

University of Salford

LLM Health, Safety and Environmental Law.

Has the introduction of Corporate Manslaughter and Corporate Homicide
Act 2007 made a significant difference to reducing the number of
workplace fatalities?

Written by Moira Gelman

Supervised by John Hamilton

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A Greater Manchester University

SALFORD LAW SCHOOL

Form of Declaration to Accompany Dissertation

Submitted by: Moira Gelman

to the University of Salford as a research paper in partial completion of the requirements for the degree of Master of Laws or Master of Arts Programme of Study in the Faculty of Business and Informatics.

I **certify** that all the material in this paper which is not my own work has been identified and acknowledged and that no material is included for which a degree has been previously conferred upon me.

I **certify** that the number of words in this paper does not exceed the maximum of 15,000 words excluding footnotes and appendices.

I **understand** that work of excessive length may be penalised.

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I would like to dedicate this dissertation to Victoria Howes who sadly passed away on 8th October 2013.

Abstract

The Corporate Manslaughter and Corporate Homicide Act 2007 came into force on April 6th 2008. The Act took over 10 years to reach the statute book. The Labour party announced its decision to bring in this piece of legislation in 1997 before it took office. Rose LJ stated in 1999 (attorney General's Reference no.2 of 1999 (1994) 158 JP 741) that even though companies were prosecuted under the Health and Safety at Work Act 1974, this did not indicate that a death had taken place. The Law Commission suggested that a definite offence for work related deaths would increase the social stigma of such a conviction.¹

At the same time that the Corporate Manslaughter and Corporate Homicide Act 2007 came in into force, the number of work related fatalities diminished out of proportion with previous years.

This dissertation explores this area to identify the impact the introduction of this new Act has had on the reduction of work place fatalities. The research has approached the question by comparing the literature review² of criminal and civil law from before and after the introduction of the Act with empirical data collected by the survey and conclusions drawn.

¹ Stephen O'doherty, 'The Corporate Manslaughter and Corporate Homicide Act 2007' [2008] Criminal Law and Justice Weekly (Formerly Justice of the Peace)

² John Biggam, *Succeeding with your master's dissertation a step-by-step handbook* (2nd edn, Open University Press 2011)

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Chapter 1

Introduction

1.1 Background

1.2 Research Focus

1.3 Overall Research Aim and Individual Research Objectives

1.4 Value of this research

1.1 Background

Can you imagine that anyone would go to work in the morning expecting to die and that directors go to work in the morning expecting to kill one or more of their employees? The answer to both questions should be “no”. But it happens. Fact;³ Employees go to work and die.

The Health and Safety at Work Act 1974 (HSWA 1974) section 37 punishes directors and corporations when this happens. Civil law has a tort for gross negligent manslaughter⁴ and the latest legislation; Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA 2007) is designed to punish when there has been a fatality at work.

³ HSE, ‘Fatal Injury Statistics’, July 2013

⁴ ‘R v Adomako {1994} 3 WLR 288 HL’

When analysing the boundless columns that has been written on the subject of fatalities at work, the majority focus on the punishment aspect after the event. When surfing the internet, limitless commentaries have been written that are immensely critical⁵ of CMCHA 2007 and suggests that it has been a “waste of time”⁶ as previous criminal and civil legislation already cover “killings at work”.

Prosecuting companies under the HSWA 1974 section 37 have been known as “marginalisation” as it is deemed to diminish the seriousness of the crime.⁷

The civil tort of gross negligence manslaughter has severe restrictions due to the “identification” principle⁸ that have allowed large companies to avoid prosecutions in this area. 3425 work related deaths⁹ were recorded between 1992 and 2005 of which only 34 were prosecuted and 7 small companies were convicted.

⁵ Google and Google scholar searches.

⁶ J Gobert, ‘The Corporate Manslaughter and Corporate Homicide Act 2007-Thirteen years in the making but was it worth the wait?’ (2008) 71 Modern Law Review 413–433

⁷ Michael Jefferson, ‘Corporate Criminal Liability in the 1990s’ [2000] Journal of Criminal Law, Vol 64 (106)

⁸ The requirement to establish that the act or omission causing the death was the act or omission of an individual.

⁹ ‘Draft Corporate Manslaughter Bill’, 2005 Home Affairs and Work and Pensions Committees: 2005-06 HC 540

The HSE (Health and Safety Executive) maintain comprehensive statistical data on all accidents and fatalities. Statistics are based on the reporting under RIDDOR (Reporting of Diseases and Dangerous Occurrence Regulations 1995) which has limitations due to its nature of relying on companies to report under this regulation. The only possible exception would be fatalities at work which its very nature is very difficult to conceal.

Corporate manslaughter charges were initially instituted for the sinking of the Herald of Free Enterprise¹⁰ in 1987 but then dropped due to the inability to attribute blame to the “directing mind” of the company.¹¹ Thereafter there were a series of disasters on the sea, viz Piper Alpha (1988), the Marchioness (1989) and rail, viz Paddington (1999), Hatfield (2000) and Potters Bar (2002). All were prosecuted under Health and Safety Law but no prosecutions and convictions for gross negligence manslaughter or corporate manslaughter were served. The CPS (Crown Prosecution Service) only prosecutes if there is a realistic prospect of conviction.

¹⁰ ‘R v P&O European Ferries (Dover) Limited [1991] 93 Cr App R 72’

¹¹ Stephen Griffin, ‘Corporate Manslaughter: A Radical Reform’ [2007] Journal of Criminal Law, Vol 71

The Law Society Gazette¹² reported on the Lion Steel Case sentencing which took place on July 20th 2012. The judge commented that he had reduced the fines for Corporate Manslaughter (under the new Act) when the company consented to plead guilty to the offence in exchange for charges against individual directors being dropped. Furthermore the judge stated that the fines were designed not to endanger the future of the company.¹³ What sort of message does this send out to both directors, senior managers and also to the public?

Subsequent to the Act being passed in parliament in 2008 there have been only 4 convictions under that Act of which 3 have been within the last 12 months. There are almost 70 companies currently under investigation under the Act. To date between July 2012 to June 2013 there have been 148 fatalities. Since 2007/2008 there have been 872 fatalities at work.¹⁴ In realistic terms 99.5% of all work related deaths do not have convictions under Corporate Manslaughter as there is an average of 1 prosecution for every 218 work related deaths.

¹² Jonathan Grimes, 'The Law Society Gazette', August 29, 2012

¹³ Ibid

¹⁴ HSE Statistics.

1.2 Research Focus

A colossal amount has been recently written on the Corporate Manslaughter and Homicide Act 2007 (CMCHA 2007). It is interesting to note that the opinions and comments that have been made and published in law journals¹⁵ and publications on the latest cases prosecuted this year.¹⁶ Significant percentages have been very negative.¹⁷ This dissertation aims to examine a more fundamental point to the Act besides whether or not there have been successful prosecutions for corporate bodies. It aims to discover whether this Act has instilled trepidation into senior managers and directors to ensure they take their responsibilities seriously to ensure that the intended outcome of this act is to reduce the number of workplace deaths.

The Health and Safety at Work Act 1974 (HSWA 1974) section 37 also covers corporate breaches under this act and this dissertation will look at the impact of the prosecutions from breaches under this regulation in relation to CMCHA 2007. The Health and Safety Executive (HSE) issue annual statistics¹⁸ identifying

¹⁵ S Field, 'Five Years On: the impact of Corporate Manslaughter and Corporate Homicide Act 2007: plus ça change?' [2007] International Company and Commercial Law Review. Volume 24. Issue 6

¹⁶ C Clarkson, 'Kicking Corporate Bodies and Damning their Souls' [2011] The Modern Law Review, vol 59, Issue 4

¹⁷ M Woodley, 'Bargaining over Corporate Manslaughter- what price a life?' [2013] Journal of Criminal Law

¹⁸ (Health and Safety Executive, 2013)

the number of workplace fatalities and the sectors to which they are more prevalent. By analysing this data, it should be possible to examine the trends since the turn of the century and to formulate an opinion based on the facts.

Directors' attitudes to their responsibilities in light of the restrictions limiting the effectiveness of the CPS will be investigated¹⁹ The CPS are required to ensure that they are absolutely certain of a prosecution before they can proceed due to the costs involved.²⁰ What message does this send to corporations large and small?

The SHP²¹ (Safety and Health Practitioner) regular publishes articles on Corporate Manslaughter with opinions from eminent legal experts in this field. On the LinkedIn website there are a range of discussions around corporate manslaughter from lawyers that have represented the cases from Geotechnical and Lion Steel.²² There are forums including "Corporate Manslaughter and Fatal Accidents Working Group".

¹⁹ L Wusterman, 'Corporate Manslaughter: where's the proof?' [2013] Journal of the Working Environment

²⁰ 'The Code for Crown Prosecutors' (CPS January 2013)

²¹ Kevin Bridges, 'Corporate Manslaughter. Slowly but Surely. SHP', April 2013

²² (www.linkedin.com)

A study carried out by Andrew David Hopwood and Francis T Edmun-Fowte, PhD²³ identified that 83.54% of managers compared with 89.66% of operatives working in construction believe that all workplace fatalities are preventable. It also showed that the most senior of managers and operatives were those who thought that the fatalities were not preventable. This serious allegation implies that 1 in 5 senior managers do not believe deaths are preventable. The impact of this is far reaching and will be discussed in the dissertation whilst exploring the attitudes of senior managers and directors.

The bases of this study will include only employees and self-employed fatalities. It will not include road traffic accidents, deaths from occupational diseases such as mesothelioma or asbestos. Nor will it be examining deaths in police custody or deaths in the armed forces. Emphasis will be on areas where the HSWA 1974 applies.

1.3 Overall Research Aim and Individual Research Objectives

The overall research aim of this dissertation is to identify whether the Corporate Manslaughter Act 2007 has had significant impact in reducing the number of workplace fatalities. A death at work has far reaching effects for the families and

²³ Andrew David Hopworth, 'The Impact of Corporate Manslaughter and Corporate Homicide Act 2007 on the Construction Industry in the UK', ?

friends of the deceased person, his/her colleagues and the company. The effects are not just financial but include psychological, social and economic factors. There are also psychological aspects for the people who may have seen the fatality occur and those who may have been responsible in one way or another.²⁴

There is the stigma for a company that has had one or more fatalities.²⁵ Amec Group Ltd had fatalities in April 2004, September 2005 and June 2007. All were falls from height and on different sites.²⁶ SITA UK Ltd had fatalities in January 2007 and June 2008 on different sites both involving the collection of hazardous waste. UK Coal Mining had 4 fatal injuries between June 2006 and November 2007 all on different sites. Followed by 2 in July 2007 and April 2008. That is 6 fatal injuries in 2 years. Veolia Environmental Services (UK) LTD has had 2 fatal injuries, in September 2002 and in March 2007.²⁷

Based on the above information this dissertation is aiming to ascertain whether the following four hypotheses are accurate in order to answer the main dissertation question.

²⁴ LR Matthews, P Bohle, M Quinlan, and O Rawlings-Way, 'Traumatic death at work: consequences for surviving families' (2012) 42 *International Journal of Health Services* 647 –666

²⁵ Alexandra Dobson, 'Directors' liability for death or workplace injury.' (2013) 55 *International Law Journal and Management* 385 – 395

²⁶ HSE, 'HSE Prosecutions Area', 2013

²⁷ All this information is available on the HSE website under the prosecutions section.

1. The Corporate Manslaughter legislation hasn't delivered anything more than could have been achieved with existing health and safety legislation.
2. Statistical evidence of the number of fatalities at work from before and after the introduction of CMCHA 2007 shows very little effect of the act.
3. Directors' attitudes towards corporate killings are apathetic.
4. Prosecutions for Corporate Manslaughter have not been an effective measure in reducing the number of workplace fatalities.

The first hypothesis examines existing health and safety legislation namely the Health and Safety at Work Act 1974 and in particular section 37.²⁸ The research will delve into the effects of this section on fatalities and to identify if it had of been sufficient deterrent without introducing more legislation. It will also investigate the civil tort of Corporate Manslaughter by Gross negligence.

The second hypothesis will analyse data accessible from the HSE and study the reasons for the trends and identify other issues that may account for these figures.

²⁸ Section 37 HSWA 1974: Proceedings against director, manager, secretary or other similar officer.

The third hypothesis will be accomplished by empirical research by means of a survey. It will endeavour to discern the attitudes of directors and senior managers by asking fundamental and searching questions.²⁹ The data collected from this survey will be analysed and an opinion offered based on this research.

The final hypothesis will dissect the data from current cases that have been successfully prosecuted in the courts in addition those pending ones. The reasons for the lack of prosecutions will be briefly analysed although the main focus will be on the effect on reducing work place deaths.

1.4 Relevance of the research.

Previous research focus on Corporate Manslaughter has concentrated on the prosecutions or lack thereof and not about reducing the number of work place deaths. Since 2008 Corporate Manslaughter has hit the news but the effects on the families and work colleagues who are left behind have been glossed over.³⁰

This research is aimed at bringing back into focus not the lack of prosecutions but the possible lack of commitment by companies who refuse to put the resources in place to successfully prevent these deaths.

²⁹ See appendix 1 for the explanatory letter and appendix 2 for the survey questions.

³⁰ Matthews, Bohle, Quinlan, and Rawlings-Way, 'Traumatic death at work: consequences for surviving families'

Health and Safety is often ridiculed and labelled “elf n’ safety”.³¹ The HSE has a section on myths.³² Companies hide behind “elf ‘n safety” as they do not have an understanding of what is required.³³ The dilemma comes when companies and employees use their attitudes towards “elf ‘n safety” to justify their lack of compliance to the law. Complacency kicks in and deaths occur as a result.

This dissertation is important as it will emphasise that good health and safety and an understanding of the implications of when things go wrong will bring back into focus that prevention of serious injury and death is of paramount importance. If we can prevent all work related deaths then there will be no issues over lack of prosecutions. Thereafter Corporate Manslaughter both in a civil and criminal form will become superfluous.³⁴

The literature review will inspect previously written information and extract the views of the authors on work related deaths and compare them to the statistics and empirical data that has been collected.

³¹ ‘New study examines public’s attitudes towards “elf and safety”’, September 23, 2013, sec. Press release

³² <http://www.hse.gov.uk/myth/>

³³ Ian Dunt, ‘Exposed: How firms hide behind the “health and safety” myth’, 03 2013, Politics edition

³⁴ In an ideal world. But nor practicable!

Chapter 2

Methodology

2.1 Hypothesis 1:

The Corporate Manslaughter legislation hasn't delivered anything more than could have been achieved with existing health and safety legislation.

