

Getting away with murder

Every week an average of five workers are killed at work. Almost all of these are a result of management failures, and all of them are avoidable. Frances O Grady, deputy general secretary of the TUC, says bosses guilty of safety crimes must face justice.

It is high time something was done to bring to account the people who cause workplace deaths. We need to create a new sense of moral responsibility among employers, a sense of accountability for their actions and indeed their inaction, when the result is the death of someone they have employed.

That is why the TUC wants a new law of corporate manslaughter to emphasise society's shock at workplace deaths and disapproval of those who allow them to happen. Too many people have died at work for us to forget. Some quickly because of a fall from height, or being crushed by machinery. Others slowly through asbestosis or silicosis.

This isn't about revenge, because everyone who has lost someone dear knows they can't be brought back by vengeance. It's about making sure that the killing is brought to an end. It is always tragic when someone is killed at work, but it is doubly tragic if the lessons aren't learnt, and if no one is held to account.

Too often the guilty party escapes with a paltry fine. Obviously, not all workplace deaths are the fault of the employer – but, where a

worker has died and the Health and Safety Executive has successfully prosecuted the employer for breaking laws, it is wrong for the employer to escape with a small fine. It suggests that allowing one of your workers to die is no more important than a parking fine or a shoplifting offence.

Offences offensive

The TUC has been advocating a law against corporate killing for several years (*Hazards* 77). We submitted evidence to the Law Commission review whose findings were published in 1996 (*Hazards* 54) and which resulted in a draft Bill to implement a new law on corporate manslaughter. We supported the Bill moved in the House of Commons by Andrew Dismore MP.

However, we believe that a single penalty will not be an effective deterrent to employers or the institutions they run. In our original submission to the Law Commission, we argued that fines often penalised the workforce, not

the company, and stressed the need for custodial remedies (*Hazards* 49).

We believe that a range of innovative sentencing approaches should be considered to cut the death toll at work from its current unacceptable level of five a week. These include corporate probation, more innovative financial penalties, and imprisonment.

We applaud the sentiments of the Lord Chancellor, who has said the courts should treat people injured at work as if they have been the victim of a violent physical assault. We believe that the same principle holds true for people killed at work.

The TUC would rather see no-one convicted of corporate killing, and no-one imprisoned as a result, because we would rather no-one was killed at work.

But until deaths at work are stopped, there should be an appropriate sanction for those who allow the deaths to go on happening.

Boardroom target

We also want to avoid scapegoating of frontline employees or middle managers. We consider that workplace fatalities are avoidable and are usually caused by fundamental health and safety shortcomings throughout the organisation which can properly be laid at the door of the managing director, board of directors, the chief executive.

It is fundamental that criminal liability for management applies not only to the corporate body or undertaking concerned, but also to owners, directors and very senior personnel who are ultimately responsible for the management failure.

However, the Home Secretary announced in 2003 that his proposals on corporate killing will cover companies, but not individual directors (*Hazards* 83). Yet it is not faceless companies that are responsible for killing workers, it is people.

It is important that the new laws apply to everyone,



Photo: Mick Holder

including the civil service. We hope the government is not going to hide behind Crown Immunity.

There is no logical, legal or moral case for leaving Crown bodies exempt from prosecution where they have caused workplace fatalities.

The government continues to say that it supports legislation on corporate killing. So where is it? We know proposals have been drafted, but they are yet to see the light of day. It is seven years since they were first proposed by



Photo: Mick Holder

this government. Is there some lobby group – more powerful than that of the dead and wounded of working Britain – delaying them?

This is one of the last promises of Labour's manifesto to be implemented and we are

running out of time. How much longer are we going to have to wait?

How much longer are the families of those who die at work are going to have to wait to get justice?

www.hazards.org/deadlybusiness

EVERYDAY TRAGEDIES, EVERY DAY INJUSTICE

Maureen O'Sullivan's father, Patrick, died on the Wembley Stadium construction site on 15 January this year. Maureen, pictured above with her family and campaigners, told a 600-strong Workers' Memorial Day rally and stoppage at the site (photo, page 4): "How many men have to die? How many fathers, sons, brothers must be maimed or killed before governments say enough is enough?"

George Brumwell, UCATT general secretary, told the 28 April rally: "Thirty years, 3,500 deaths and not one employer sentenced. We still do not have a law on corporate killing. The continued delay is inexcusable."

And Jack Dromey, TGWU deputy general secretary, said: "The current law, in effect, allows unscrupulous or disinterested directors to get away with murder. We believe that hearing the clunk of the cell doors behind the first jailed director will result in immediate changes to safety practices on sites."

PRESSURE GROWS FOR INQUIRY INTO BLAST WATCHDOG

The official safety watchdog investigating the 11 May disaster which killed nine and injured 40 workers at ICL Plastics plc in Maryhill, Glasgow, is facing demands that its own role be investigated in a public inquiry.

Critics say the Health and Safety Executive (HSE), which is investigating with the police and the procurator fiscal, should face scrutiny after allegations that its own behaviour may have allowed dangerous conditions to persist at the plant. HSE visited ICL's Stockline plant in Maryhill at least five times prior to the explosion. But ICL was given a clean bill of health to operate at the time of the tragedy.

Last year, HSE was called to the premises by concerned staff, but did not carry out a full inspection – but did reveal the identity of whistleblowers to company bosses. Workers say the company received prior warning of HSE visits.

Professor Andrew Watterson of Stirling University said: "You can't have the HSE policing itself if there is a question about regulation and enforcement." And Paul McBride QC, vice-chair of the Criminal Bar Association, said: "It is not appropriate for the HSE to be involved in making recommendations to the Crown about prosecutions if there are serious questions about their own inspection regime and conduct."

Name them, shame them, ban them, jail them

TUC says the government should be creative with its penalties for workplace safety crimes.

Probation: Put the company on "probation" so that further violations of criminal law can be tracked and dealt with more harshly than an isolated case. Inspectors or other prosecutors can already refer to the criminal record of a company after judgment has been entered. Probation would enable inspectors to do more to require future compliance with the law.

Negative advertising: HSE is already "naming and shaming" companies convicted of safety offences, as well as using positive publicity for those with a good record. So why not "negative advertising", requiring those convicted of particularly serious offences to pay for prominent adverts advising the public and, crucially, their peers and customers, of their crimes?

Equity stakeholdings: Publicly quoted companies could be punished for safety offences by awarding the government an equity stake in the form of shares. This penalises the company in a way that hardly affects employees and could give the regulatory authorities the ability to exert influence by intervening at AGMs or, in extreme circumstances, replacing certain directors. If the company really does improve its safety performance, the government could sell the shares, often recouping an amount larger than a possible safety fine.

Disqualification: In many cases of corporate manslaughter the company is a private firm and remedies such as stakeholding or fines would have limited effect. Disqualifying directors who breach safety laws, possible under current legislation, should become the rule where a worker dies, rather than an exception. Those found guilty of recklessly endangering the lives of their employees should not be allowed to become repeat offenders.

Imprisonment: Employers must know that if their actions or inaction leads to the death of someone in their employment, they will be treated by the courts as if they have committed any other form of manslaughter.