

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

24 APRIL 2008

**REPORT OF
CORPORATE
MANAGEMENT TEAM**

COUNCIL DECISION

CORPORATE MANSLAUGHTER AND CORPORATE HOMICIDE ACT 2007

1. Summary

This report provides details of the implications of the Corporate Manslaughter and Corporate Homicide Act 2007.

2. Recommendations

It is recommended that Members note the report and endorse the recommended action at paragraph 12 of this report.

3. Reasons for the Recommendations/Decision(s)

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. Members' Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;

- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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SUMMARY

This report provides details of the implications of the Corporate Manslaughter and Corporate Homicide Act 2007.

RECOMMENDATIONS

It is recommended that Members note the report and endorse the recommended action at paragraph 12 of this report.

BACKGROUND

1. The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on 6 April 2008. The Act provides a new offence of Corporate Manslaughter to apply to Companies, Government Departments, Local Authorities and similar bodies, Police Forces and certain unincorporated Associations.
2. The Act is essentially concerned with health and safety and increases the scope of prosecutions where there is a fatality.
3. 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 is one of the reasons why manslaughter charges were dismissed against Barrow-in-Furness Borough Council.
4. Barrow-in-Furness Borough Council became the first Local Authority to be charged with Corporate Manslaughter 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 is important to note that the new offence of Corporate Manslaughter will complement and run alongside other charges such as breaches of health and safety legislation and possibly a manslaughter charge against an individual.

THE OFFENCE

5. Liability for the new offence depends on a finding of gross negligence in the way in which the activities of the organisation are run. An offence is committed where an organisation owes a duty to take reasonable care for a person's safety and the way in which the organisation's activities have been managed or organised, by its senior management, amounts to a gross breach of that duty and causes the person's death.
6. Accordingly, there are four elements to prove:-
 - the organisation must owe a "relevant duty of care" to the victim
 - the organisation must be in breach of that duty of care as a result of the way in which the activities of the organisation were managed or organised (known as "the management failure")
 - the "management failure" must have caused the victim's death (however it need not be the sole cause)
 - the "management failure" must amount to a gross breach of the duty of care

THE DUTY OF CARE

7. The duty of care must arise from specific functions or activities performed by the Council. It will apply:-
 - to the Council's employees and to other persons working for the Council eg contractors, secondees and volunteers
 - as an occupier of premises
 - when supplying goods or services
 - when constructing or maintaining buildings, plant or machinery
 - when carrying out activities on a commercial basis.
8. A duty of care will **not** apply:-
 - when responding to emergencies
 - to child protection functions (Parts 4 and 5 of the Children Act 1989)
 - to decisions of public policy (eg decisions by PCTs about the funding of particular treatments)
 - to an "exclusively public function" (this may include the exercise of planning and building controls and the investigation of environmental breaches or food safety issues, however, what is an "exclusively public function" may only become clear as case law evolves)
 - to statutory inspections carried out in the exercise of a statutory function
 - to policing or law enforcement activities when dealing with terrorism, civil unrest or serious disorder.

IMPLICATIONS FOR LOCAL AUTHORITIES AND SENIOR MANAGERS

9. The Act is designed to target "management failures" by senior managers. It focuses on the arrangements and practices made by senior managers for carrying out the Council's functions. Individuals that are identified as being responsible or the cause of the "management failure" must play "significant roles" in that failure, ie a decisive and influential role, not a minor or supporting role.
10. "Senior management" is defined as those persons who play 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.
11. The definition will 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).
12. In terms of risk management, the Council's procedures and risk management systems are well established and regularly reviewed, however, the Council is 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 understand their responsibility for ensuring all risks have been adequately identified and mitigated
 - strengthen Leadership on Health & Safety
 - ensure correct policies and procedures are established and enforced to prevent serious incidents from occurring and to continually monitor, audit and review Service activities
 - ensure that the corporate culture supports and reinforces 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 are identified.
13. Where Managers have reasonable safeguards in place and a death nonetheless occurs, no liability will arise.

PENALTIES

14. A conviction for Corporate Manslaughter may result in one or more of the following:-
- an unlimited fine
 - an Order that requires 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.
15. Non-compliance with a Court Order is also an offence punishable with an unlimited fine.
16. Juries will be asked to determine if health and safety laws had been broken, were the consequential risks understood, and did Managers seek to profit from any breaches.

INDEMNITY FOR OFFICERS AND MEMBERS

17. The Council reviewed its insurance and indemnity arrangements in respect of Members and Officers in March 2006. The Scheme of Indemnity for Members and Officers is attached at Appendix 1. In relation to criminal offences, an indemnity is 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 is convicted of a criminal offence and that conviction is not overturned following any appeal, the Officer or Member is required to reimburse the costs and any sums incurred by the Council in relation to the proceedings.

FINANCIAL AND LEGAL IMPLICATIONS

18. The Act increases the Council's legal liability in respect of fatalities arising from a gross breach of the duty of care. Given the Council's broad range of activities, there is the potential for significant fines and costs if the Council is found guilty of corporate manslaughter.

RISK ASSESSMENT

19. The risk is considered to be medium to high. Leadership on health & safety can be strengthened and the development of an Action Plan will help.