The information for this hypothesis was gathered using a selection of journal articles, case law, court cases and Statute law. The data collected under the Freedom of Information Act³⁵ was originally collected by Lee Hughes³⁶ and a copy of which, the information given to him is annexed³⁷ to this dissertation. The relevant information was extracted from this document to produce the graphs in this hypothesis.

2.2 Hypothesis 2:

Statistical evidence of the number of fatalities at work from before and after the introduction of the CMCHA 2007 2007 shows very little effect of the act.

³⁵ Lee Hughes, 'A different class of duty: Should positive director duties be introduced into the Health and Safety at Work etc. Act 1974?' (May 2012)

³⁶ Lee Hughes: Associate at Osborn Abas Hunt Solicitors. Manchester

³⁷ Annex 3

The main statistics used for this hypothesis are freely available from the HSE website and from the Office of National Statistics. Most of this hypothesis is an analysis of the data and backed up with recent case law. By contrast, the statistics from comparable animal cruelty figures were used and are available from the RSPCA (Royal Society for the Prevention of Cruelty to Animals).

2.3 Hypothesis 3:

Directors' attitudes towards Corporate Killings are apathetic.

To prove or disprove this theory 30 senior managers or directors were selected to receive a survey questionnaire and an explanatory letter which is annexed³⁸ to this dissertation. The questionnaire contained 23 yes/ no or yes/no/not sure questions.³⁹

The questions were grouped together for ease of analysis and the answers entered onto an excel spreadsheet which was converted to graphs. The decision to use “number of employees” for all the main analysis was based on the size of the companies that have been prosecuted or are under investigation for Corporate Manslaughter under the new Act.

³⁸ Annex 1 and Annex 2

³⁹ DR. RL Eiselen and Prof Tina Uys, 'Analysing Survey Data Using SPSS13' (University of Johannesburg 2005)

The selection criteria for the senior managers were based on the accessibility. Most either work for the company or sit on the board for which I am employed. The balance I knew personally or were known to other work colleagues.

2.4 Hypothesis 4:

Prosecutions for Corporate Manslaughter have not been an effective measure in reducing the number of workplace fatalities.

The information for this hypothesis was based mainly on case law both recent and historical as well examining the successful prosecutions and those under investigation. There is considerable information written and theorised on Corporate Manslaughter. These papers have been identified and commented on in the hypothesis.

2.5 Limitations:

The limitations of the dissertation were as follows.

1. Time: The amount of time available to a post graduate student on a part time distance learning course is limiting especially when also holding down a full time job and being family carer. Given some more time, most of the areas identified in the dissertation would have been more thoroughly investigated, thence a more definite conclusion identified.

2. A selection of 30 directors/senior managers was not enough to gain a authentic insight into their views and perceptions. It would have been beneficial to be able to identify at least 100 directors and senior managers and engage them in a survey where the answers could have been in more depth. On reflection I would perhaps reduce the number of questions to a maximum of 12.
3. Following on from the above point, it would have been beneficial to interview some of the directors to clarify some of the points. CMCHA 2007 has only been in force since 6th April 2008, which is a time span of just over 5 years. Ideally the statistics should have been collected over double that time, at least.

Chapter 3

Hypothesis 1: The Corporate Manslaughter legislation hasn't delivered anything more than could have been achieved with existing health and safety legislation.

3.1 A review of pre CMCHA 2007 legislation

3.2 Prosecution rates

3.3 Consent Connivance and Neglect

3.4 SMEs

3.5 Marginalisation

3.6 Summary

3.1 A review of pre CMCHA 2007 legislation

Previous to Corporate Manslaughter and Corporate Homicide Act 2007 came to be passed as law, the only ways to prosecute for fatalities at work was to prosecute for Gross Negligence Manslaughter under civil law or through section 37 of Health and Safety at Work Act 1974

The majority of prosecutions under section 37 come about due to the positive duties under section 2 and section 3 of HSWA 1974.⁴⁰ There are no positive duties⁴¹ under section 37.⁴² According to David Bergman⁴³:

a clever company—with a little help from its lawyers can draw up a policy that places duties on individuals at a lower level within the organisation and therefore ensure that its senior officers escape prosecution for “neglect”

Section 37 applies to directors and anyone else who is acting in a position of authority. They can be prosecuted through their “consent,⁴⁴ connivance,⁴⁵ or neglect.”⁴⁶ Both the directors and the companies can be prosecuted. As a company does not have a mind of its own and requires the input of directors and employees, there must be some failure of these individuals for the company to be in breach of its legal duties. But this does not mean that the HSE

⁴⁰ Godric Jolliffe, ‘Directors on the hook’, 2010

⁴¹ Howard Fidderman, ‘Directors’ duties: there’s room at the top’ (2009) *The Journal of the Working Environment Tolley’s Health and Safety at Work*

⁴² David Bergman, Courtney Dr Davies, and Bethan Rigby, ‘International Comparisons of Health and Safety Responsibilities of Company Directors’, 2007

⁴³ David Bergman, ‘Corporate Conniving and directors’ duties’ (1999) 149 *New Law Journal* 1436

⁴⁴ ‘R v Chagot Ltd [2008] UKHL 73 [2009] 2 ER 645’

⁴⁵ ‘Huckerby v Elliott [1970] 1 All ER 189’

⁴⁶ ‘Wotherspoon v H.M. Advocate [1978] JC 74’

automatically prosecutes individuals. The HSE does not necessarily prosecute both the company and the individuals as in a vast number of cases it would be prosecuting the same person twice for the same failings.⁴⁷

3.2 Prosecution Rates

The Freedom of Information Act 2000⁴⁸ has enabled information to be released by the HSE on the number of prosecutions under section 37 of the HSWA 1974 1974. The following graphs based on this information help to understand why section 37 was not achieving sufficient deterrent against companies in preventing work place fatalities.

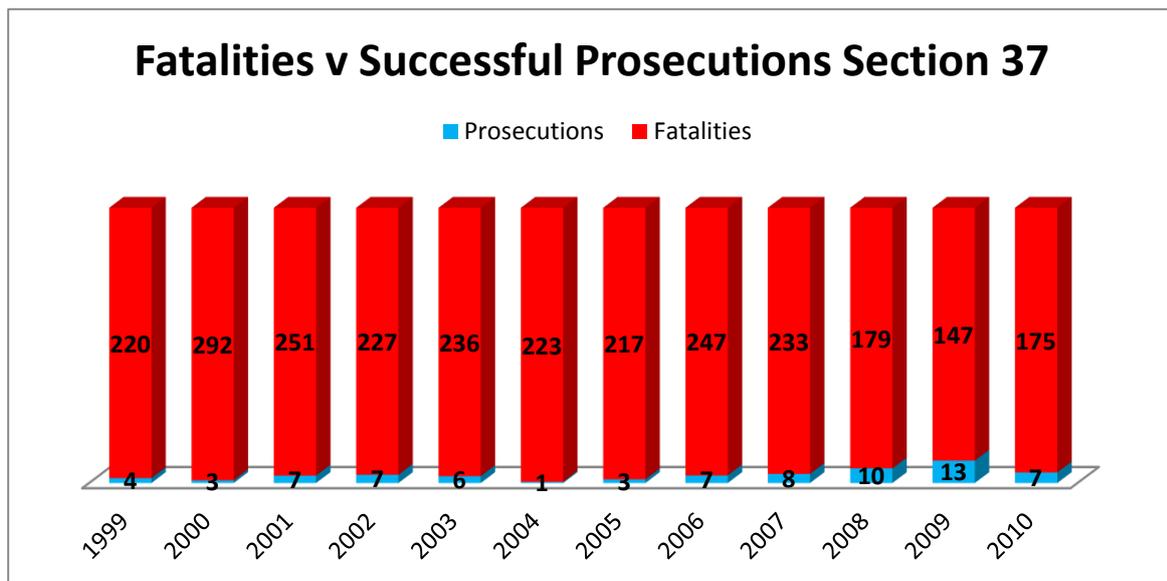
The first graph shows the number of work place fatalities against the number of successful prosecutions under HSWA 1974 1974 section 37 since the middle of 1999. CMCHA 2007 was enacted in 2008. Subsequently there have been prosecutions under the Corporate Manslaughter and Corporate Homicide Act 2007 as well as under Section 37. Companies can be prosecuted under both Acts but senior managers and directors can only be prosecuted under section 37 as well as under civil law for gross negligence manslaughter.

⁴⁷ Michael Appleby, 'Safety & Health Practitioner.', September 2013

⁴⁸ 'Freedom of Information Act', 2000

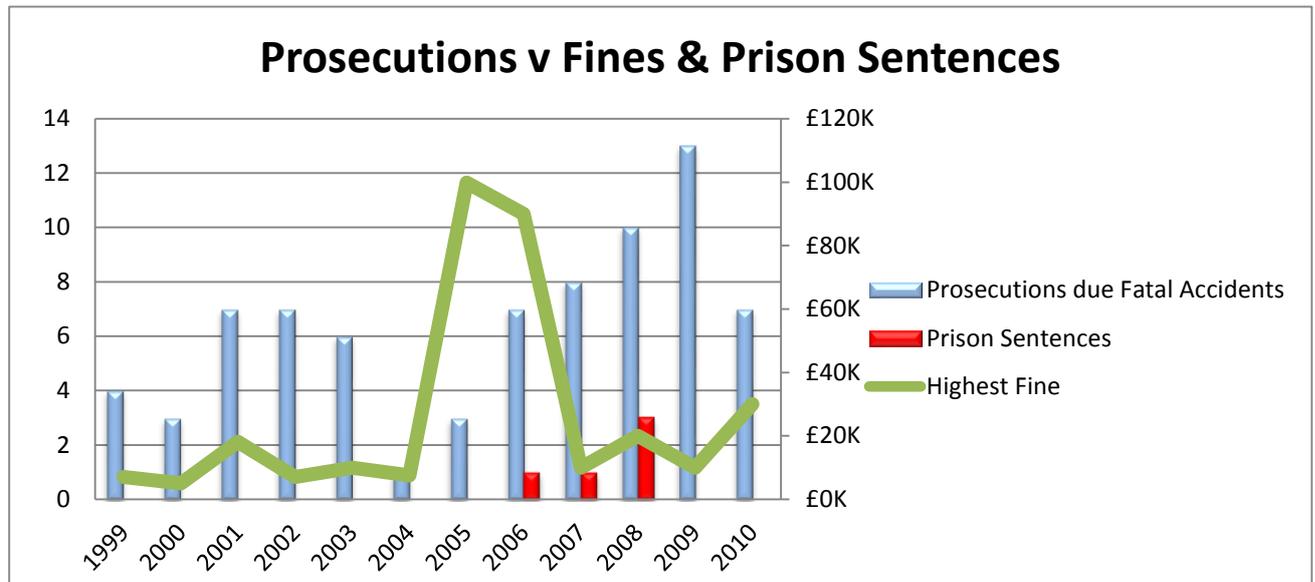
The graph very clearly shows that the number of fatalities far exceeds the number of prosecutions that have successfully resulted in fines and/or prison sentences.

Graph 3.1



The second graph breaks this information down even further. It identifies the quantity and number of prosecutions, the fines and prison sentences that have been issued for the breaches in the law. It is important to note that the highest fine under section 37 for a fatality is under £100 000 and that most of the fines have been under £30 000. There have been 5 prison sentences and 76 prosecutions for a total of 2647 fatalities since 1999.

Graph 3.2



Due to the low prosecution rates and the even lower fines and imprisonment rates one can understand the general public's discontent about the "accidents" that happen at work⁴⁹. Until the 1990's when a fatality happened at work it was classed as an "accident".⁵⁰

Prior to the 1990s the general public's understanding and acceptance of accidents was that they were not planned killings in the sense of a company or individuals deliberately setting out to murder employees. Subsequently, post 1990's, these "accidents" have caused public uproar and there has been a shift

⁴⁹ Celia Wells, *Corporations and criminal responsibility* (2nd edn, Oxford University Press 2001), Oxford monographs on criminal law and justice

⁵⁰ HSE definition of an accident: An unplanned unwanted event that results in an injury of damage to equipment or property.

in thought. These accidents were caused by financial greed and lack of evidence of benefits for the companies.⁵¹ The short-sighted view of the less money that was spent on keeping employees safe, the more profit they generated.⁵² Although a research paper undertaken by Paul Almond⁵³ indicated that the public wanted to see preventative measures put into place as opposed to punishment of corporations.

There have been some major accidents over the last 30 years that have caused numerous deaths:

- Herald of Free Enterprise⁵⁴ caused 193 deaths.
- Kings Cross underground fire caused 31 deaths. The Fennel report ⁵⁵ stated that both the London Underground and the London Regional Transport denied responsibility for the physical structure of the system.

⁵¹ C Smallman and G John, 'British directors perspective on the impact of health and safety on corporate performance' (2001) 38 Safety Science 227–239

⁵² David Cameron, 'David Cameron: Health and Safety Laws are holding back business.', January 5, 2012, sec. News

⁵³ Paul Almond and Sarah Colover, 'Mediating punitiveness: understanding public attitudes towards work related fatality cases.' (2010) 7 European Journal of Criminology 323–338

⁵⁴ 'R v European Ferries (Dover) Ltd [1991] Crim L.R. 695'

⁵⁵ Fennel, 'Investigation into the King's Cross Underground Fire ', 1998

- The Clapham Rail Disaster⁵⁶ caused 35 deaths. The DPP did not prosecute for corporate manslaughter even though the jury returned a verdict of unlawful killings.
- Piper Alpha oil rig fire caused 167 deaths.⁵⁷

These work related deaths were now seen by the public as preventable and they wanted the responsible people punished. Professor Wells⁵⁸ originally wrote in her book that the public wanted to see Corporations punished but later changed her view that the public wanted to see individual directors found guilty. The Law Commission used this in its Report no. 235, Involuntary Manslaughter in 1995. Later on the term Corporate Manslaughter was used both by legal professionals and by the layperson. This change was initiated by deaths at work.⁵⁹

Under section 37 a successful prosecution will require proof than an offence has been committed by a body corporate. It also requires proof that the offence was committed with consent, connivance or neglect on the part of the accused. The accused must also be a person who has the authority and capacity to make decisions on behalf of the corporate body.

