

## Operations and Maintenance



### UK Debates Proposed Law

# Corporate Manslaughter

By Ewen Rose

The draft Corporate Manslaughter Bill in the United Kingdom, which was announced in the Queen's speech in November, is a lawyers' charter to target anyone connected with construction projects in the event of a life-threatening accident. This was the view of many industry professionals who attended a Chartered Institution of Building Services Engineers (CIBSE)/ASHRAE group debate on the issue following the HAC Graduate of the Year awards in London.

Consulting engineers, contractors and even contributors to technical design guides could be swept up in any court action taken against the owner or operator of a building deemed to have damaged the health of an occupant or site worker.

A number of engineers observed afterwards that they were hoping for a Conservative Party victory at the UK's general election—likely to take place in May; as that now seems the only way likely to stop the proposed bill. However, others stated that the bill was needed to end a series of “unnecessary and eminently avoidable” accidents on building sites and infections from buildings with poorly designed and maintained services.

The present government has been promising to reform the law governing the area of corporate responsibility and to create the new criminal offense of “corporate killing” since it came to power in 1997. The Centre for Corporate Accountability, a public safety charity, has accused the Labour Party of breaching its manifesto commitment by failing to bring legislation about during this parliamentary session.

Unlimited fines, disqualification of directors, freezing company assets, and expensive compulsory remedial works are just some of the penalties facing clients and their specialist suppliers if the bill becomes law, according to debaters.

#### Uncharted Territory

Anyone deemed to have given advice on the design of a project could fall within the compass of any prosecution—possibly including contributors to technical design guides and even university lecturers, it was suggested.

The debate, which was chaired by Heating and Ventilating Contractors' Association (HVCA) legal expert Professor Rudi Klein, included the statement that the bill would take the industry into the uncharted territory of criminal law.

“This is a whole new ball game. We are not talking about just suing people here in civil actions, but criminal prosecutions leading to serious penalties including imprisonment,” said Klein.

However, former ASHRAE President Richard Rooley, FREng, said the bill was long overdue.

“We need this bill because we kill people,” he said. “We need to get our minds around what is expected of us because too often, we allow the blame for problems to be pinned back on the industry because we have not done our jobs properly. We were supposed to address the safety issue voluntarily, but the figures show that we have failed.”

Rooley said there was a need for project teams to establish full audit trails so areas of responsibility can be properly tracked. “We need to be able to work out

exactly who has done what on every project,” he said. “The problem is that the industry is so diverse, but it is yet another reason why we need to work in more effective, integrated teams.”

#### Negligence

Klein pointed out that the law was becoming much clearer on areas where organizations could be accused of “gross negligence,” and where it can be proved that it breached its duty of care to an injured person.

“This applies to buildings where the owner can be shown to have demonstrated conduct falling far below what would be expected of a responsible organization or company,” said Klein. “Cost will be absolutely no defense. If a client has failed to take the right steps to safeguard the occupants of his building, then he could be judged to be criminally negligent.”

Klein also suggested that if a building services designer had brought a safety issue to the attention of the client, but the client had refused to act, then the consultant should resign from the project.

GUEST COLUMN

“We should be very worried about this,” said Rooley. “We are forever going into buildings that are simply not right. Maintenance is not done because of incompetence and management inaction, but this bill will make those problems bounce back at us in the design community.”

Tony Thomas, head of education and training at the HVCA, added that you were more likely to die on a construction site than fighting in Iraq, and that corporate boardrooms should face a similar amount of criticism for presiding over maimings and deaths as Prime Minister Tony Blair for taking us to war.

CIBSE President Graham Manly added that this was the inevitable consequence of a more litigious society. “Clients will have to be more careful about who procures their work as this is evidence of a management failure. Our designs do not cause injuries or deaths—it is how those designs work in practice. Our clients will be charged with a duty of care in operation and will be expected to ensure that the people they subcontract to are properly qualified and are competent to do the job.”

Klein pointed out that designers already had responsibility under construction (design and management) regulations to minimize risks through their designs. He added that insurance

companies are monitoring the situation closely and already spiraling premiums might quadruple in price when the bill comes into force.

Ant Wilson of FaberMaunsell said that services designers would have to work more closely with the people who are left to run the buildings.

“We have to get the safety issue further up the agenda,” he told the meeting. “Often the FM (facility manager) has little say in the design of the plantroom and services—he is just left to get on and work with what he is given. In many cases, the architect should be taken to task for restricting access and limiting what can be done with the services plant.”

The whole business now goes into limbo while we await the general election. It is understood that should Labour return to power, a draft bill will go before parliament early in the term assuming the cabinet can iron out a number of contentious issues—not least whether the legislation will apply to Crown bodies as well as corporate organizations.

*Ewen Rose is a freelance journalist and editor of the UK building services engineering magazine, HAC Journal. ●*

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