

STOCKTON-ON-TEES BOROUGH COUNCIL

CABINET RECOMMENDATIONS

PROFORMA

Cabinet Meeting24th April 2008

1. Title of Item/Report

Corporate Manslaughter and Corporate Homicide Act 2007

2. Record of the Decision

Consideration was given to a report that provided details of the implications of the Corporate Manslaughter and Corporate Homicide Act 2007.

It was explained that the Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6 April 2008. The Act provided a new offence of Corporate Manslaughter to apply to Companies, Government Departments, Local Authorities and similar bodies, Police Forces and certain unincorporated Associations.

The Act was essentially concerned with health and safety and increased the scope of prosecutions where there was a fatality.

Under previous law, a Company could only be convicted of manslaughter where "a directing mind" of the organisation could be identified. In practice that meant a senior individual who could be said to "embody the company in his actions and decisions". Such an individual was easier to identify in a small organisation than a large organisation. This was one of the reasons why manslaughter charges were dismissed against Barrow-in-Furness Borough Council following the deaths from Legionella of seven people in 2002. In that case, the Judge expressed doubt that even the Chief Executive could be the "directing mind" of the Local Authority. Despite the charges of manslaughter being dismissed, both the Council and a Senior Manager involved were convicted of health and safety offences. The Manager was fined £15,000, the Council £125,000 and the Council was ordered to pay £90,000 in costs. Therefore, it was important to note that the new offence of Corporate Manslaughter would

complement and run alongside other charges such as breaches of health and safety legislation and possibly a manslaughter charge against an individual.

Liability for the new offence depends on a finding of gross negligence in the way in which the activities of the organisation are run. It was explained that an offence would be committed where an organisation owed a duty to take reasonable care for a person's safety and the way in which the organisation's activities had been managed or organised, by its senior management, amounted to a gross breach of that duty and caused the person's death.

Members noted that the Act was designed to target "management failures" by senior managers. It focused on the arrangements and practices made by senior managers for carrying out the Council's functions. Individuals that were identified as being responsible or the cause of the "management failure" must have played "significant roles" in that failure, ie a decisive and influential role, not a minor or supporting role.

"Senior management" was defined as those persons who played significant roles in:-

- the making of decisions about how the whole or a substantial part of its activities are to be managed or organised, or
- the actual managing or organising of the whole or a substantial part of those activities.

The definition would therefore include strategic decision-makers (Chief Executive, Directors and Cabinet Members) and those who actually manage the activity or function (Heads of Service and possibly third or even fourth tier Officers).

In terms of risk management, the Council's procedures and risk management systems were well established and regularly reviewed, however, the Council was advised to :-

- carry out a Corporate risk assessment of the likely exposure under the Act
- ensure that the Chief Executive, Directors, Heads of Service and other senior managers understood their responsibility for ensuring all risks had been adequately identified and mitigated
- strengthen Leadership on Health & Safety
- ensure correct policies and procedures were established and enforced to prevent serious incidents from occurring and to continually monitor, audit and review Service activities
- ensure that the corporate culture supported and reinforced the policies and procedures
- provide effective training for all relevant employees, agency staff and volunteers
- ensure effective record keeping
- consider adopting a protocol for dealing and responding to a fatality in the workplace
- develop an Action Plan to minimise the risks that were identified.

Where Managers had reasonable safeguards in place and a death nonetheless occurred, no liability would arise.

A conviction for Corporate Manslaughter may result in one or more of the following:-

- an unlimited fine
- an Order that required the "management failure" to be remedied
- an Order requiring publicity about the conviction, the particulars of the offence, the amount of any fine and details of any remedial Order

- an Order for the costs of the legal proceedings to be paid by the convicted party.

Cabinet was reminded that the Council had reviewed its insurance and indemnity arrangements in respect of Members and Officers in March 2006. The Scheme of Indemnity for Members and Officers was provided to Members. In relation to criminal offences, an indemnity was available provided that the action or failure to act that gave rise to the offence was taken in good faith. However, if an Officer or Member was convicted of a criminal offence and that conviction was not overturned following any appeal, the Officer or Member was required to reimburse the costs and any sums incurred by the Council in relation to the proceedings.

Recommended to Council that the report be noted and the recommended actions, as detailed in the report considered by Cabinet, be endorsed.

3. Reasons for the Decision

To ensure the Council understands the Act's implications and that a Corporate risk assessment is carried out to develop an Action Plan and minimise any risks that are identified.

4. Alternative Options Considered and Rejected

None

5. Declared (Cabinet Member) Conflicts of Interest

None

6. Details of any Dispensations

Not Applicable

7. Date and Time by which Call In must be executed

Not Applicable

Proper Officer

28 April 2008