⁵⁶ Anthony Hidden, 'Investigation into the Clapham Junction Railway Accident.', 1989

⁵⁷ Kenneth Miller, 'Piper Alpha and The Cullen Report', 1991ILJ 20(3)

⁵⁸ See note 2

⁵⁹ Jefferson, 'Corporate Criminal Liability in the 1990s'

3.3 Consent, Connivance and Neglect.

Consent, connivance and neglect have all been debated in civil cases such as *Wotherspoon v H.M. Advocate*,⁶⁰ *Huckerby v Elliott*⁶¹, and *Armour v Skeen*.⁶² Consent and connivance suggest that a decision might have been made based on knowledge and agreement of the material facts.⁶³ Neglect can also be applied to a situation where a defendant ought⁶⁴ to have known even if they did not and ignorance of the law is no defence.⁶⁵

Section 37 is for persons identified with accountability as proven in *R v Boal*⁶⁶ on appeal. In *Armour v Skeen*⁶⁷ the Director of Roads for Strathclyde Regional Council was successfully prosecuted under section 37 even though he was not, technically, a director but he was clearly responsible within the definitions of an

⁶⁰ 'Wotherspoon v H.M. Advocate [1978] JC 74'

⁶¹ 'Huckerby v Elliott [1970] 1 All ER 189'

⁶² 'Armour v Skeen [1977] IRLR 310'

⁶³ 'Attorney General's Reference [1996] 2 Cr. App. Rep.320', 1995

⁶⁴ Richard A. Matthews, *Health and safety enforcement: law and practice* (3rd ed. Oxford University Press 2010)

⁶⁵ 'R v P [2007] EWCA Crim 1937'

⁶⁶ 'R v Boal [1992] 3 All ER 177'

⁶⁷ 'Armour v Skeen [1977] IRLR 310'

officer with responsibility for a corporate body. Evidence for the decision as to who is in a position of authority can be obtained from a safety policy.⁶⁸

Section 37, does not insist on a conviction of the corporate body but does require proof that it has committed an offence and if the HSE wish to prosecute only under section 37 it then also requires proof of consent⁶⁹, neglect⁷⁰ or connivance⁷¹ by the directors or senior managers. There are some obvious problems with this.

This problem was explored recently by Michael Appleby,⁷² that the proof for either would prove guilt for the other. Seeing that section 37 can prosecute either the company or the directors or both, there lays the dichotomy of the situation. In the recent case of R v Dairy Crest and others the prosecution tried to use Section 74 of the Police and Criminal Evidence Act 1984. This section allows for “the fact that a person other than the accused has been convicted of an offence...shall be admissible in evidence for proving that that person committed that offence.” The judge in the case refused to allow the prosecution

⁶⁸ Section 2.3 HSWA 1974 1974

⁶⁹ ‘R v Charget Ltd [2008] UKHL 73 [2009] 2 ER 645’

⁷⁰ ‘Wotherspoon v H.M. Advocate [1978] JC 74’

⁷¹ ‘Huckerby v Elliott [1970] 1 All ER 189’

⁷² Appleby, ‘Safety& Health Practitioner.’

use this quoting case law R v Armstrong George⁷³ that this should be used sparingly. Michael Appleby confirms that although case law is not binding on future decisions, defence lawyers are likely to try to use this decision for a company's guilty plea to be excluded in the prosecuting directors.

If an individual is not found to be a director or senior manager under section 37's criteria they can also be prosecuted under section 7⁷⁴ or section 8⁷⁵ as an employee. This is rarely used but Kenneth George Miller, of Linton Cambridgeshire was given a 24 week prison sentence suspended for 2 years after admitting breaching section 7 of HSWA 1974 1974 after he accidentally killed a member of the public at the Milton Waste Landfill site.⁷⁶

This was an unusual decision to prosecute the individual and not the company. The accident had been investigated and no breaches of Health and Safety Law could be found to prosecute the company. It was purely the lack of reasonable care taken by Mr. Miller that had resulted in this fatality.

⁷³ 'R v Armstrong (George) [2001] EWCA Crim 2905'

⁷⁴ Employees duties under section 7 HSWA 1974: To take reasonable care of themselves and others by their acts and/or omissions.....

⁷⁵ Employees duties under section 8 HSWA 1974: Do not interfere with anything provided in the interests of health and safety.....

⁷⁶ Sentenced August 8th 2013. Date of offence was 5th January 2012.

3.4 SMEs

According to Alexandra Dobson⁷⁷ the ability to prosecute directors and/or companies under section 37 was brought in due to the precarious position of SMEs (Small to Medium sized Enterprises)⁷⁸ SMEs have been defined in EU law: EU Article of the annex of the Recommendation 2003/361/EC. Very often, SMEs which are being prosecuted are wound up prior to the prosecution and it is possible to prosecute the directors in the absence of a corporate body. In February 2012 Labour MP Luciana Berger attempted to push through a bill to amend 1974 HSWA 1974 to be able to freeze assets of companies under investigation for health and safety breaches. Although this failed, individual officers can still be liable. It is much easier to identify the line of culpability in a small company that does not have layers of middle managers between the senior managers and the work force.

3.5 Marginalisation

To prosecute under section 37 the CPS must be able to link the fatality with failures of the company and also senior managers. This is known as the

⁷⁷ Alexandra Dobson, 'Section 37 of the Health and Safety at Work Act 1974 – re-invigorated' (2013) 55 International Journal of Law and Management 141 – 155

⁷⁸ Gunter Verheugen, 'The New SME definition' (2003) L 124 Official Journal of the European Union 36

“identification doctrine” and it is just this issue that has prevented the successful prosecutions for fatalities and serious injuries that occur at work for larger companies. Even when there are successful prosecutions, there are the lack of prison sentences that are issued and the fines do not reflect the seriousness of the cases.⁷⁹ Health and Safety cases are seen to be “minor” offences even when a death occurs and are compounded by the low fines and prison sentences. The public outcry and the media opinions concerning “elf ‘n safety” have pushed the government into reviewing its sentencing.

Marginalisation is the concept that bringing only Health and Safety charges for a fatality at work devalues a life. The low fines and the minimal prosecution rates emphasises this. The fact that purely SMEs are being prosecuted and larger companies are literally “getting away with murder” compounds this theory. In the building of the channel tunnel six men were killed. There was only one prosecution for manslaughter and the others were charged under the Health and Safety at Work Act 1974

The introduction of the Health and Safety (Offences) Act (HSOA 2008 2008) delivers more emphasis to the prosecutions under health and safety law. It is also easier to successfully prosecute under Health and Safety Law due to the

⁷⁹ See graph 2

burden of proof. In Corporate Manslaughter both criminal and civil tort of gross negligence, the burden of proof stays with the prosecution. Under Health and Safety law the prosecution only needs to show that there has been a failure in a relevant duty and then the burden shifts to the defence to show that they took all reasonable practicable steps to prevent the accident.

Even so, in any case that is brought before the courts for prosecution; the Crown Prosecution Service must be virtually 100% positive that they can win the case. Any uncertainty, then they will not prosecute due to the financial implications should they lose.

3.6 Summary

This hypothesis delved in the civil tort of Corporate Manslaughter and Section 37 Health and Safety at Work Act 1974 and identified some of the issues with this legislation. One main flaw of Corporate Manslaughter is the “identification principle”⁸⁰ that required a senior director or manager to be responsible. Without this the prosecution will fail. This was true when no one individual person was to blame even when failings of a number of directors or senior

⁸⁰ Simon Parsons, ‘The Doctrine of Identification, Causation and Corporate Liability for Manslaughter’ (2003) 67 Journal of Criminal Law

managers led to the death or deaths. This is particularly difficult to prove when dealing with larger companies.

A concern with section 37 is the lack of positive duties for directors. Providing they can prove that they had no knowledge (prior or otherwise) then they cannot be held responsible. More so in larger companies.

The graphs of the number of fatalities before and after the introduction of CMCHA 2007, show there was a 23% drop in the number of workplace deaths from 2007 to 2008 and thereafter another 22% drop in 2009. This implies a drop of nearly 40% in 2 years. However, in 2008 the UK entered its worst recession since 1930s⁸¹. The main industries affected were construction and manufacturing, also with mining, agriculture and utilities (electrical)⁸² are known to have the highest number of fatalities. A dramatic increase in unemployment would expect the number of work related fatalities to decrease. There must be, however other factors that would influence this decrease. Possibly, the introduction of CMCHA 2007 and the publicity around the Act initially forced employers to look at their responsibilities to their employees and review their safety management systems to improve safety at work.

⁸¹ BBC news May 6th 2009 : <http://news.bbc.co.uk/1/hi/business/8034879.stm>

⁸² HSE information

Not only have the number of fatalities dropped quite considerably since 2008 but the number of prosecutions under section 37 has increased. The introduction of the Health and Safety (Offences) Act 2008 allowed much more severe penalties to be inflicted and this re-enforced a message to employers that the health and safety of its employees is paramount.

On the balance of probabilities when analysing the research, the introduction of the Corporate Manslaughter and Corporate Homicide Act has been instrumental in working with Section 37 of the Health and Safety at Work Act to making places of work safer. This could not have been achieved by just the Health and Safety at Work Act 1974 and the civil tort of Corporate Manslaughter alone.

Chapter 4

Hypothesis 2: Statistical evidence of the number of fatalities at work from before and after the introduction of the CMCHA 2007 shows very little effect of the act.

4.1 Gathering of data

4.2 HSE Statistics

4.3 Unemployment rates.

4.4 History of Corporate Manslaughter

4.5 Current position on CMCHA 2007 2007

4.6 Fatal Injury Rates

4.7 Prosecutions under CMCHA 2007 2007

4.8 Health and safety prosecutions v Animal Welfare prosecutions

4.9 Summary

4.1 Gathering of data

Statistics used in this dissertation are derived from the HSE reported fatalities, including both employees and self-employed but excluding road traffic accidents, deaths in the armed forces and asbestos related diseases. The supplementary source of information relating to the labour force has been extracted from the Office of National Statistics.

The actual figures of work related fatalities furthermore call for information in context to other external factors that would affect these numbers; for instance the economic recession, and the statistics of people who are employed or self-employed year on year. An additional factor is the type of industries that have been affected by the recession which might be classed as higher risk, such as, mining and agriculture, utilities, manufacturing and construction workers.

Although the number of fatalities fluctuate on an annual basis, the calculation of fatal injury rates is calculated by dividing the number of fatal injuries by the estimated number of employed and then multiplied by a factor of 100 000.⁸³ This is called the “rate of fatal injury”:

$$\frac{\textit{Number of fatal injuries}}{\textit{Number of employed}} \times 100000$$

4.2 HSE statistics

Using this data and the number of fatalities as accessed from the HSE website, it becomes apparent that the number of fatalities and the fatal injury rate has reduced quite considerably since the introduction of Health and Safety at Work Act 1974. The statistics demonstrate that although the number of deaths has decreased significantly since 2008, the fatal incident rate has not done so. It

⁸³ Calculations used by HSE

reached its lowest rate in 2009/ 2010 and since then has increased again in 2010/2011.

Year	Employees	Self-employed	Workers #	Rate of fatal injury (per 100 000 workers)
1974 (1)	651	..	651	2.9
1981 (2)	441	54	495	2.1
1986/87	355	52	407	1.7
1996/97	207	80	287	1.1
1997/98	212	62	274	1.0
1998/99	188	65	253	0.9
1999/00	162	58	220	0.8
2000/01	213	79	292	1.0
2001/02	206	45	251	0.9
2002/03	183	44	227	0.8
2003/04	168	68	236	0.8
2004/05	172	51	223	0.8
2005/06	164	53	217	0.8
2006/07	191	56	247	0.8
2007/08	178	55	233	0.8
2008/09	127	52	179	0.6
2009/10	104	43	147	0.5
2010/11	122	53	175	0.6
2011/12	114	57	171	0.6
2012/13p	99	49	148	0.5

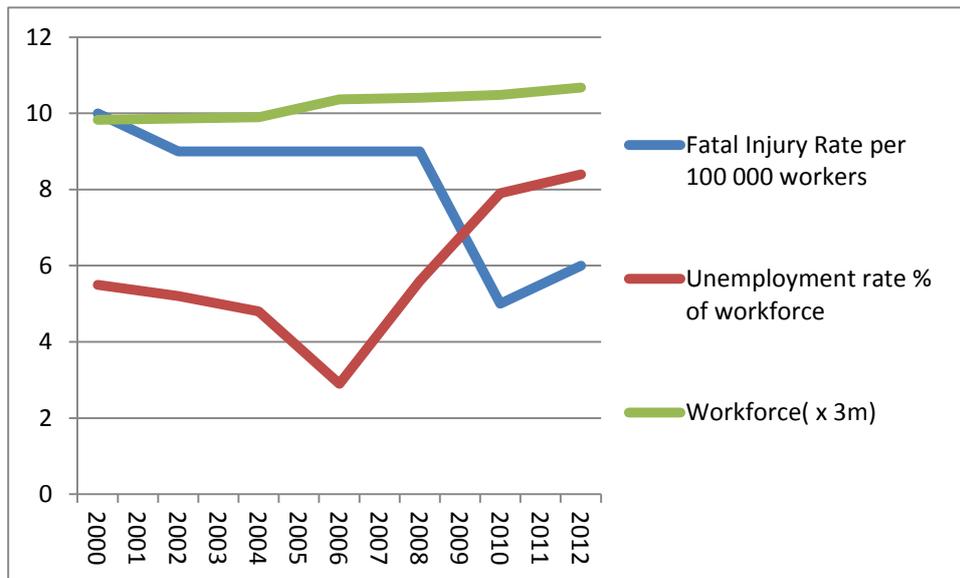
The latest figures for HSE website 2012/2013 (provisional) have the number of deaths at 148 and the fatal injury rate down to 0.5. In 2008/2009 after the

introduction of the CMCHA 2007 the number of fatalities reduced from 0.8 to 0.5 for which there are some possible reasons which will be discussed. Of interest is the fact that between 2010 and 2012 the numbers of fatalities increased but decreased in 2013. Possible theories for this will be expounded and any possible links explored.

4.3 Unemployment rates

In 2006/2007 the UK had its lowest unemployment rates this century which the fatality rate does not reflect. The fatality rate remained static. It would be expected that the rate of fatalities increase proportionally. Conversely as the numbers of unemployed increase it would be expected that the fatal injury rate would decrease proportionally which did not happen. Considering the slowly increasing number of people eligible to work (the workforce) (29.5 million in 2000 to 32 million in 2012) statistics do not reflect a direct correlation between the number of people in work and the fatality rate. See Graph 4.1 below;

Graph 4.1



The recession 2008/2009 in the UK hit the construction and manufacturing industries hardest.⁸⁴ These industries are well documented to be high risk and as expected the number of fatalities dropped to their lowest rate. At the same time Corporate Manslaughter and Corporate Homicide Act came into force.

4.4 History of Corporate Manslaughter

The Corporate Manslaughter and Corporate Homicide Act 2008 may be one of reasons for the anomalies in the statistics. To understand why this may be, an understanding of the civil tort of Corporate Manslaughter by gross negligence requires analysis.

