior management' means the persons who play *'significant roles'* in making decisions about, or in actually managing, the *'whole or a substantial part'* of the organisation's activities.

On the one hand there is a lot of defining going on there but on the other the adjectives 'significant' and 'substantial' leave much room for debate. What does 'substantial' mean? It is used twice - once to define the extent to which senior management is involved in the breach, and once to define who within an organisation might be regarded as senior management. Often in criminal law the word substantial has a broad meaning, and is used to denote something 'more than minimal'. But of course it can also, in common usage, mean something much more restrictive, more like 'a large part of'. In relation to its use to define who within an organisation might be regarded as part of the *senior* management, it could well be interpreted as including only a narrow range of people whose responsibilities are central to the organisation's decision making. The reasoning here is that 'substantial' is not used as a stand alone word, it supplements 'the whole', suggesting that it means something close to the whole if not the whole itself. In the case of dental provision this may not be problematic as these are likely to be relatively small or centralised organisations. It should be possible to see who the decision-makers are and connect them with the breach of duty.

Having established that persons who play important ('significant') roles in managing a large part of the organisation's activities have played a substantial (possibly meaning not very great) part in the breach, we can move to the requirement that the breach of duty must itself be gross.

Do not fear if you feel a bit lost at this point. What is worrying is that the Government in its explanatory notes to the Act seems to think that this is all quite straightforward! Perhaps they don't meet many corporate defence lawyers.

## 'Gross' breach:

Most commentators regard it as appropriate to limit any corporate manslaughter

offence to gross breaches, which is consistent with the common-law standard for gross negligence manslaughter. A departure from a standard of care is 'gross' under s 1 (4) b) if the 'conduct ... falls far below what can reasonably be expected of the organisation in the circumstances'. This builds on the *Adomako* common law definition of gross negligence but avoids the circularity of saying that the *criminal* standard for negligence is met when the jury thinks the breach was *criminal*. The Act goes further however and provides some factors for the jury to take into account. Again these seem to complicate rather than clarify.

To begin with, 'the jury must consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach...' and if so how serious was the failure and how much of a risk did it pose.[39] Section 8 continues that a jury may also consider 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, or produced tolerance of, the failure to comply with such legislation. They may also have regard to any health and safety guidance relating to the breach. These are effectively instructions to the trial judge. She must instruct the jury to take into account breaches of health and safety legislation. But how that is taken into account will be left to the mysteries of the jury room. She must instruct the jury that they may take into account company culture, and/or breaches of guidance. It is also explicitly stated that none of this prevents the jury from having regard to other matters they consider relevant.

This is all a bit odd. In one sense section 8 states the obvious for it must be reasonable to expect an organisation to have regard for health and safety legislation and guidance. The rest is not mandatory. And none of this actually helps the jury decide whether the failure is 'gross', or falls 'far below' what can be reasonably expected.

## Penalties:

The Act provides for three types of penalty: a fine, a publicity order and/or a remedial order. The maximum fine is unlimited as it is for offences under the HSWA when sentenced in the Crown Court. As the Sentencing Advisory Panel indicates in its Consultation paper, particular issues arise when the offending organisation is a public body, or a private or hybrid body providing what is considered to be a public service. In health and safety cases courts sometimes take a more severe view of breaches where there is a significant public element, particularly where public safety is entrusted to companies such as those maintaining the railways. However, courts have also reduced fines where the funds needed to pay the fine would otherwise be spent on public safety, for example in the case of Railtrack following the Ladbroke Grove disaster.

A *publicity order* would require an organisation convicted of corporate manslaughter to advertise the fact of its conviction, specify particulars of the offence, the amount of any fine imposed, and the terms of any remedial order that has been made. Canada, the United States and Australia have all introduced this type of penalty. The HSE's 'name and shame' database launched in 2000 serves a similar purpose in relation to health and safety offences, providing a public record of all successful prosecutions and the names of convicted companies.[13]

The purpose of the *remedial order* under which an organisation may be ordered to take steps to remedy the breach is unclear. This is another example of confusing the underlying aims of an offence of corporate manslaughter. Rather than minimising risk directly, which is the main function of health and safety regulation, the aim of this offence is to punish in a retributive sense. It may secondarily act as a general deterrent or encouragement to take safety compliance more seriously, but the time lag between the event and the trial renders the idea of relevant remedial action impractical. A manslaughter trial would not in any case be the most effective forum in which to decide on appropriate remedial action. The penalty for failing to comply with any remedial order, a fine, would again only be enforceable against the organisation itself. The government has rejected the suggestion that company directors should be liable for failing to take the specified steps.

