



**In this issue:**

**Corporate Manslaughter— Not So Fine** 1

**What If Your Tenant Can't Pay?** 1

**When An Employer Wants A Change** 2

**So You Think Your Home Is Your Castle?** 2

**The Neath Front Row** 2

## Corporate Manslaughter—Not So Fine

Since the Corporate Manslaughter and Corporate Homicide Act came into force in 2008, companies and similar organisations face the risk of being found guilty of corporate manslaughter when serious management failings lead to a gross breach of the duty of care. Prosecutions will now be brought against the corporate body and not the individual. With the first case under the Act currently before the courts, it is still unclear how effective the law will be in holding companies to account. However, over recent weeks, the level of sanction that will follow from a finding of guilt has been clarified. In February, the Sentencing Guidelines Council published its guidance on corporate manslaughter in Health and Safety offences causing death.

The Council advised that companies found guilty of corporate manslaughter should

face fines which “may be millions of pounds and should seldom be below £500,000.” The Council did not clarify its approach to smaller companies e.g. with turnover of £100,000. Clearly, such a large fine would have the effect of putting the company out of business. The Council indicated that this would have a bearing on any sentence imposed but suggested that this may actually be an acceptable consequence of an offence of this nature.

The Council also stated that judges will have the power to force companies convicted of corporate manslaughter to publicise their conviction. The courts will now be able to hand out publicity orders to companies and public bodies where gross corporate health and safety failure causes death. The implementation of such an order will be at the judge’s discretion and he

will decide whether the order is to be publicised in a newspaper or even on the company’s own website. The order could also require those convicted to publicise the details of their case, the fine imposed and any remedial work they have been ordered to undertake. Clearly the financial sanction could be a huge burden to a company found guilty of the offence but forcing corporations and organisations to publicise their convictions could also prove a powerful deterrent. Companies should think hard and long about their health and safety responsibilities in the knowledge that their reputation and financial status is at risk.

In publishing this guidance, the Sentencing Guidelines Council has sent a clear message to companies about their responsibilities and the need to ensure that they comply with all health and safety regulations.

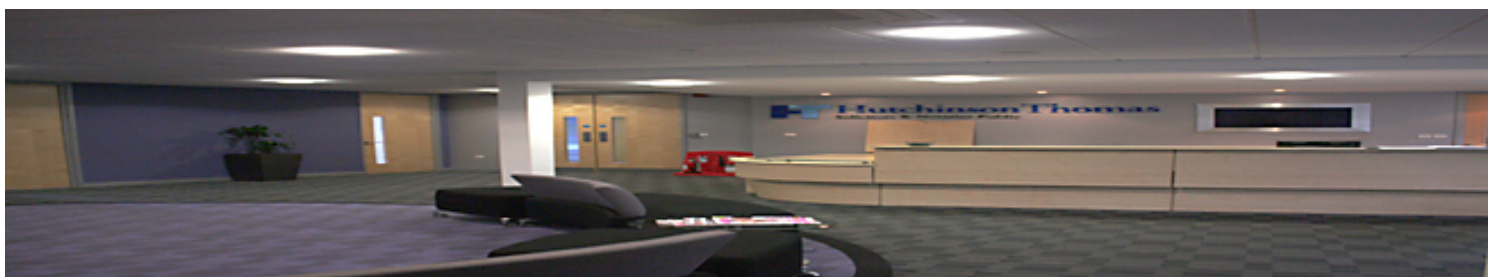
## What If Your Tenant Can't Pay?

Many commercial tenants have been adversely affected by the economic downturn and may be struggling to pay the rent due under the terms of their lease. There are a number of issues a landlord should consider in these circumstances:

- 1) The tenant may become liable to pay interest (often at a rate higher than bank base rate) on the unpaid rent.
- 2) The tenant may be liable to pay damages to the landlord.

- 3) The Landlord may be able to re-enter and obtain possession of the property.
- 4) The tenant may be unable to exercise a break clause in the lease or tenancy agreement while there are rent arrears.
- 5) The Landlord may be able to take steps to have a tenant declared bankrupt or a corporate tenant wound up.
- 6) If the tenant has persistently delayed paying, the landlord may be able to block an application for a renewal lease.

- 7) The Landlord may be able to take action against the tenant’s guarantor, a former tenant or even a former tenant’s guarantor to recover unpaid rent. Notice must be served by a specially prescribed form to seek payment from a former tenant or guarantor.
- 8) The tenant may be liable for the Landlord’s costs arising from, or in connection with, the breach of their obligation to pay rent under the terms of the lease.



# When an Employer Wants a Change

Employers may want to vary the terms of an Employment Contract to react to changing circumstances or to reorganise a business to make it more efficient or profitable. During hard times, employers may seek to change terms relating to pay, benefits or working hours.