⁸⁴ Celia Campos, Alistair Dent, Robert Fry, and Alice Reid, 'Impact of the recession', November 2011 Regional Trends

The first prosecution for corporate manslaughter was in 1927, R v Cory Bros [1927]⁸⁵ but failed because the company could not have had a 'guilty mind' or 'mens rea'. The concept of the identification principle had not yet been developed. The public raised concerns over this lack of a conviction but it was not until there was a general uproar from the public over the major disaster, the Bradford City Football Stadium Fire in 1985 when 49 people died. In 1991 when the Herald of Free Enterprise sank killing 187 people the principal of Corporate Manslaughter was first conceived. It took until 1994 and the Lyme Bay Canoe⁸⁶ tragedy to provide the first successful prosecution of Corporate Manslaughter by Gross Negligence. But as identified in a previous chapter, there were serious failings with this law.

There have been a low number and lack of successful prosecutions under CMCHA 2007. The CPS originally predicted around 12 to 14 prosecutions per year⁸⁷ under CMCHA 2007. Until the commencement of 2012 there was only 1 successful prosecution.⁸⁸ The media's focus on the new Act and the CPS predictions could have influenced companies to invest resources in Health and

⁸⁵ 'R v Cory Bros [1927] 1 K.B. 810'

⁸⁶ 'R v OLL Ltd (unreported) (Crown Court) 1995'

⁸⁷ 'Draft Corporate Manslaughter Bill'

⁸⁸ 'R v Cotswold Geotechnical (Holdings) Ltd [2011] ALL ER (D) 100(May)'

Safety even though there was no actual material return that could be measured against the company's' profits. The costs of the fines, bad publicity and loss of business due to poor health and safety are attributable measures. The HSE estimate that for every £1 spent on insurance there is £38 of uninsurable/indirect losses.⁸⁹

Very shortly after CMCHA 2007 came into effect, companies may have realised that the CPS predictions of 12 to 14 prosecutions a year were not achievable. Senior managers may have become complacent when they realised that prosecutions under the Act were rare and problematic.⁹⁰ After the initial "hype" of the introduction of the Act and the possible consequences to companies for gross breaches that resulted in fatalities were going to be complex for CPS. The reality was that this was an extremely complex issue and exceedingly difficult for the CPS to prove. Confirming that the CPS would only prosecute if they were convinced of a successful outcome and that it is in the public's interests to do so.

⁸⁹ Roxanne Gervais, Zofia Pawlowska, Anne Kouvonen, Maria Karanika-Murray, Karla Van den Broek, and Marc De Greef, 'Occupational safety and health and economic performance in small and medium-sized enterprises: a review', 2009, Working Environment Information EN9

⁹⁰ Maurice Punch, 'Suite violence: Why managers murder and corporations kill' (2000) 33 Crime Law and Social Change 243–280

4.5 Current position on CMCHA 2007

Perceptions changed in 2012. 2012 /13 revealed another 3 successful prosecutions and an exponential growth of the number of cases being investigated.

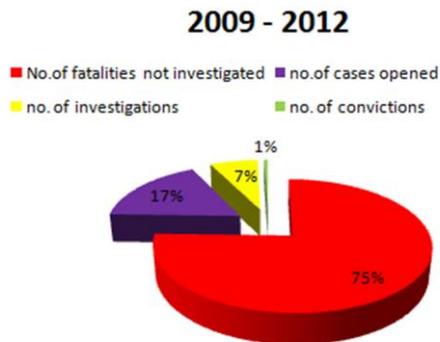
To date there have been 4 successful prosecutions under CMCHA 2007 from the Act coming into force in 2008. This is attributed to Corporate Manslaughter cases being acutely complex and time consuming. The number of cases opened by the CPS(as of March 2013) is as follows

2009	7
2010	26
2011	45
2012	63

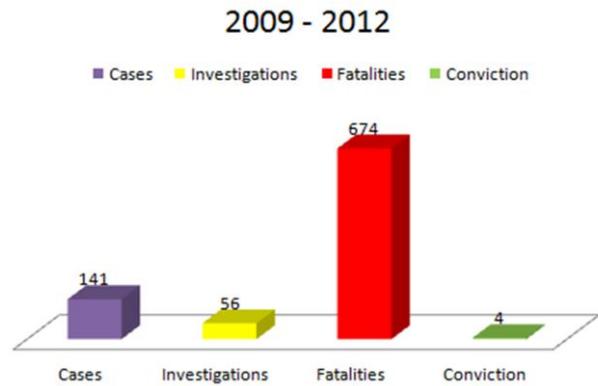
56 investigations are current. The anomaly is that 85 cases appear to be missing from the 141 cases opened and only 56 being investigated.⁹¹ Furthermore, since 2008 there are 618 work related deaths that are outstanding.

⁹¹ Pinset Masons LLP <http://www.pinsetmasons.com/en/media/press-releases/2013/new-corporate-manslaughter-cases-opened-by-cps-up-40-in-20121/> accessed October 15th 2013

Graph 4.2



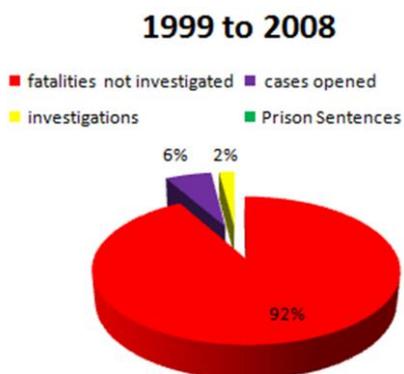
Graph 4.3



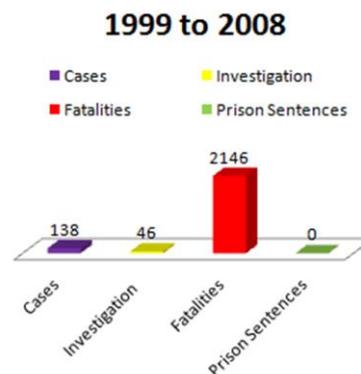
Graph 4.2 and graph 4.3 show this data in 2 different ways. The graphs put the facts into stark reality. There are deaths at work and the prosecutions are minimal.

The graphs below highlight issues prior to 2008 and the influence of CMCHA 2007 and the HSOA 2008.

Graph 4.4



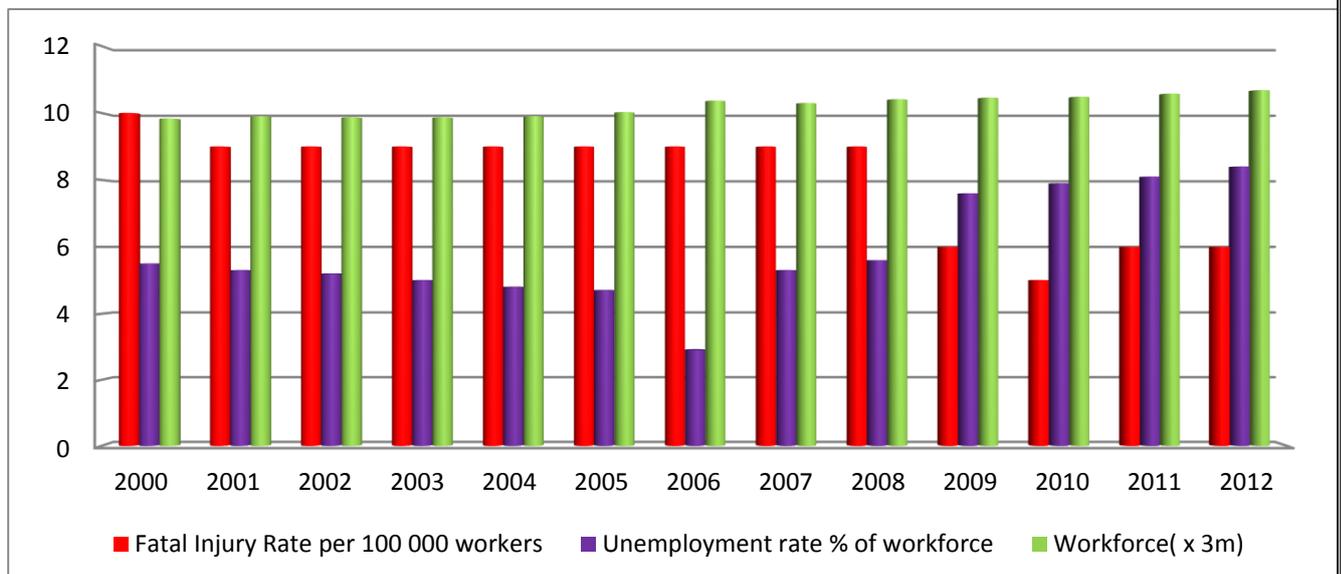
Graph 4.5



Statistics expose the problems pre 2008 attesting to lack of prison sentences for responsible people and lack of prosecutions for work related deaths. Is there any wonder that these figures were highlighted as a concern? There is no doubt that the penalties for “Corporate Killings” were going unpunished. The fines were negligible especially to the larger companies and no-one was taking any responsibility and paying for it with “time at her majesty’s pleasure”.

By manipulating the data from Graph 4.1 into a different format a more informed analysis can be deduced. Graph 4.6 depicts this data more distinctly.

Graph 4.6



4.6 Fatal injury rates

From graph 4.6 the fatal injury rate to 2008 remained almost static and then dropped dramatically. The number of workplace fatalities dropped by 54 from

233 to 179. This was the highest fall since the beginning of the century. Initially this appeared to be compelling evidence that CMCHA 2007 was effective in reducing the number of workplace fatalities as before 2008, the number of fatal injuries per 100 000 workers has not been influenced by the unemployment rate or the number of prosecutions by HSE.

In 2006 when the country had its lowest level of unemployment, the fatal statistic rates remained the same per 100 000 workers. It would be expected that the fatal statistic rates should remain fairly constant regardless of the number of unemployed or the number of people in the workforce.⁹² However, in 2009/2010 the rate has dropped to its lowest rate ever and although this might be an anomaly for one single year, following years indicate that there was no anomaly. The introduction of the Corporate Manslaughter and Corporate Homicide Act 2007 and the Health and Safety (Offences) Act 2008 or a combination of both might have been a deterrent for companies continuing with their financial justifications for putting health and safety as a low priority.

Of concern is that the fatality rate increased since 2008. It would have been expected that the rate drop and continue dropping. The graphs indicate that although there had been an increase in the number of prosecutions both under

⁹² 'Labourforce', 2013

section 37 and CMCHA 2007 this has not had an impact on reducing the number of fatalities.

4.7 Prosecutions under CMCHA 2007

It is proposed that the prime reason for the increased fatality rate is due to complacency of directors and senior managers observing the lack of prosecutions of large companies.⁹³ By way of example the outcome of Cotswold Geotechnical,⁹⁴ This was the first company to be prosecuted under the CMCHA 2007. Initially the director also faced prosecution under HSWA 1974 but these charges were dropped due to the ill health of the director. To date nothing has been paid of the £385k fine.

The next case, JMW Farms⁹⁵ (Northern Ireland), where the director of the farm was person responsible for the death. Though this company's turnover was more than 4 times Geotechnical, the fine was only £187 500. The sentencing guidelines start at £500k which was clearly ignored.

⁹³ Dobson, 'Directors' liability for death or workplace injury.'

⁹⁴ 'R v Cotswold Geotechnical (Holdings) Ltd [2011] ALL ER (D) 100(May)'

⁹⁵ 'R v JMW Farm Limited [2012] NICC 17'

Interestingly Lion Steel's⁹⁶ fine was to be £480k paid over 3 years. The charges for the individual directors under section 37 were dropped in exchange for a plea of guilty for Corporate Manslaughter.

One of the latest successful prosecutions (October 2013) is another Northern Ireland case, J Murray and Son,⁹⁷ who pleaded guilty to Corporate Manslaughter. The fine issued was £100k to be paid over 5 years. This was done to protect the jobs of the 16 employees.

There seems to be a message being sent to companies large and small. According to Paul Verrico and Philip Crosbie "It is "cheaper" to cause the death of an employee than to engage in price fixing"⁹⁸

The previous common law of Corporate Manslaughter has been abolished when applied to companies'.⁹⁹This was following severe criticism due to the "identification principle" and its failure to bring responsible people to account. However, the new law of Corporate Manslaughter and Corporate Homicide Act

⁹⁶ 'R v Lion Steel [2012]'

⁹⁷ 'R v J Murray & Son [2013] NICC 15'

⁹⁸ Paul Verrico and Philip Crosbie, 'Setting sanctions- a comparative paper considering corporate offences' (2013) 55 International Journal of Law and Management 361–371

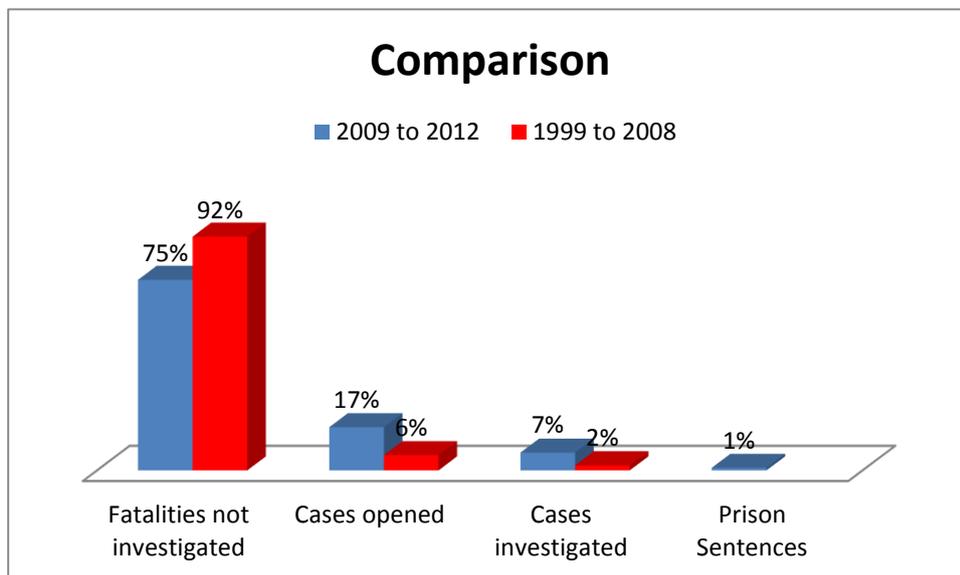
⁹⁹ 'Corporate Manslaughter and Corporate Homicide Act', 2007 section 20

2007 has also been criticised for to a similar reason; section 1 (3) of the Act. It appears to have re-introduced parts of the old flawed common law.

