

# Sentencing Council Manslaughter Guideline Consultation Response by Thompsons Solicitors October 2017

Thompsons is a UK-wide law firm with a network of offices across the UK, including the separate legal jurisdictions of Scotland and Northern Ireland. As the largest trade union and personal injury law firm in the UK, we specialise in personal injury and employment law for trade union members, their families and private clients. At any one time we will, as a firm, be handling over 50,000 cases.

We also provide criminal law services and professional misconduct advice to members of the public and trade unions for work-related matters. We have experience of representing professionals facing disciplinary proceedings before bodies such as the Nursing and Midwifery Council, the Health and Care Professions Council and the General Teaching Council.

In the last financial year to April 2017 our criminal law and professional misconduct unit ran a total of 1,932 cases for our clients. 94% of those cases were successful – our clients either had No Further Action taken against them or there was a finding of Not Guilty at trial.

The firm participates regularly in government consultations on a wide range of issues relevant to our trade union and other clients.

## **Background**

Thompsons worked with the then Home Office Minister in the run up to the Corporate Manslaughter and Corporate Homicide Act 2007 being introduced in the UK.

We have seen a copy of the TUC response and endorse the comments that they make within it.

We don't propose to answer all the questions but rather to highlight three areas of concern to us from our practice and experience:

- the inconsistency of sentencing;
- the junior level of employee being prosecuted for these offences and;
- the practice of prosecuting for Gross Negligence Manslaughter (GNM) but pleading Unlawful Act Manslaughter (UAM) in the alternative.

Since its introduction Thompsons has defended at least ten gross negligence manslaughter cases brought against employees who were also union members. Of those, only two have been convicted – one was a nurse prosecuted for giving the wrong blood group to a patient. After trial they were given an 18 month sentence and suspended for two years. The other was a train guard who was prosecuted for giving the signal to the driver to move the train out of a station while a passenger was not clear. On conviction they were given a five year immediate custodial sentence.

These two cases neatly illustrate two of our main concerns – the inconsistency of sentencing and the junior level of employee being prosecuted for these offences.

## **Inconsistency of sentencing**

Prosecutions for Gross Negligence Manslaughter are infrequent and each case turns on the specific facts. This has resulted in a wide variance in sentences imposed in such cases. We therefore welcome the proposed consistent sentencing guidelines as they provide clear guidance to the sentencing courts.

## **The junior level of employee being prosecuted for these offences**

The level at which the prosecutions are being brought reflects on the inadequacy of the legislation, which we accept is beyond the remit of The Sentencing Council and this Consultation. However, given that it is all too often workers on the frontline facing prosecutions for the systemic failings of employers, who cut corners or fail in their duties, we believe that on sentencing (and therefore within the Sentencing Council's remit) consideration should be given to mitigating factors which will reduce sentences imposed on employees who find themselves in this situation. The list of factors that we suggest should be considered on sentencing should be at least (but not limited to):

- a lack of training/failure to refresh training;
- pressures to meet deadlines;
- any inadequate or missing equipment;
- a lack of any adequate supervision;
- any poor practice known to but not adequately addressed by the employer;
- any staff shortages that impact on the delivery or safety of the task[s] being undertaken;
- any excessive working hours;
- any employers failing to address concerns raised with them before the incident in the subject of the prosecution; and
- any inadequate or unclear management instruction.

## **The practice of prosecuting for Gross Negligence Manslaughter (GNM) but pleading Unlawful Act Manslaughter (UAM) in the alternative**

Our experience is that the Crown Prosecution Service (CPS) chooses to pursue prosecutions as GNM or UAM in the alternative in certain prosecutions. A recent example was a case involving custody detention staff restraining a detainee. The charge was for GNM but in the alternative UAM (assault by the application of unlawful force during the restraint). Another was a train guard charged with GNM for giving the signal to the driver to start the train whilst the passenger was not clear. They were also charged with an alternative of UAM (endangering the safety of a passenger on the railway).

We know why the CPS chooses to plead in the alternative – because UAM is easier to establish than GNM - but they were not envisaged as alternatives and it is a distortion of the intention of the legislation for them to be so. We would suggest an issue that The Sentencing Council could recommend from this Consultation is that prosecutions should be for one breach of the Act and not pleaded as alternatives.

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