If the proposed changes favour the employee there is unlikely to be any difficulty but if changes are unfavourable there is the potential for problems. Any change imposed by the employer will normally be a breach of contract and may entitle the employee to compensation unless the employer has a contractual right to vary the contract or the employee consents to it.

In a recent case, Asda wanted to harmonise all of their staff's contracts to the same pay and work structure as historically some were on better terms than others. Asda claimed that the changes were lawful and relied on a very general clause in their staff handbook which read: "Asda reserve the right to review, revise, amend or replace the contents of this handbook and introduce new policies from time to time reflecting the changing needs of the business". Crucially, the handbook was incorporated into the staff contracts of employment.

The Tribunal decided that the wording in the handbook was wide enough to allow Asda to make changes to the

pay and work structure. Provided these were properly implemented, the employees' consent was not required. Asda adopted good practice in this case by entering into extensive negotiations with staff and tried their best to ensure that no-one suffered a reduction in pay.

Employers should, if at all possible, draft their staff handbooks in such a way so as to give them flexibility to meet the changing economic needs and also, importantly, to ensure that in the contracts of employment, the matters contained within the handbook are referred to as being integral to their terms and conditions.

# So You Think Your Home Is Your Castle?

That may have been true a long time ago but the reality of modern life is that increasing numbers of public officials now have rights to enter on to private property. They cannot enter a property unless the laws allow it but more and more laws seem to be allowing more and more public officials to enter private property.

In the 1950s there were only about 10 laws permitting officials to enter private property. By the 1990s, this had increased to about 60. Now there are almost 300 laws that may allow public officials to enter your home. These include the obvious (police, fire service and local authority) but also a range of the weird and wonderful.

Whilst it is correct that the police, for example, will often need a warrant from Magistrates before entering property, there are many occasions when no warrant is required. For example, if you are suspected of driving over the limit, the police may enter your land and arrest you. Even if a warrant has been obtained, you will not know about it (you will certainly not be told about it in

advance of the application) until the relevant official arrives on your doorstep and demands the right to enter.

Officials can enter your home if they believe you have been watching television without a licence or using a hosepipe when banned. They can even check your fireplace in a smoke control area. If you see a man with a theodolite in your garden be careful! He may from the Ordnance Survey Map Department and he has the right to come on to your land if he chooses to. What's more you will be liable to a fine of £200 if you obstruct him!

Do you keep bees or chickens? Bee keepers should be aware that officials can come in to your garden and check for the presence of infection or of foreign bees – although how can you tell a foreign bee from a domestic bee? Perhaps they use different buzz words ..!

If you keep chickens, be careful! An Inspector may enter your premises without warrant to examine them. If you refuse to let him on to your land – you can be

fined £5000 or sent to prison for a month. And if you live in a house overlooking the sea be careful not to be seen flashing a light from your upstairs window. It could be taken as a signal from you to smugglers and that allows customs officers to enter your house. On top of this Local Authorities have the right to enter your property to do such things as check the height of your hedge and to measure noise levels. The weights and measures man can demand entry to check for evidence of unqualified persons acting as Solicitors!

So if you still think your house is your castle try pulling the portcullis down and you will find it wedged open by the various machinations of the Houses of Parliament which, ironically, proudly boasts on its Coat of Arms – a portcullis!



# The Neath Front Row

Three of the Firm's partners have again been heavily engaged in the disciplinary process of the rugby world.

In 2009, Robert Williams, Roger Morris and Simon Thomas were appointed to the European Rugby Cup's elite panel of Judicial Officers. They are the only three Welshmen on the panel which comprises only twelve Judicial Officers from the whole of Europe. They were also appointed as Judicial Officers to various of the Autumn internationals and members of Judicial Officers

panel for the 2010 RBS Six Nations tournament.

High profile matters in which they have been involved include the now infamous Harlequins 'Bloodgate' misconduct case, in which Robert Williams was chair of the original disciplinary committee. Accused of using fake blood to arrange a player's substitution, Harlequins were later vilified for attempting to play ketchup rugby! Another high profile case concerned Irish International Alan Quinlan. Roger Morris and Simon Thomas were

part of the committee that banned the player so that he lost his place in the Lions tour to South Africa.

More recently, Robert Williams sat on the Appeal Committee that confirmed the 70 week suspension of French player Attoub (accused of "gouging") and Roger Morris chaired the Committee that suspended Jerry Flannery after his indiscretion in Ireland's match against France.

The judgements can be viewed on [www.ercrugby.com](http://www.ercrugby.com)



Business & Commercial \* Claims & Disputes \* Clinical Negligence \* Contentious Probate & Trusts \* Criminal Law

Employment \* Family & Childcare \* HIPS \* Licensing \* Personal Injury \* Planning \* Property \* Wills, Trusts & Probate



Pendrill Court, 119 London Road, Neath SA11 1LF

Tel : 01639 645061