Since 2008 the number of fatalities that have been investigated has increased together with the prosecution rates and prison sentences as shown in graph 4.7.

This will be a deterrent for companies who feel that health and safety is an unproductive cost to their bottom line. Fines for breaching health and safety law are now unlimited,¹⁰⁰ although prison sentences under section 37 in the Crown Courts though can be only up to 2 years! The maximum sentence under the Health and Safety (Offences) Act 2008 is also only 2 years.

Graph 4.7



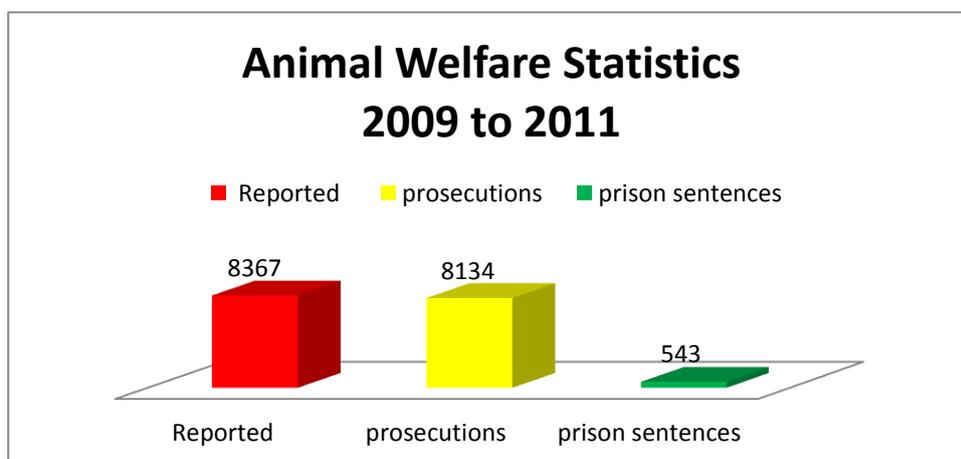
¹⁰⁰ 'Health and Safety (Offences) Act', 2008

Analysis of the number of prosecutions by the HSE and convictions (prison sentences) for fatalities at work before 2008 revealed in Graph 3.7, shows that 92% of all fatalities were not investigated and of those that were prosecuted, no prison sentences were handed out.

4.8 Health and Safety prosecutions v Animal welfare prosecutions

By comparison with the Animal Welfare Act 2006¹⁰¹ section 32 allows for imprisonment of a maximum of 51 weeks for offenders: just under half of the time allowed for Health and Safety offences. Graph 3.8 shows the number of reported cases, prosecutions and prison sentences for cruelty to animals.

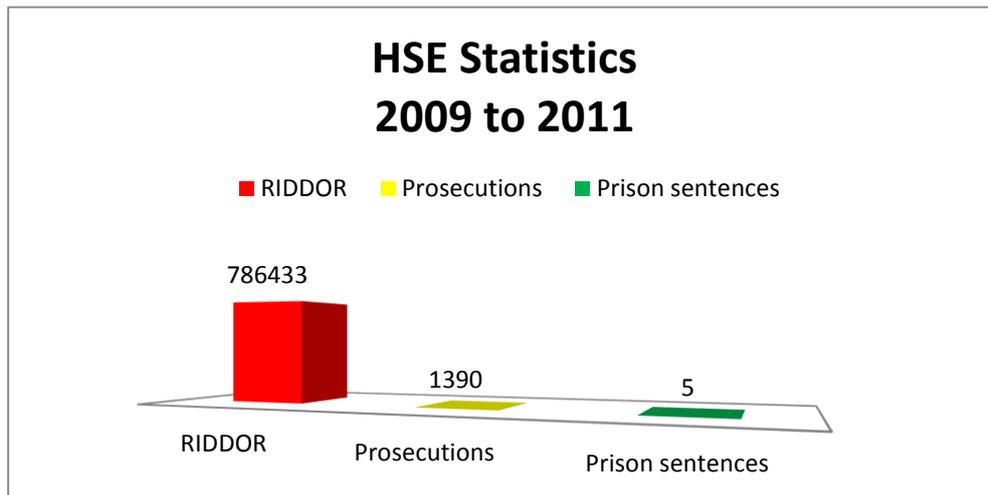
Graph 4.8



¹⁰¹ 'Animal Welfare Act', 2006

The following graph 4.9 shows the same data (non fatal accidents) for human beings reported under RIDDOR¹⁰² for the same time period.

Graph 4.9



4.9 Summary

Hypothesis 2 compared various statistics that are available through HSE and the Office of National Statistics on fatal injuries at work to the fatal injury rates of the employed.¹⁰³ In 1999 there was on average 253 deaths at work. Ten years later in 2009 there were 179. With a reduction of 30%, the HSE has the following opinion;

¹⁰²

¹⁰³ This included self employed within these numbers too

Fatal injuries at work are thankfully rare events. As a consequence, basic statistical principles dictate that the annual count is highly subject to chance variation, and is relatively more pronounced the smaller the number. Moreover, the effect of this chance variation can be estimated to give an indication of the amount the figure would fluctuate if the inherent dangerousness of work conditions were to stay unchanged from one year to the next.

For example it can be estimated the latest year's count of 148 worker fatalities could have been anywhere between 124 and 171 based on chance alone. This theoretical point is borne out at a practical level when the causal factors behind individual fatalities are examined. It is often found that an unfortunate set of chance events have occurred together with shortcomings in safety precautions.¹⁰⁴

This highlights other questions that arise from this information: Does it therefore make sense to look at the drop in the number of deaths as significant? Do the fluctuations especially in very low numbers mean that it is a coincidence? Should there be other factors that should be taken into consideration?

¹⁰⁴ HSE Fatal injury Statistics 2012/2103: Full year details and technical notes

The statistics available from the HSE seems to show that CMCHA 2007 has been instrumental in reducing the number of workplace fatalities. This is substantiated by the fatal injury rate which dropped from 0.9 per 100 000 workers (1999) to 0.5 (2013). This is decrease of almost 50%, but needs further detailed analysis. There are other factors that influence this drop of which the combination of CMCHA 2007 and the HSOA 2008 has a direct influence.

Chapter 5

Hypothesis 3: Directors Attitudes towards Corporate Killings are apathetic

5.1 Companies responsibilities

5.2 Survey

5.3 Survey Analysis

5.4 Summary

5.1 Companies responsibilities

The Health and Safety at Work Act 1974 requires employers to have a general duty to ensure, as far as is reasonably practicable, the health, safety and welfare of their employees.¹⁰⁵ Most prosecutions for fatalities are related to the failure of companies to comply with this regulation. It is also fair to say that most companies and their directors and senior managers are not deliberately setting out to kill their employees.

A company's success is measured in a number of different ways. Success other than financial profit is now a concern for the companies. In 2006 the Companies Act¹⁰⁶ brought together old common law and statute law in respect of directors'

¹⁰⁵ 'Health and Safety at Work Act', 1974 section 2.1

¹⁰⁶ 'Companies Act', 2006

duties as well as introducing new elements relating to corporate responsibility. Section 172 of this Act specifies the company's duty to promote success for the benefit of its members. This could be translated into promoting work place safety as one of its priorities.

Section 2 and section 3 of the Health and Safety at Work Act 1974 place a duty on employers to care for their employees and others. A failure to do so could lead to a conviction under section 37. A company also has a common law duty to do the same.¹⁰⁷

To put this in practical terms the general public voice their disapproval when things go wrong. The media can prove to be very destructive. Bad news sells newspapers and the media capitalise on this point.¹⁰⁸ People have a morbid fascination for catastrophes (as long as it doesn't happen to them).¹⁰⁹

A company's reputation is at the forefront in today's world of business and maintaining a good reputation of high standards is essential for success. An excellent reputation would include high quality goods or service at a reasonable cost. If this is based on monetary terms then it is considered value for money

¹⁰⁷ Donoghue v Stevenson (1932) AC 562

¹⁰⁸ Caitlin Klevorick, 'The Huffington Post', November 16, 2013

¹⁰⁹ Roy Greenslade, 'The good news about bad news-it sells', September 4, 2007, sec. Media

and would be of interest to the consumer. Other costs involved are producing high quality goods such as the cost on the environment, waste and sustainability¹¹⁰ of raw ingredients for the future, and the cost of safety for those people producing the goods or service.

Punishing companies for the failings of their directors and senior managers is what the Corporate Manslaughter and Corporate Homicide Act 2007 aims to do. In doing so this should result in a reduction in workplace fatalities. If it is in the public's interest, the fines and costs to the companies should not exceed their abilities to pay, otherwise the company will cease trading and employees will lose their jobs.

5.2 Survey

Examining the 4 successful prosecutions to date for corporate manslaughter under the Act¹¹¹, there are three questions that can be asked about any company;

1. Do directors and senior managers understand their responsibility and accountability?

¹¹⁰ Marc J Epstein, *Making sustainability work: best practices in managing and measuring corporate social, environmental and economic impacts* (1st edn, Greenleaf Pub. ; Berrett-Koehler Publishers 2008)

¹¹¹ R v Cotswold Geotechnical, R v JMV Farms, R v Lion Steel, R v J Murray & Sons

2. Do they have knowledge?

3. Do they care?

In order answer these questions; a survey was dispatched to a group of senior managers and directors to canvass their opinions. A diverse range of companies were targeted with varying number of employees. A varied range of questions was asked around section 37 HSWA 1974 and CMCHA 2007.

5.3 Survey analysis

The survey¹¹² with an explanatory letter¹¹³ was sent to 30 directors or senior managers. 14 people responded giving a response rate of 47%. However 2 responses were incomplete thus reducing the response rate to 40%. One of them was within the engineering sector with a workforce of more than 500 employees. This person did not answer any of the main questions. The other one was within the financial sector with a workforce of between 11 and 50 employees. This person stopped answering questions when faced with statement 9; all work related deaths can be prevented.

The financial senior manager was from a hedge fund company who works in a small office. This person answered the first basic questions. His answers showed

¹¹² Through Survey Monkey website

¹¹³ Appendix 1 (this is just the main body of the letter)

that he had not read the Corporate Manslaughter Act had not read any of the guidance documents and had not worked previously or now for a company that had a work related death. From these answers so far, one would deduce that he has no knowledge or experience of Corporate Manslaughter and might not expect it to affect his company in any way. An office environment is generally accepted to be low risk.¹¹⁴

On the other hand the senior manager in the engineering sector with 500 or more employees might have knowledge of the Corporate Manslaughter Act but also might not expect it to affect his company in any way due to other reasons than the financial director from the Hedge Fund office. With employees of more than 500 this company is no longer a SME and not really vulnerable. All the convictions so far for Corporate Manslaughter under the act have all been SMEs.

There requires some thought for Directors and Senior Managers who did not respond at all. There could be a possibility that they do not care, can't be bothered, forgot or the survey got lost amongst all their other emails in their inboxes. There is the possibility that they are very busy people and answering surveys are not top of their priority list. According to Survey Monkey, the time of day, day in the week and time of year affects the response rate. The response

¹¹⁴ HSE

rate was therefore higher than predicted by the Survey Monkey¹¹⁵ website. One third of the identified directors/managers were personally known to me and therefore one would expect this result.

12 respondents completed the survey. The highest percentage of them was from companies that employed between 251 to 500 employees. (50%). All the rest except one employs less than 250 employees. This means that they fall into the category of SMEs and are more at risk for a prosecution for Corporate Manslaughter.

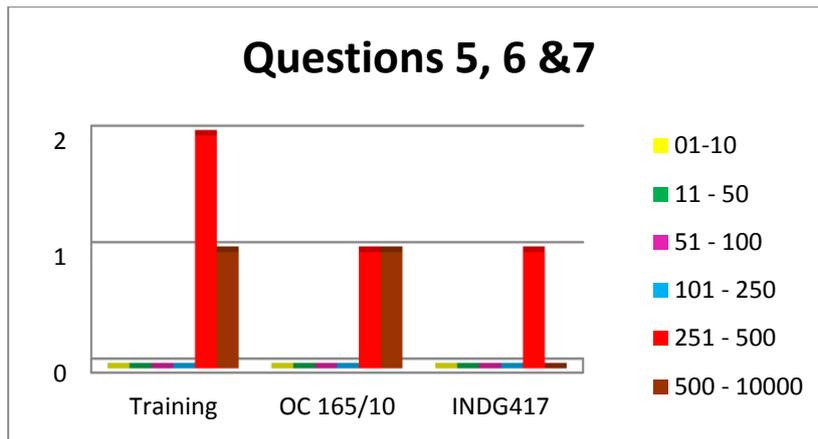
Questions 1 to 3 required basic information on their work sector, number of employees and their position within the company.

Question 4 queried if they had read the CMCHA 2007. Of the 3 that had, one of them was from a legal company with less than 250 employees and the remainder were in Education with more than 250 employees.

Question 5, 6 and 7 queried if they had received any training on the CMCHA 2007, or, if they had read any of the guidance documents issued by the HSE and/or Institute of Directors.

The following graph puts their answers into perspective.

¹¹⁵ P Bennett, 'What is the Typical Response Rate for a Survey?', October 2013

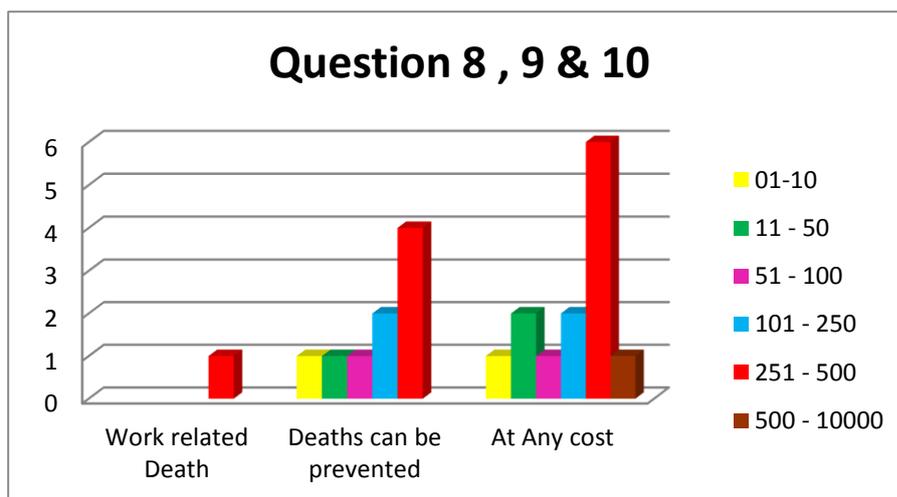


By classing any organisation with less than 250 employees as “at risk”. and baseing this on the fact that the 4 successful prosecutions to date have been SMEs , then we can see that these companies were not aware of the position in which they might be placing themselves. Only 3 directors had had training on their resposibilities, 2 had read the OC 165/10 guide issued by the HSE & Institute of Directors and 1 had read HSE INGD417. All were from companies that were not “at risk”. The larger companies become “at risk” as soon as there has been a successful prosecution for a larger company.

