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Victoria Roper on the UK Corporate Manslaughter and Homicide Law

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It has been fifteen years since the United Kingdom passed its Corporate Manslaughter and Corporate Homicide Act.



Victoria Roper

In 2007, the year the law was passed, 247 workers died on the job in the UK – a worker death rate of 0.84 per 100,000.

This past year, 123 workers died – a rate of 0.38 per 100,000 workers.

Over those fifteen years since the law was passed, the worker death rate has been cut in half.

Is the law deterring corporate wrongdoing in the workplace?

“Can we say with absolute certainty that’s to do with corporate manslaughter legislation being introduced? I think that is a difficult assertion to make,” Northumbria Law School Professor Victoria Roper told *Corporate Crime Reporter* in an interview earlier last month. “But I do think that corporate manslaughter complements well our existing health and safety

regime.”

“There has been a lot of publicity about corporate manslaughter because of the introduction of the act and the prosecutions. And I still have contacts in practice who have corporate clients. And generally, companies are fearful of the stigma that comes with the possibility of a corporate manslaughter prosecution in a way that they might not necessarily be by a health and safety prosecution alone.”

“It does complement our existing health and safety system, but it is difficult to say with absolute certainty that it has contributed to that downward positive trend and a reduction in fatalities.”

How did the UK law come about?

“In the UK, it’s had a long gestation of about 13 years.”

“What we saw in the 1980s and 1990s was a series of quite high profile disasters involving loss of lives. We had transport disasters, such as trains crashing and ferries sinking, and then dissatisfaction when the then law was incapable of holding any corporations to account. This despite frequent inquiries proving widespread negligence within the corporation itself.”

“The impetus for change came from a public dissatisfaction about these disaster cases. And there was also a view that the rate of work-related deaths was too high, and that a lot of incidents which have previously been labeled as accidents were in fact preventable, and the number should go down.”

“In fact, our legislation has been used for work related fatalities, really not for the kind of disasters involving widespread loss of life. But the actual real public push to introduce a new piece of legislation was because of those disasters in the UK.”

Can the law be used for disasters that kill many people?

“It can, at least in theory. To date, we haven’t had any disaster cases successfully being prosecuted. There was a case in Wales which was a mine collapse that resulted in the deaths of four miners. That case resulted in acquittal on the facts and that was to do with not being able to prove the gross negligence and causation.”

“But there has been a suggestion that in the Grenfell tower disaster case, which was a fire which killed 72 people, that there might be grounds for bringing a prosecution in relation to that case. We await further information about that, as the investigation is ongoing.”

“And certainly the act is wide enough to reply to disasters. And in practice, many more people tend to lose their lives through deaths at work than through disaster cases. And I’m pleased to say that the UK has experienced less of these disaster type cases more recently. And that’s hopefully due to an improved health and safety environment.”

Is there a unit within the prosecutorial office that focuses exclusively on this law?

“Yes, within our Crown Prosecution Service, which is the public body responsible for bringing prosecutions, there is a unit which deals specifically with corporate manslaughter specifically.”

“It is still a relatively unusual crime compared to some types of offenses that are very commonly brought and therefore there is a specialist team for manslaughter.”

“However, the initial investigative work is done by police. And the police that will investigate will be the local police service and it may be that they are not always familiar, particularly with corporate manslaughter. And they may need to liaise with other agencies such as the health and safety executive, to get some advice in relation to that.”

Large corporations fear reputational damage. Being labeled as a killer or being convicted of manslaughter is something corporations want to avoid at all costs.

Do you find that to be the case – that reputational damage is central to this?

“I do think reputation is important,” Roper says. “I did a follow up with the companies that had been convicted and actually the majority of them subsequently went out of business within a reasonable amount of time. It’s difficult to say that that was only to do with the corporate manslaughter conviction in that many of them may have been approaching insolvency anyway. But certainly the kind of publicity that a corporate manslaughter prosecution or conviction attracts is not the kind of publicity companies want.”

“And certainly in the UK there was a lot of talk when the act was introduced that the corporations feared the publicity as much as the fines. As well as a fine it is possible in a corporate manslaughter case for the judge to order a publicity order. And that means that the facts of the conviction and death have to be publicized in the way specified.”

“That could be a newspaper article or it could be press or something on the company’s website. That is an additional sanction which is available and has been described as one of the more innovative aspects of the corporate manslaughter legislation.”

The overwhelming number of companies charged under the law are smaller companies, is that accurate?

“Yes, I think that is accurate to say. And it is something that has been criticized by a number of commentators in the UK. But I do think there are a number of reasons for that. The act in the UK is reserved for the very worst cases of negligence, not just where a company’s been negligent, but where the conduct has fallen far below what could have reasonably been expected in the circumstances. And actually, it tends to be smaller micro companies, ones under extreme pressure financially, maybe approaching insolvency, that tend to display the very worst failings and health and safety resulting in a death.”