## SUMMARY

An organisation will be guilty of the new offence if the way in which it managed its activities both caused a person's death and was a gross breach of a duty of care that the organisation owed the deceased. Currently such circumstances may lead to corporate liability for the common law offence of manslaughter by gross negligence. A gross breach is defined as conduct which falls far below what can reasonably be expected in the circumstances. An organisation will only be guilty of the offence if the way in which its activities are managed or organised by its senior managers is a substantial element of the breach. This test of 'senior management failure' is intended to ensure a wider application of the offence than was achieved under the common law although it is doubtful whether it will.[11]

1. NHS Dental Statistics 2006/7. www.ic.nhs.uk/statistics-and-datacollections/primary-care/dentistry/nhs-dental-statistics-2006-07
2. Worthington K, Flynn S, Strunin L. Death in the dental chair: an avoidable catastrophe? *Br J Anaesth* 1998; **80:** 131-132.
3. Poswillo D. General anaesthesia, sedation and resuscitation in dentistry. Report of an expert working party for the Standing Dental Advisory Committee. London: Department of Health, 1990.
4. Royal College of Anaesthetists. Standards and guidelines for general anaesthesia for dentistry. London: Royal College of Anaesthetists, 1999.
5. Department of Health. A conscious decision: a review of the use of general anaesthesia and conscious sedation in primary dental care; report by a Group chaired by the Chief Medical Officer and Chief Dental Officer. London: Department of Health, 2000.
6. HMSO. Corporate manslaughter and corporate homicide act 2007. Section 17. London: Ministry of Justice, 2007.
7. Health and Safety Executive. Work related deaths: a protocol for liaison. Revised version. London: HSE, 2003. http://www.hse.gov.uk/enforce/enforcementguide/wrdeaths/investigation.htm
8. EWCA Crim 1586; Guidelines laid down by the Court of Appeal in *R v Howe* [1999] 2 *All ER* 249, endorsed in *R v Balfour Beatty Infrastructure Services Ltd* [2006] EWCA Crim 1586.
9. *R v Balfour Beatty* 2006.
10. Health and Safety Executive. Health and safety offences and penalties 2004/5. Table 8. London: HSE, 2004. http://www.hse.gov.uk/enforce/off0405/off0405.pdf
11. Sentencing Advisory Panel. *Consultation paper on sentencing for corporate manslaughter.* London: Sentencing Guidelines Secretariat, 15 Nov 2007. http://www.sentencing-guidelines.gov.uk/consultations/closed/index.html
12. Health and Safety Executive. Barrow incident webpage. http://www.hse.gov.uk/legionnaires/barrow.htm (accessed 13 March 2008).
13. Health and Safety Executive. HSE public register of convictions website. http://www.hse.gov.uk/prosecutions/ (accessed 13 March 2008).
14. Quick O. Prosecuting 'gross' negligence:

manslaughter, discretion and the Crown Prosecution Service *J Law Soc* 2006; **33:** 421
15. Ferner R. Medication errors that have led to manslaughter charges *BMJ* 2000; **321:** 1212.
16. *R v Adomako* [1995] 1 AC 171.
17. HMSO. Corporate manslaughter. The Government's draft bill for reform (2005). Cm 6497, para 9. London: HMSO, 2005.
18. Centre for Corporate Accountability website. www.corporateaccountability.org
19. Crown Prosecution Service. Code for Crown Prosecutors 2004. Paras 5.2, 5.3. London: CPS, 2004.
20. *R v P&O European Ferries (Dover) Ltd* (1991) 93 Cr App R 72, *Attorney-General's Reference (no 2 of 1999)* [2000] 3 All ER 182, *R v Balfour Beatty* (on the directions of Mackay J, July 2005).
21. Crown Prosecution Service. CPS decision on Ladbroke Grove collision. (Press release). London: CPS, 6 December 2005. http://www.cps.gov.uk/news/pressreleases/archive/2005/166_05.html
22. Carter H. Legionnaire's case fails – architect still faces charges. *The Guardian* (London) 2005 March 12. http://www.guardian.co.uk/society/2005/mar/12/localgovernment.uknews
23. Wells C. *Corporations and criminal responsibility.* 2nd ed. Oxford: Oxford University Press, 2001.
24. Wells C. Corporate criminal responsibility. *In* Tully S (ed) *Research handbook on corporate responsibility.* pp 147-158. London: Edward Elgar Press, 2005.
25. HMSO. *Op. cit.* (ref 6). Section 1 (5) (b).
26. HMSO. *Op. cit.* (ref 6). Section 20.
27. HMSO. *Op. cit.* (ref 6). Section 18.
28. HMSO. *Explanatory notes to corporate manslaughter and corporate homicide act 2007.* London: HMSO, 2007. http://www.opsi.gov.uk/acts/en2007/2007en19.htm
29. Ministry of Justice. *Reforming corporate liability for work-related death: a guide to the Corporate Manslaughter and Corporate Homicide Act 2007.* London: Ministry of Justice, 2007. http://www.justice.gov.uk/docs/guidetomanslaughterhomicide07.pdf
30. HMSO. *Op. cit.* (ref 6). Section 1 (1).
31. HMSO. *Op. cit.* (ref 6). Section 1 (2).
32. HMSO. *Op. cit.* (ref 6). Section 28 (3).
33. HMSO. *Op. cit.* (ref 6). Section 2.
34. Law Commission. Report 304: *Murder, manslaughter and infanticide.* HC 30 2006, Para 2.30. London: Law Commission, 2006.
35. HMSO. *Op. cit.* (ref 6). Section 3 (4).
36. Law Commission. Report 237: *Legislating the criminal code: involuntary manslaughter.* HC 171 1996, cl. 4 (4), emphasis added. London: Law Commission, 1996.
37. *R v Kennedy* [2007] UKHL 38.
38. HMSO. *Op. cit.* (ref 6). Section 1 (3).
39. HMSO. *Op. cit.* (ref 6). Section 8 (2).