Question 8 and 9 queried if they had worked or were working for a company where there had been a work related death, and, if they thought that all work related deaths were preventable. After question 9 the senior manager in finance left the survey.

The graph below depicts the results from these questions. 1 person had worked for a company where there had been a work related death. Not everyone

thought that work related deaths were preventable. Of interest is that the CEO in Education of between 251 and 500 employees where the fatality occurred indicated that all work related deaths could not be preventable. A senior manager in Finance in the “at risk” group was also under the same impression. Comparing this data to the following question, 10, all were unanimous in believing work related deaths should be prevented at any cost. This statement was designed to check the morals of the directors. This statement relied on an honest reply.



Question 11 was designed to test the current knowledge of the senior managers and directors; all but one of them knew that fines for Corporate Manslaughter are not capped. The director who did not know the answer owned a very small company (less than 10 employees) and his perception was that the introduction of the Corporate Manslaughter and Corporate Homicide Act 2007 was a waste of time. Unfortunately there is only 1 person in this category (less than 10

employees) and a statistic cannot be accurately based on this biased information.

Question 12 took the form of an emotive statement. It suggested that sacrificing a company in exchange for dropping manslaughter charges against individual directors (as in the Lion Steel case)¹¹⁶ was acceptable. As expected the director of the very small company answered that it was, but unexpectedly another business owner in the retail sector with 50 to 100 employees also agreed. Kevin Bridges¹¹⁷ who represented Lion Steel discussed this issue at a recent Health and Safety Road Show in Bolton in October 2013. He commented that although it sounded unethical and it was highly criticised, one would need to be in that situation oneself to be able to make an informed comment as to the validity of the decision of both the directors and the judge.

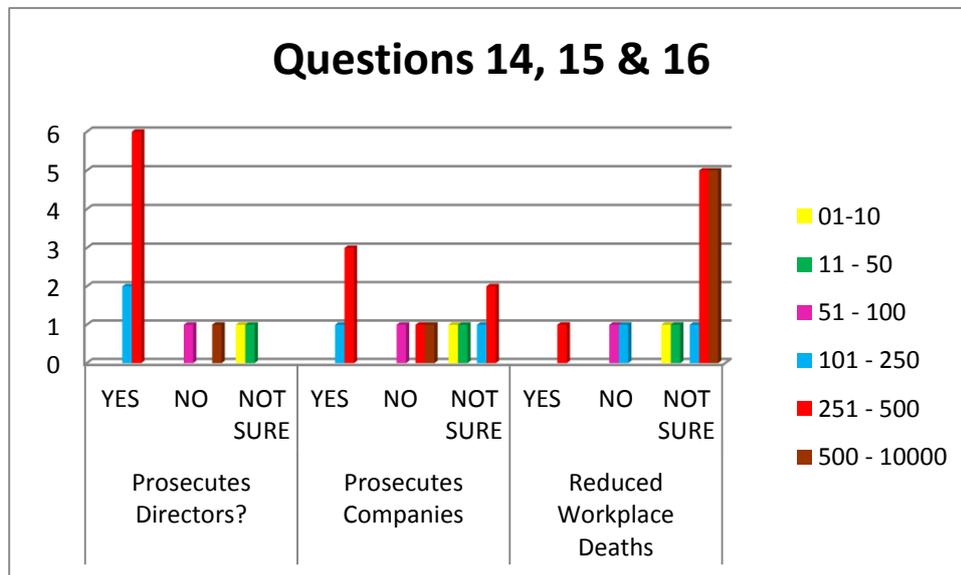
Question 13 was crucial as it suggested that CMCHA 2007 was a “waste of time.” All but the director of the smallest company agreed that it was not a waste of time.

The majority of the answers to question 14 indicated that directors were unaware that they could not personally be prosecuted for Corporate

¹¹⁶ ‘R v Lion Steel [2012]’

¹¹⁷ Pinset Masons LLP Manchester UK

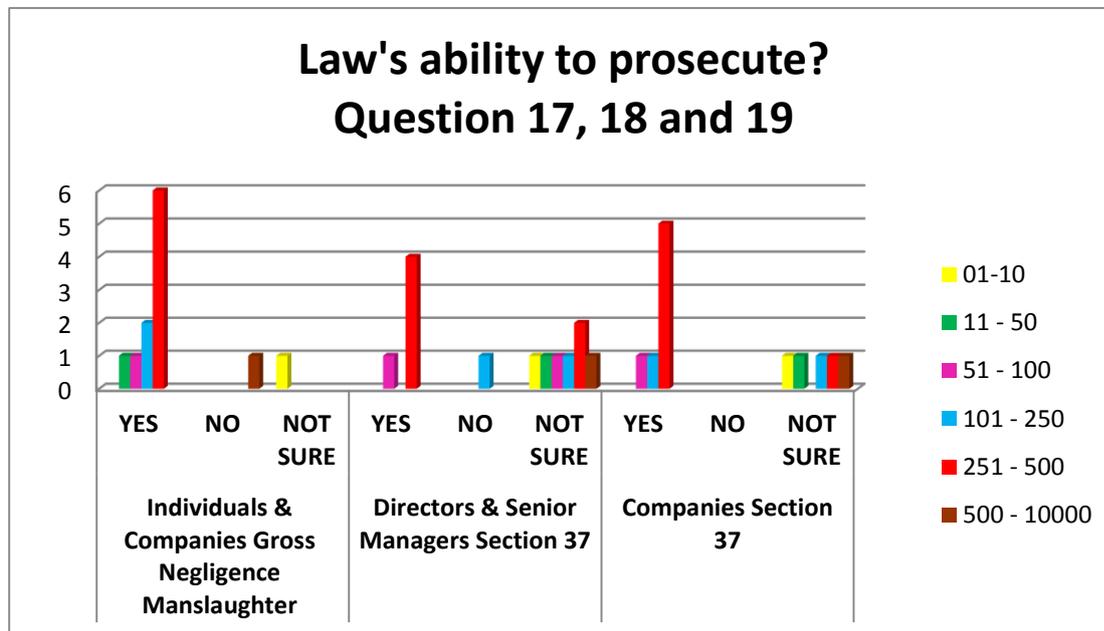
Manslaughter under the new law. The fact that only a quarter of them had known that the new act prosecutes companies only, was of concern



Question 16 queried if they knew that the CMCHA 2007 had reduced the number of workplace deaths. Except for 1, all the directors answered a previous question (13) indicating they did not believe CMCHA 2007 was a “waste of time”, it raises another question which was not asked: i.e. what was the purpose of bringing in the CMCHA 2007?

The answer to questions 17, 18 and 19 which were related to the Health and Safety at Work Act 1974 section 37 and the Common Law of Tort for Gross

Negligence Manslaughter¹¹⁸ may provide insight to that question. However answers to questions 17, 18 and 19 displayed confusion and lack of knowledge.



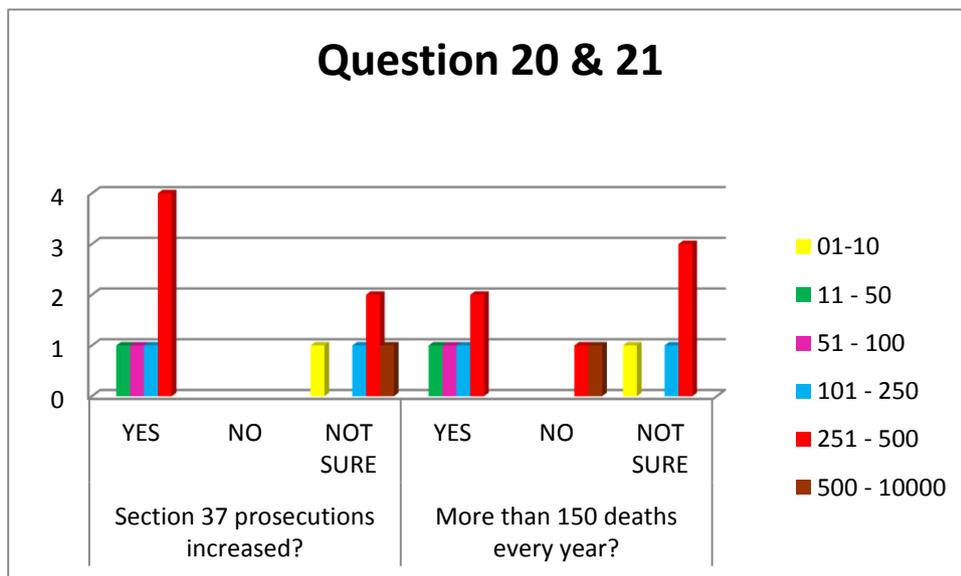
The expected answer to all 3 questions was “yes” but as depicted in the data, the majority in the “at risk” groups do not know where their legal responsibilities lay. Also note the answers of the directors of the smallest and the largest companies showed confusion. The director with less than 10 employees answered “not sure” to these questions as he answered “not sure” to the majority of the 23 questions. The answers indicate a lack of knowledge. This seems to be common to very small companies¹¹⁹ in spite of “ignorance is no

¹¹⁸ ‘R v Adomako [1994] 3 WLR 288 HL’ . Originally the test for Gross Negligence Manslaughter was set out in R v Bateman [1925] 19 Cr App R.8. Over the years other cases superseded R v Bateman until R v Adomako which sets the test for negligence.

¹¹⁹ Smallman and John, ‘British directors perspective on the impact of health and safety on corporate performance’

defence”.¹²⁰ The director from a large company with more than 500 employees from the retail sector indicates a lack of knowledge too. Most of the directors from the largest group (251 to 500 employees) are familiar with the law.

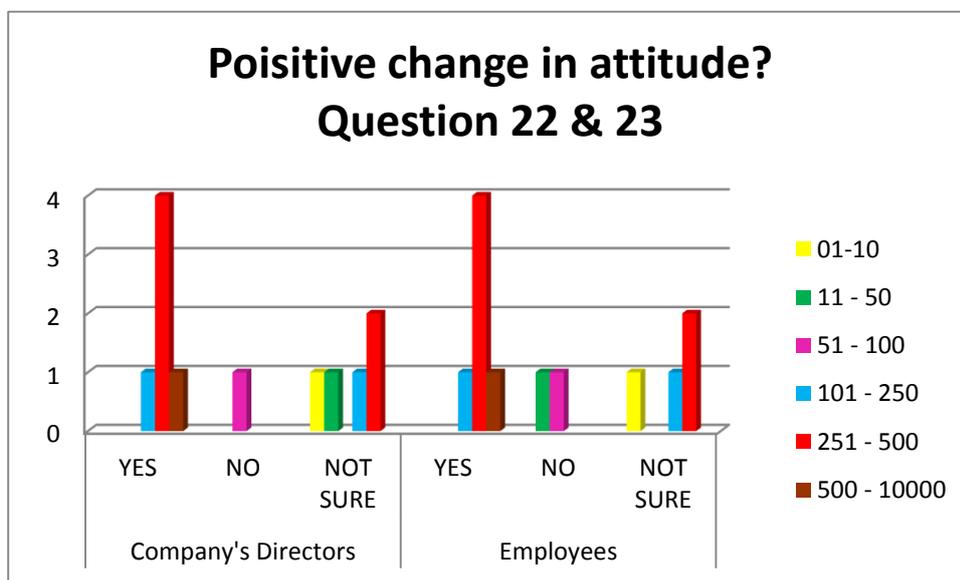
Question 20 and 21 were also asking about general knowledge relating the number of prosecutions for section 37 and the number of people who have died due to work related injuries.



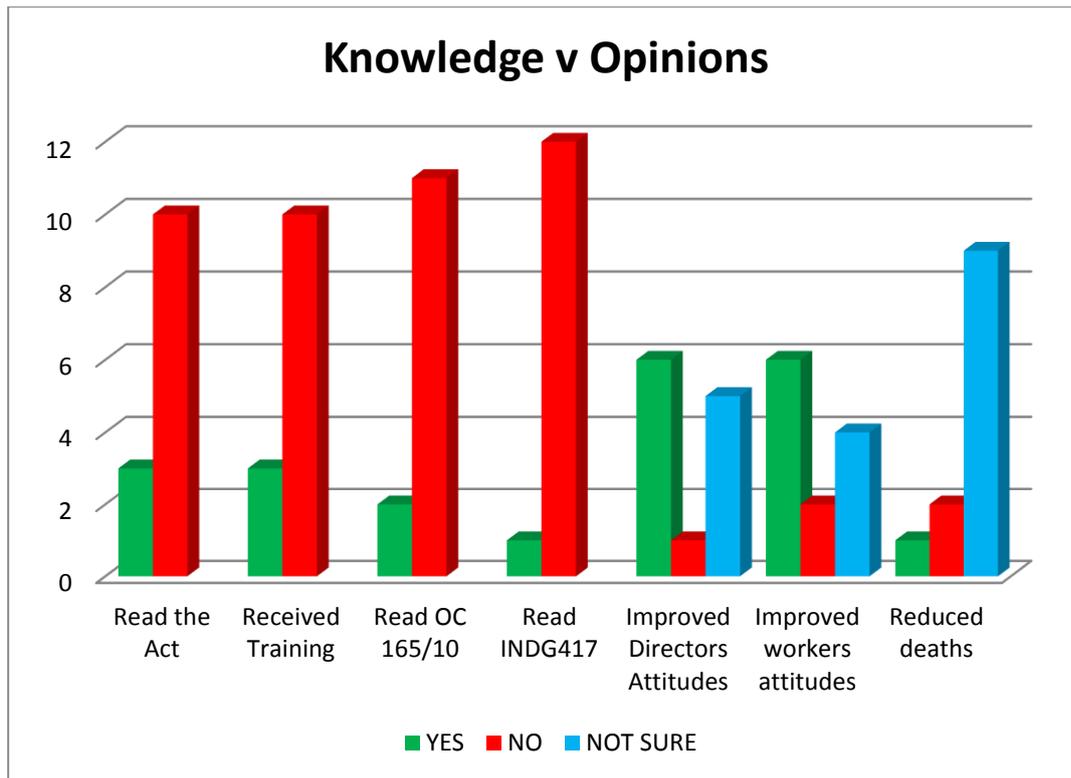
More than half the directors knew that the number of prosecutions under section 37 was on the increase but the rest did not know the answer to this question. All the “at risk” companies (except the smallest one) were aware that there were more than 150 work related deaths every year.