COMMUNITY STRATEGY IMPLICATIONS

20. There are no community strategy implications arising from this report.

CONSULTATION

21. The Extended Management Team and Heads of Service have been made aware of the Act's implications. It has also been discussed by the Corporate Governance and the Risk Management Group.

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<u>Background Papers:</u>	Explanatory Notes to Corporate Manslaughter and Corporate Homicide Act 2007
<u>Ward(s) and Ward Councillors:</u>	Not Ward Specific
<u>Property Implications:</u>	None

SCHEME OF INDEMNITY FOR MEMBERS AND OFFICERS

1. This Scheme of Indemnity (“the Scheme”) shall take effect from the date on which it is passed and in substitution for any previous Scheme of Indemnity.

In this Scheme:-

“employees” includes any person employed or formerly employed by Stockton-on-Tees Borough Council (“the Council”) and any other person appointed to it to be an Officer of the Council including volunteers.

“members” includes former or present elected and co-opted Members of the Council and persons appointed by the Council to School Governing Bodies.

2. The Council hereby indemnifies its employees and Members against the costs, claims and expenses set out in paragraph 3 of this Scheme, subject to the exceptions set out in paragraph 4 of this Scheme, and on the terms set out in paragraph 5 of this Scheme.

Notwithstanding any limitation on the powers of the Council, the indemnity is effective to the extent that the employee or Member in question:-

- a. believed that the action, or failure to act, in question was within the powers of the Council, or
- b. where that action or failure to act comprises the issuing or authorisation of any document containing any statement as to the powers of the Council, or any statement that certain steps have been taken or requirements fulfilled, believed that the contents of that statement were true, and it was reasonable for that employee or Member to hold that belief at the time when he/she acted or failed to act.

The indemnity is also effective in relation to any act or omission which is subsequently found to be beyond the powers of the employee or Member in question but only to the extent that he/she reasonably believed that the act or omission in question was within his/her powers at the time at which he/she acted.

3. The costs, claims and expenses are those which arise from, or in connection with, any action of, or failure to act by, the employee or Member in question, which:-
 - a. is or has been authorised by the Council, or
 - b. forms part of, or arises from, any powers conferred, or duties placed, upon that employee or Member, as a consequence of any function being exercised by that employee or Member (whether or not when exercising that function he/she does so in his/her capacity as an employee or Member of the Council):-
 - i. at the request of, or with the approval of the Council, or

ii. for the purposes of the Council.

4. The exceptions are that:-

a. No indemnity is given in relation to any action by, or failure to act by, any employee or Member which:-

- i. constitutes a criminal offence, or
- ii. is the result of fraud, dishonesty or other deliberate wrongdoing, wilful misconduct or recklessness on the part of that employee or Member.
- iii. arises from liability in respect of the recovery of losses by District Audit pursuant to the Audit Commission Act 1998.

b. Notwithstanding paragraph 4(a) (i), the indemnity is provided in relation to:-

- i. (subject to paragraph 5) the defence of any criminal proceedings brought against the employee or Member;
- ii. any fine or financial penalty imposed as a result of an offence under the Health & Safety at Work Act 1974; and
- ii. any civil liability arising as a consequence of any action or failure to act which also constitutes a criminal offence

provided that in each case the employee's or the Member's action or failure to act that gave rise to the liability was taken in good faith.

c. No indemnity is provided in relation to the making by the employee or Member indemnified of any claim in relation to an alleged defamation of that Member or employee but the indemnity is provided in relation to the defence by that Member or employee of any allegation of defamation made against him/her.

5. The terms of the indemnity are as follows:-

a. Where the indemnity has effect in relation to the defence of any criminal or civil proceedings; or any Part 3 proceedings (meaning any investigation, report, reference or adjudication panel hearings pursuant to Part 3 of the Local Government Act 2000 but excluding Standard Committee hearings and appeals against Standards Committee determination) then:-

- i. in the case of criminal or civil proceedings, if the employee or Member in question is convicted of a criminal offence and that conviction is not overturned following any appeal; and
- ii. in the case of Part 3 proceedings:-
 1. if a finding is made in those proceedings that the Member in question has failed to comply with the Code of Conduct, and that finding is not overturned following any appeal, or
 2. if the Member admits that he has failed to comply with the Code of Conduct.

the employee or Member shall reimburse the Council or the Council's Insurer for any sums expended by it in relation to those proceedings pursuant to the indemnity or insurance, and those sums shall be recoverable by the Council or the Council's Insurer as a civil debt.

- b. The indemnity will only extend to cover actual loss and expense incurred and evidenced by the employee or Member to the satisfaction of the Corporate Director of Resources or his/her nominee.
 - c. The indemnity will not cover any loss or expense in respect of which the employee or Member can obtain reimbursement from any other source, including any policy of insurance whether taken out by the Council or the employee or Member or by any other person or outside body.
6. This indemnity is without prejudice to the right of the Council to take disciplinary action against an employee in respect of any neglect, act, error or omission.
 7. This indemnity will not apply if a Member or Officer, without express permission of the Council, admits liability or negotiates or attempts to negotiate a settlement of any claim falling within the scope of the indemnity.