“Statistically, I think smaller companies are more likely to be involved in a death or a manslaughter type case. And that is one of the reasons is that larger companies tend to be able to better resource health and

safety equipment and training and specialist advisors.”

“When I looked at the profile of failed cases, there were more large and larger companies than I expected actually. I think they tend to be better at persuading, probably because they have legal advice, prosecutors willing to settle for a lesser charge as well, in the same way that that’s, you know, something that not just in corporate manslaughter cases, but being able to afford better representation may lead to more favorable outcomes for the corporate defendants generally.”

Have there been any high profile corporations who have been charged?

“There hasn’t been any kind of multinational corporation charged under the law. They are more likely to be able to provide evidence that may suggest there has not been a gross breach so that they haven’t fallen so far below the standard expected.”

“And one of the higher profile cases was an NHS Trust case. It was a hospital. It was charged with manslaughter in the death of a cesarean section patient. That was one of the more high profile prosecutions that’s been brought under the act. And that case actually resulted in acquittal. The judge held that gross negligence hadn’t been proven.”

In the United States about ten years ago British Petroleum pled guilty to felony manslaughter in connection with the Deepwater Horizon incident that resulted in the deaths of a number of workers. It does happen here in the United States, but it’s rare.

Have you tracked at all any efforts in the United States to pass such a federal manslaughter law here?

“In the United States? I haven’t. I do genuinely try and keep up to date with if there are legislative efforts in countries to introduce specific new legislation. And I’m not aware of any but at the same time, I haven’t set out to do particular research in the United States. It may be that things are going on that I’m not aware of.”

What about the Grenfell Tower fire case? Has there any reporting in the UK on whether there is an investigation into whether the owners of the building violated this law?

“Yes, there’s been a police investigation ongoing now for over five years, much to the frustration of the survivors and family members.”

“Grenfell is a strange one in that very shortly after the fire itself, in the immediate weeks after the fire, the police came out and said like they thought there were reasonable grounds for suggesting that both the local public authority that owned the building, and the tenant management organization that was involved in that the management of the building, were potentially guilty of corporate manslaughter.”

“I did think that was quite unusual for them to come out so early in what was obviously going to be an extremely complex investigation. And I think the survivors and family members have found it frustrating that no charging decisions have been made yet. If a charge was to be brought in relation to it, it would be the most complex corporate manslaughter prosecution ever to have been brought.”

“There were lots of different companies and actors involved in the refurbishment of the building. And there was a large number of people who died on the night as well. We will have to see what the strength of the evidence is.”

“The challenge with Grenfell is that it appears from the initial inquiry, which is separate from the police investigation, that there was negligence on the part of various organizations. I think the challenge is proving that the tenant management organization or the local authority specifically, were grossly negligent.”

“You can’t kind of add together the negligence of different corporations to find the gross negligence element. You need that particular organization to be grossly negligent and also you need to prove fault on behalf of senior management – that is a requirement under the act as well. And you have to prove causation and overcome the other hurdles.”

“It’s certainly something that has been written about a lot and has appeared in the press. I’m not certain that prosecutions will be brought or if they are that, that convictions will be obtained. But it’s very difficult to know without knowing the strength of the evidence that the police have.”

I see where you recently went to South Korea to speak with lawmakers there about the possibility of passing a similar law there in Korea. How did that trip come about and what was the result?

“In South Korea, unfortunately, they have a relatively high rate of work-related death. It is very significantly higher than in the UK.”

“It started a few years ago. There was a high profile worker death in South Korea where a factory worker was found dead. Unfortunately, he died after being pulled into the machinery.”

“And it was his family that eventually went to the factory and found him. And that has spurred demands for change and demands for improvement in health and safety in Korea.”

“They’ve passed a number of pieces of legislation. And most recently, they introduced the Serious Accident Punishment Act, which is designed to try to tackle this issue within Korea. And that’s proved to be quite controversial, because in addition to imposing liability on a company, individuals and managers within the company can face prosecution.”

“For that reason, there’s been quite a lot of resistance from industry. I was invited to go over to discuss it. It has been a very controversial act. It is obviously strongly supported by people representing workers rights and trade unions, but there has been a lot of real opposition.”

“I’m not an expert in South Korean health and safety law. But it certainly seems to me that South Korea is not as far advanced yet on its journey towards good health and safety practice. There is perhaps some resistance within corporations to accept responsibility for health and safety.”

“I think they have a lot of misuse of contracting out of liability for riskier work. They’re definitely making steps in the right direction. But I think health and safety law probably needs to be looked at as well because introducing penalties and things like corporate manslaughter really normally complements a well developed health and safety system, a system that’s functioning well.”

“I went over to South Korea to speak about the UK experience, which is slightly different from what they’ve done in Korea, but with the view that there might be some lessons to learn from our experience.”

[For the complete q/a format Interview with Victoria Roper, 36 Corporate Crime Reporter 33(11), August 29, 2022, [print edition only](#).]

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