¹²⁰ Joanna Gray, ‘Company Directors and Ignorance of the Law’ (1996) 17 (10) pp296 - 300 Journal of Company Law

The final 2 questions were asking if they thought that the introduction of CMCHA 2007 had improved the attitude of directors/senior managers and employees towards health and safety. As this survey was only sent to Directors and senior managers one would expect the answer to question 22 to be “yes”. The business owner of a company in the “at risk” said no. He also said that it had not improved employee’s attitudes towards health and safety either.



The survey highlights the lack of knowledge of directors and senior managers of the CMCHA 2007. It also highlights their lack of understanding of the consequences of when things go wrong. The following graph is a comparison of knowledge against opinions of certain questions.



5.4 Summary

This hypothesis was divided up into 3 questions.

- Do directors and senior managers understand their responsibility and accountability?
- Do they have knowledge?
- Do they care?

A survey containing 23 questions was sent to 30 directors and senior managers and their responses, analysed. Of 14 people that responded, 2 did not finish.

This would imply that more than half had problems in this area.

In 1999 a similar survey was undertaken by C Smallman and G John¹²¹ where they had the same issues with lack of responses. They identified this problem and as having an influence on their results. Even so, all companies do not like to be seen to be underestimating the value of health and safety and were concerned with their accountability. The companies were compliant with their customers' needs but felt that "anything above was a waste"¹²². There is a possibility that this survey identified their lack of knowledge and although the survey was anonymous, they did not want to admit to it. All companies have a duty to keep up to date with legislation but small companies have to keep their heads above the water and make ends meet. To be able to pay their staff is a higher priority than reading and understanding each and every new piece of legislation that comes out.

The survey was not only about knowledge. It identified their perceptions of CMCHA 2007 and workplace deaths. Even if they had not read the Act or had any training on their responsibility and accountability, CMCHA 2007 is a topical subject and all had formed opinions

¹²¹ C Smallman and G John, 'British directors perspective on the impact of health and safety on corporate performance' (2001) 38 Safety Science p232 note 3

¹²² Ibid p235

Chapter 6

Hypothesis 4: Prosecutions for Corporate Manslaughter have not been an effective measure in reducing the number of workplace fatalities.

6.1 The origins of the concept of manslaughter

6.2 Civil cases of corporate manslaughter by gross negligence pre 2008

6.3 The identification principle

6.4 Corporate Manslaughter and Corporate Homicide Act 2007

6.5 Companies and channels of command

6.6 Companies under investigation

6.7 Summary

6.1 The origins of the concept of manslaughter.

It is possible for individuals and companies to be prosecuted for manslaughter following a workplace fatality. For there to be a conviction for (involuntary) manslaughter, the prosecution must prove that the defendant's actions constituted "gross negligence".

For the company to be convicted an individual who can be "identified as the embodiment of the company itself" must first be shown to have been guilty of

manslaughter. If this can be proved, only then can the company be convicted.

This is known as the “identification principle”

The leading case which set this principle was *Tesco Supermarkets Ltd v Nattrass*¹²³ which was charged under the Trade Descriptions Act 1968. It invoked the defence of due diligence and argued that the offence was due to the act or default of another person; in this case the branch manager. The defence held that the branch manager was not part of the “mind” of the company. The principle of identification and the clear distinction between it and vicarious liability was described by Lord Reid:

[A corporation] must act through living persons, though not always one and the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs the acts is the mind of the company. There is no question of the company being vicariously liable. He is an embodiment of the company and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company.

¹²³ ‘*Tesco Supermarkets Ltd v Nattrass* [1972]AC 153’

There have not been many companies that have been found guilty of manslaughter.

6.2 Civil cases of corporate manslaughter by gross negligence pre 2008

In November 1994 OLL Ltd ¹²⁴and its managing director, Peter Kite, were found guilty of manslaughter. 4 teenagers died during a canoe trip where the group was accompanied by 1 teacher and 2 unqualified instructors. The group was swept out to sea, no distress flares had been provided and the coastguard had not been notified of the expedition. To emphasise the tragedy, 2 other instructors had resigned the previous year due to the poor safety conditions.

In September 1996, Jackson Transport (Ossett) Ltd ¹²⁵ and its Managing Director, Alan Jackson were convicted of manslaughter after one of its employees died whilst cleaning chemical residues from a tanker. The company had not provided any training, suitable equipment or any personal protective equipment to the employee.

In August 2001 English Bros Ltd ¹²⁶ pleaded guilty to the manslaughter of the gang foreman who died in 1999 when he fell 8m from a fragile roof. The court heard

¹²⁴ 'R v OLL Ltd (unreported) (Crown Court) 1995'

¹²⁵ 'R v Jackson Transport(Ossett) Ltd [1996]'

¹²⁶ 'R v English Brothers Ltd [2001]'

that in 1997 the HSE had seen him working at another site without using the correct safety equipment but the company had done nothing about it. The director of the company Melvyn Hubbard had pleaded not guilty to the same charge and the charge was dropped against him.

In October 2002 Dennis Clothier & Sons¹²⁷ and one of its directors, Julian Clothier was found guilty of manslaughter when one of their employees was hit by a 20 tonne trailer. The connection mechanism to the trailer was badly worn and the defect was obvious to the naked eye.

In February 2003, Teglgard Hardwood (UK) Ltd ¹²⁸ and one of its directors pleaded guilty to manslaughter after a stack of timber fell on one its employees.

All of the above companies that had been charged and convicted of corporate manslaughter were small companies.

6.3 The identification principle

The difficulty is in identifying an individual from the company who is culpable. The problem compounds with the larger companies who have layers of management between the workforce and the directors who are the “controlling

¹²⁷ ‘R v Dennis Clothier & Sons Ltd [2002]’

¹²⁸ ‘R v Teglgard Hardwood (UK) Ltd [2003]’

mind” of the company. In most cases it is impossible to identify this person, even if one exists, which is a pre-requisite for manslaughter. In such cases, therefore, no criminal liability can be attributed to the company and consequently the prosecution will fail.

An excellent example of this was in July 1999, when Great Western Trains¹²⁹ was cleared of manslaughter even though 7 people died when one of its trains passed through a red signal in Southall, London and collided with an empty freight train. In a pre-trial hearing Mr Justice Scott Baker¹³⁰ ruled that the company could be prosecuted only if a person deemed to be the “controlling mind” of the company was prosecuted and no such person had been charged. The CPS then dropped the manslaughter charges against the train driver. Great Western Trains subsequently pleaded guilty to health and safety offences.

Similarly in September 1990, P&O (European) Ferries¹³¹ and 2 directors were acquitted of the manslaughter of 192 people who died when the ferry, the Herald of Free Enterprise sank off the coast of Zeebrugge in 1987.

¹²⁹ ‘R v Great Western Trains[2000] CA’

¹³⁰ ‘Attorney-General’s Reference (No 2 of 1999) A’, 2000

¹³¹ ‘R v P&O European Ferries (Dover) Limited [1991] 93 Cr App R 72’

6.4 Corporate Manslaughter and Corporate Homicide Act 2007

The Act sets out a new offence for convicting companies where there is a gross failure in the way in which its activities were managed, or organised, results in a person's death.¹³² A gross failure or gross breach means that a company's conduct must have fallen far below the level to which it could have been reasonably expected. Juries are also instructed take into consideration any health and safety breaches by the company and how serious those failures were.

Under this new approach courts will look at the management systems and practices across the whole organisation and will consider how the fatal activity was managed including any systems for managing safely and how they were carried out in practice. The other consideration must be that some of the failures must be at a senior level which refers to those people who are in control of the company and make significant decisions within the company.

The Act does not create new duties but works with the ones already owed in civil law; duty of care and criminal law; Health and Safety at Work Act 1974. It does not take away the ability for courts to prosecute for Health and Safety violations but can run concurrently. A company can be prosecuted for Corporate

¹³² CMCHA 2007 2007 Section 1

Manslaughter under the act. An individual director or directors can be prosecuted for Gross Negligence Manslaughter.

CMCHA 2007 was brought in to rectify the failings of the common law of corporate manslaughter which required the identification a single director or manager to be responsible for the failings of the company. The new Act abolished the ability to prosecute a company for Gross Negligence Manslaughter under common law and since 2008 a company can only be prosecuted under the new Act. The new Act's main features are as follows;

S.1 (1) an organisation to which this section applies is guilty of an offence if the way in which its activities are managed or organised:

- a) Causes a person's death and
- b) Amounts to a gross breach of a relevant duty of care owed by the organisation to the deceased.

Under section 1 (3) an organisation is guilty of the offence **only** if the way in which its activities are managed or organised by its senior management is a substantial element of the breach.

This now attaches liability to senior management, not just senior managers as in the previous common law offence. It takes away the "identification principle"

and puts the onus on all of the senior managers, not just one. This appears to be an excellent way of ensuring that fatalities at work go punished and sends a message to all employers that the protection of the workforce is paramount to being a desirable employer.

6.5 Companies and channels of command

In small companies, it is easy to follow to line of command; SMEs often have working directors/managers that are hands-on with the workforce. Senior management under Section 1(4) is defined as individuals who play significant roles within the organisation. Their decisions are easy to trace and they have full control of their company. Decisions that they make are usually significant and there are usually no layers of middle management that could dilute and confuse the decision making process. In small companies, it is easier to piece together the liability that is a central feature of the Act.

The four cases so far that have been successfully prosecuted under the CMCHA 2007 have all been SMEs.¹³³ The largest of the four was Lion Steel that employed

¹³³ R v Cotswold Geotechnical, R v JMV Farms, R v Lion Steel, R v J Murray & Sons

140 staff with a turnover of £10m per annum¹³⁴. To date there have been no prosecutions of larger companies.¹³⁵

6.6 Companies under investigation

Currently¹³⁶ there are 5 companies being prosecuted under CMCHA 2007.

- PS & JE Ward Ltd: A flower nursery where an employee died from an electrical shock when a metal hydraulic lift trailer he was driving made contact with a power cable. This company has less than 50 employees.¹³⁷
- MNS Mining Ltd: There are 4 counts of gross negligence manslaughter against the mine manager and 4 counts of Corporate Manslaughter against the company. This is the only case where there have been multiple deaths and this case will test the definition of “senior manager”¹³⁸

¹³⁴ Grimes, ‘The Law Society Gazette’

¹³⁵ Freedom of Information Request to CPS. 11th April 2013 Ref 3733

¹³⁶ November 2103

¹³⁷ Lockton, Mills, and Reeve, ‘Jordans Law for Business. Corporate Manslaughter update.’, May 9, 2013

¹³⁸ Dobson, ‘Directors’ liability for death or workplace injury.’

- Prince's Sporting Club Ltd: An 11 year old girl died whilst taking part in a banana boat ride. This company is also being charged under HSWA 1974 section 37.¹³⁹**(See footnotes for updates on this case).**
- Mobile Sweepers (Reading) Ltd: A member of the workforce died after being crushed by a road sweeping vehicle. The sole director a charge of Gross Negligence Manslaughter against him.
- Sterecycle (Rotherham) Ltd: An employee was killed and another seriously injured when an autoclave that he was working on blew up. The autoclave was one of two large vessels at the site that used heat and pressure in order to process household waste into material for recycling. The maintenance manager, operations manager and the operations director will be charged under section 7 HSWA 1974 and the operations director will also be charged with perverting the course of justice. In 2011 there were 36 employees working for the company. The company has subsequently gone into liquidation.

The above 5 cases are at the investigative stage. Another 50 cases are under referral to the CPS. Therefore, there have been 4 successful prosecutions to date

¹³⁹ This company was convicted of Corporate Manslaughter under the new Act on November 22nd 2013. H&S charges against the director were dropped. They were fined "every penny they had" £34,579.69 and another £100k was donated by the club's owner.

and a further 5 are under review. The Home Office¹⁴⁰ originally predicted that there would be between 10 to 14 prosecutions per year. It is perfectly clear that CMCHA 2007 has not fulfilled expectations and still has not brought even 1 large company to account. The law firm Pinset Masons, have suggested that the number of prosecutions will increase by 40%.¹⁴¹ We are still waiting to see if the business giants come under scrutiny.

Statistically the number of workplace fatalities has dropped while the same failings for both large and small companies still exist. While fatalities at large companies are being investigated, it is only the small companies that are being prosecuted for Corporate Manslaughter. If there is a failure in the health and safety management of a company and health and safety violations are being prosecuted, it follows that there should be an increase in the number of convictions for Corporate Manslaughter for large companies.

The purpose of the new law was intended to focus on all levels of management. Reference to “senior management” severely restricts this focus. The failings of middle or junior management are not incorporated into this scope regardless of how gross they might be.

¹⁴⁰ Draft Corporate Manslaughter Bill 2005

¹⁴¹ <http://www.pinsentmasons.com/en/media/press-releases/2013/new-corporate-manslaughter-cases-opened-by-cps-up-40-in-20121/> accessed 10th November 2013

Furthermore, of the four companies that have been prosecuted, only one (Cotswold Geotechnical) has come to trial. The other three plea-bargained for corporate manslaughter in exchange for the dropping of the charges against the individual directors.

Originally it was thought that the Act would increase the guilty pleas for Section 2 and Section 3 of HSWA 1974¹⁴² in return for potential Corporate Manslaughter charges being dropped. But this does not seem to be the case. The fines for HSWA 1974 violations can be unlimited when tried in the Crown Courts which have resulted in substantial fines even in the millions. Fines for Corporate Manslaughter commence at £500 000 a figure that has not as yet been reached. Instead, the converse has occurred where companies are being sacrificed to save individual directors.

6.7 Summary

The implications of a work place fatality for both a company and the victim's family are exorbitant. The negative publicity for a company when this happens can be catastrophic and the likely outcome for a small company will be closure. The ability for the CPS to prosecute companies for Corporate Manslaughter as well as Health and Safety related violations has been used by the company

¹⁴² *Tolley's health and safety at work handbook 2013.* (Tolley 2012)

directors as a bargaining point to dropping charges against them in return for pleading guilty to Corporate Manslaughter. If the company is going to close down anyway due to the fatality and the negative publicity it can be understood why directors and senior managers would “sacrifice” the companies to avoid a prison sentence. The company in any event will most probably not survive.

Larger companies with larger resources are able to protect their employees from a work place fatality. They are less at risk to a Corporate Manslaughter charge from Section 1(3) of the Act which states that the organisation is only guilty of the offence if the input of the senior management is a substantial element of the breach. It follows that there have so far been no prosecutions of large companies.

Chapter 7

Conclusion

7.1 Introduction

7.2 Hypothesis 1

7.3 Hypothesis 2

7.4 Hypothesis 3

7.5 Hypothesis 4

7.6 Final Conclusion

7.7 Recommendations

7.1 Introduction

This dissertation has attempted to explore whether or not the introduction of the Corporate Manslaughter and Corporate Homicide Act 2007 has made a significant difference to reducing the number of workplace fatalities. It explored this question by looking at four elements relating to before and after the introduction of the Act and the resultant effect. The specific research objectives have been summarised individually and a conclusion will be attempted for each one. Finally these conclusions will be analysed to answer the main research question.

7.2 Hypothesis 1:

“The Corporate Manslaughter legislation hasn’t delivered anything more than could have been achieved with existing health and safety legislation”.

The research has indicated that the existing legislation has not been sufficient for the desired result of reducing workplace deaths. Although the HSWA 1974 section 37 and the civil tort of manslaughter by gross negligence has gone some way in identifying the problem and punishing to a certain extent, it requires further legislation to bring the seriousness of workplace deaths to the employer. The introduction of CMCHA 2007 and the HSOA 2008 are seen by the employer, employees and the public to be necessary to help reduce the number of work related deaths.

7.3 Hypothesis 2

“Statistical evidence of the number of fatalities at work from before and after the introduction of the CMCHA 2007 shows very little effect of the Act.”

The number of fatalities has dropped. The statistics are very clear. It is very difficult to attribute this fall purely to the CMCHA 2007 as there are other factors that affect this reduction in numbers. The recession of 2008/9 and the resultant

increase in the number of people unemployed may have a significant effect on the numbers¹⁴³. The number of “high risk” industries that were hardest hit would also influence the number of deaths.

There has been an increase in the number of conviction under section 37. The HSOA 2008 was introduced in 2008 and the media placed considerable attention on the introduction of the CMCHA 2007 and the possible consequences for companies. All these factors combined may have had an effect on reducing the number of work related deaths.

7.4 Hypothesis 3

Directors Attitudes towards Corporate Killings are apathetic.

Most directors and senior managers understood their responsibilities and accountabilities for their employees but did not understand the implications of when things go wrong. The cost of protecting employees is seen as unproductive until a fatality changes their perceptions. This can be seen by the one company in the survey who previously had a fatality at work.

The main group who had any training and understood their accountabilities and responsibilities were the managers and senior directors of companies that

¹⁴³ Jocelyn Dorrell, ‘Record low in work deaths may be due to the recession’, June 25, 2009

employed more than 250 employees. All of those with less, had no training and had not read any literature on CMCHA 2007. This is of concern as it is the latter group who are “at risk” of being prosecuted for Corporate Manslaughter as all the 4 cases previously have all been from SMEs.

Most directors and senior managers care about their employees. All but one thought that CMCHA 2007 had not reduced workplace fatalities or was not sure. This indicates ignorance, not lack of care.

The conclusion from the data is that most directors and senior managers have a lack of knowledge and awareness of the CMCHA 2007 and the implications to their companies when there is a work related death. This was further compounded by several emails received directly from some of the company directors stating that the survey had “opened their eyes to their lack of knowledge and how it would affect them and their companies”.

7.5 Hypothesis 4

Prosecutions for Corporate Manslaughter have not been an effective measure in reducing the number of workplace fatalities.

The prosecutions of the smaller companies do not affect the activities of larger companies. The larger companies employ (by their nature) large numbers of people. If they were to be prosecuted for Corporate Manslaughter (should the CPS be able to prove their case) the CPS would have to look at several issues that they do not have to look at for smaller companies. For example; if the fines were too hefty, it would put the company out of business and many people would lose their jobs. This would not be in the public's interest, whereas in a small company the impact would be much less.

7.6 Final Conclusion

Corporate Manslaughter and Corporate Homicide Act 2007 would not have been nearly as effective if it had not have been for other legislation working alongside. The Health and Safety at Work Act 1974 (especially section 37) and the Health and Safety (Offences) Act 2008 have been instrumental in assisting CMCHA 2007 in reducing work place deaths. Each piece of legislation, on its own was not enough. The statistics from the HSE indicates the number of work related deaths have been reducing since 2008. It takes only one major disaster

similar to the Piper Alpha in 1987 that would test the effectiveness of the CMCHA 2007 and the prosecution for a large company.

From a moral point of view, it would be hoped that such disasters would never happen again. Unfortunately, as stated in the HSE, ¹⁴⁴a series of errors in health and safety and chance events lead to such disasters. These are compounded by complacency by directors and senior managers of companies. The data from the survey gave a clear indication that SMEs do not have the knowledge, expertise or resources to assist them in making the correct decisions. The short-sightedness on their part will result in the closure of their business when they are prosecuted but responsible individuals will be immune from prosecution.

Since the research on this topic commenced in September 2013, there have been 2 prosecutions for Corporate Manslaughter. Both have resulted in miniscule fines, and health and safety charges dropped against individual directors as happened in the Lion Steel case. This approach to Corporate Manslaughter indicates that the introduction of the act has been counterproductive. The Act, in conjunction with the other legislation has reduced work place fatalities, but at the cost of.....

¹⁴⁴ HSE Fatal injury Statistics 2012/2103: Full year details and technical notes

To fully appreciate the influence of the Act, a great deal more time will be required than the 5 years the Act has been in existence, for it to be seen if the Act has had the desired effect.

7.6 Recommendations

According to the Federation of Small Businesses¹⁴⁵ SMEs account for 99.9% of all private sector businesses and account for 46% of private sector employment of which 28.5% (1.4 million) are companies¹⁴⁶. This is a massive portion of the workforce who according to the study has a limited knowledge of the responsibilities and accountabilities for their employees. The government would be advised to undertake an initiative to educate the owners of these companies to encourage them to take responsibility for their workforce. Ideally this would be done through the media and government sponsorship schemes.

There would be a number of benefits. By educating the owners /managers of these companies they would then have the tools to improve safety at work. The law states that “ignorance is no defence” but it would be more beneficial to educate than prosecute for ignorance.

¹⁴⁵ ‘Small Business Statistics’, 2013

¹⁴⁶ Employ between 1 to 250 or more people. The rest are sole proprietors or partnerships comprising of self employed managers.

By educating senior managers, a message would be sent to the workforce that health and safety is important and driven from the top. There is more of a chance once the workforce is co-operating fully with management, the attitude towards health and safety would improve the culture.

It is recommended that this study be conducted again in a further 5 years. More accurate result to the 2nd, 3rd and 4th hypotheses would then be achieved, which would also give a more definite answer to the first hypothesis.

Appendix 1

Explanatory Letter

Dear

I am currently completing a LLM in Health Safety and Environmental Law through the Law School at the University of Salford. I am researching an aspect of the Corporate Manslaughter and Corporate Homicide Act 2008 (CMCHA 2007) and would be most grateful if you could assist me with this by completing the survey as soon as you are able.

In line with the university requirements, all information collected will be confidential and kept in a secure file. At any stage you may withdraw from the study.

My research is concerning directors and senior manager's views on Corporate Manslaughter and their perceptions about the Act. Therefore this study is not about whether the answers to the questions are "right" but about what is perceived to be correct.

Thank you for agreeing to answer this survey, enabling me to gain insight into your views and opinions.

Please click on the link below. The survey is "yes/no" based answers and should take you no longer than 5 minutes to complete 23 questions.

Yours faithfully

Moira Gelman

Appendix 2

Survey Questions

The purpose of this survey is to discover the opinions and perceptions of Directors and Senior Managers on the Corporate Manslaughter and Corporate Homicide Act 2007.

Please answer all the questions.

Please do not look up some of the answers. It is about what your PERCEPTIONS which will give me the information I require to complete a critical section in my dissertation.

Thank you

1. Job title

Business Owner
CEO
Director
Senior Manager

2. Company sector.

Automotive
Civil Service
Construction
Education
Engineering
Finance
Hospitality
I.T
Legal
Retail Food
Retail Other
Utilities
Waste Management

3. Number of employees

1 – 10
11 – 50
51 -100
101 -250
251 – 500
500+

4. I have read the Corporate Manslaughter and Corporate Homicide Act 2007.

Yes
No

5. I have received training on my accountability and responsibility under Corporate Manslaughter and Corporate Homicide Act 2007

Yes
No

6. I have read the HSE guidance "OC 165/10" on work related deaths.

Yes
No

7. I have read the HSG guidance document "INDG417" published jointly by HSE and Institute of Directors.

Yes
No

8. I am/have worked for a company where there has been a work related death.

Yes
No

9. All work related deaths can be prevented.

Yes
No

10. Work related deaths should be prevented at any cost to the company.

Yes
No

11. Fines for Corporate Manslaughter and Corporate Homicide are capped.

Yes
No

12. As in the Lion Steel Case, sacrificing a company in exchange for dropping manslaughter charges against individual Directors and Senior Managers is acceptable.

Yes
No

13. The introduction of Corporate Manslaughter and Corporate Homicide Act 2007 has been a waste of time.

Yes
No

14. Corporate Manslaughter and Corporate Homicide Act 2007 prosecutes Directors and Senior Managers for work related deaths.

Yes
No
Not Sure

15. Corporate Manslaughter and Corporate Homicide Act 2007 was introduced into UK law to punish companies for the failings of Directors and Senior Managers

Yes
No
Not Sure

16. Corporate Manslaughter and Corporate Homicide Act 2007 has reduced the number of work related deaths.

Yes
No
Not Sure

17. Both individuals and companies can be prosecuted for gross negligence manslaughter

Yes
No
Not Sure

18. Section 37 of the Health and Safety at Work Act prosecutes Directors and Senior Managers for work related deaths.

Yes
No
Not Sure

19. Section 37 of the Health and Safety at Work Act prosecutes companies for work related deaths.

Yes
No
Not Sure

20. In the last 10 years, prosecutions for breaches under section 37 of the Health and Safety at Work Act 1974 have increased.

Yes
No
Not Sure

21. On average there are more than 150 work related deaths every year. (Not including Road traffic accidents or asbestos related deaths).

Yes
No
Not Sure

22. The introduction of Corporate Manslaughter Act and Corporate Homicide Act 2007 has made a positive difference to the way in which Health and Safety is viewed by the company's Directors and Senior Managers.

Yes
No
Not Sure

23. The introduction of Corporate Manslaughter and Corporate Homicide Act 2007 has contributed towards a positive attitude towards Health and Safety by your company's employees.

Yes
No
Not Sure

Appendix 3

Freedom of Information Health and Safety at Work etc Act 1974: Section 37 Prosecutions Data for Years 1999/00 to 2010/11

	Question	Info Available	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	07/08	08/09	09/10	10/11
1	How many company directors were prosecuted under the Health and Safety at Work etc Act 1974 (HSWA 1974) in each of the following years: 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009 and 2010.	Y	See 3 Below											
2	How many directors were investigated for offences in their individual capacity during these years?	N	x	x	x	x	x	x	x	x	x	x	x	x
3	How many directors were prosecuted under Section 37 HSWA 1974 during these years?	Y	28	24	20	20	17	12	10	23	13	36	36	(43)
4	How many of those directors were convicted?	Y	20	22	14	9	13	6	5	14	9	13	27	(35)
5	Of those that were convicted, how many pleaded guilty?	Y	(13)	(16)	(15)	(10)	(13)	(5)	(5)	(18)	(12)	(17)	(27)	(33)
6	How many of those directors were prosecuted at the same time as the company of which they were directors?	N	x	x	x	x	x	x	x	x	x	x	x	x

7	What percentage of prosecuted directors were the sole directors of the company?	N	x	x	x	x	x	x	x	x	x	x	x	x
8	Of the directors prosecuted, how many of them were prosecuted as a result of an investigation which followed a fatal accident?	Y	(4)	(3)	(7)	(7)	(6)	(1)	(3)	(7)	(8)	(10)	13	7
9a	How many of the directors prosecuted were prosecuted for offences that resulted from an investigation where there had not been 1) a fatal accident	Y	(6)	(1)	(4)	(6)	(3)	(0)	(4)	(2)	(2)	(10)	12	15
9b	2) an accident at all	Y	(8)	(16)	(9)	(6)	(5)	(8)	(4)	(12)	(5)	(16)	12	21
10	Can the HSE provide a breakdown of the penalties imposed on the directors once convicted?	Y	Range £750 - 7000	Range £150- 5000	Range £750 – 18,150	Range £1000 - 7000	Range £1000 – 10,000	Range £200 - 7500	Range £1500 – 99,900	Range £1000 – 90,000	Range £2500 – 10,000	Range £800 – 20,000	Range £2,000 – 10,000	Range £1500 – 30,000
11	What percentage / number of convicted directors received prison sentences? Can the HSE break these down into how long the prison sentences were?	Y	0	0	0	0	0	0	0	1 (MANS) & s37 2 Year Suspended	1 (MANS) & s37 Prison 2.5 years 2 Years MANS + 6 months perjury	3 (MANS) & s37 4.5 months 12 months 12 months Plus 2 Directors imprisoned for perjury	0	0

												15 months – 3 years		
12	If convicted following prosecution, how many of those directors were subject to an application under the Directors Disqualification Act 1985?	Y	x	x	x	x	x	x	x	x	x	3	0	3
13	Of those directors that were subject to such an application, how many of those directors were actually disqualified? Can the HSE break down this information to show how long each of those directors were disqualified for?	N	x	x	x	x	x	x	x	x	x	4 Years 3 Years 5 Years	0	4 Years 5 Years 5 Years

Figures are for Section 37 HSWA 1974 prosecutions are for England, Wales and Scotland

It has not been possible to provide data to those questions where the box has been marked with an 'x'

The data provided has been produced from HSE's data base and whilst every effort has been made, HSE cannot guarantee the data is 100 % accurate (see clarification below).

Questions 3, 4, 5, 8, 9a and 9b; Data in brackets has not been validated and therefore may not be 100% accurate. The figures may include duplications, but have also been affected by changes to how S 37 HSWA 1974 breaches have been recorded on HSE's database over the sample period.

Question 11. Almost all prison sentences were in relation to associated convictions for Manslaughter ranging from a 2 year suspended sentence, and prison sentences ranging from 4 1/2 months to 2 years. One case resulted in convictions for perjury, with 2 Directors receiving prison sentences of 15 months and 3 years. One individual was given a 6 months suspended sentence in relation to Health and Safety offences only. It has only been possible to provide this information due to the low number of cases that have resulted in a Director being imprisoned.

Question 13: It has only been possible to provide data to the answer to question 13 from 2008/09 due to changes in how Director Disqualification has been recorded. It has been possible to give details of the length of the Directors disqualification periods due to the low number of cases.

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