

Culpable Homicide Consultation – Individual Response

Name: Louise Taggart

E-mail address [REDACTED]

or

Contact address [Click or tap here to enter text.](#)

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Aim and Approach

I fully support the proposed bill

The law of culpable homicide in Scotland is not fit for purpose. That is particularly the case in relation to how the law applies to organisations. More to the point, the law of culpable homicide has got itself tied up in knots by having different tests for different types of wrongdoers. The result is that the law is confused and does not apply consistently across individuals and different types of organisations.

We need one clear set of rules that apply to everyone – individuals, small organisations, large organisations, ministers and crown bodies. That is exactly what the proposed bill will achieve and that is why it has my full support.

I believe that when an individual or an organisation causes death through recklessness or gross negligence they are guilty of culpable homicide. I therefore support the bill containing both tests.

No organisation should be exempt from the law of culpable homicide. I therefore full support the bill applying to ministers, civil servants and crown bodies.

No organisation should be “too big to be convicted”. I therefore fully support the proposal that an organisation will be guilty if an office holder of the company acts with recklessness or gross negligence and causes the death of an individual. The term “office holder” should be given the widest definition. It should apply to all levels of management and supervision. If a manager or supervisor is acting within the course of their employment and their recklessness or gross negligence causes death then the organisation is as guilty as the individual and both should face conviction for culpable homicide.

The real benefit of the proposed bill is that the law will apply consistently and evenly to everyone and every organisation. The law will be clear and easy to understand. Wrongdoers will be punished. Justice will be served. Most importantly, the law will serve as a real deterrence and Scotland will be a safer place.

Sanctions

The widest sanctions must be available to Judges. That includes imprisonment and remedial orders. Victim impact statements should be mandatory in all cases where there is a conviction for culpable homicide. In appropriate cases senior management and directors of organisations should face the prospect of custodial sentences.

Any additional comments

My 26-year-old brother Michael Adamson died at work on 4 August 2005.

This led me to unwanted membership of Families Against Corporate Killers, a campaign and support organisation for those bereaved by work.

My wee brother left for work on 4 August 2005 and didn't make it home to his fiancée and the puppy she had picked up for them that very same day. He was electrocuted at work. In an incident which was entirely preventable.

I expect you might receive objections from some quarters that these proposals are an unnecessary “burden on business”. Grandparents who are told by their granddaughter that all she wants from Santa is a big long ladder so that daddy can climb down from the sky, they bear the real burden. The mother who heads to court for the final day of her son's employer's prosecution with locks of his hair from the day he was born and the day he died, she bears the real burden. I urge those who will talk about burdens to think again, because it is we FACK

families who have borne - and who will forever continue to bear - the burden of poor health and safety regulation and enforcement.

Above all we want culpable homicide legislation that serves as a deterrent. Understand that there are very rarely “accidents at work”, because an *accident waiting to happen* is no accident.

My brother’s death occurred at an “all hands on deck” job to get a JJB sports store and gym complex completed and ready for handover to the client, or else contractual penalty clauses were going to be triggered.

His employer company was charged with offences under the Health and Safety at Work Act 1974, as too were the managing director, operations director and technical services manager.

Mistakes were made by the prosecutor and those three individuals walked free from the dock before the case got to the jury, leaving the advocate acting for the company to describe it as the “invisible man” now sitting in the dock.

So, having waited more than three years from the date of Michael’s death for the case to come to trial, we sat and listened to the jury deliver a guilty verdict. The invisible man had been convicted of the health and safety failures that led to his death.

But the invisible man did not take the decisions that resulted in Michael’s death, real-life individuals did. So the conviction and £300,000 fine imposed on that invisible man did not provide my family with anything approaching justice.

And far too frequently this is the case: a family bereaved by work is left to feel that we have failed our lost loved ones, because the justice system has failed us!

For the victim’s family, where death occurs because of the reckless or grossly negligent conduct of a company, a prosecution under the Health and Safety at Work Act does not reflect the magnitude of the failures. They will only see justice being served if the company, and where appropriate its managers and directors, are prosecuted of a crime with the appropriate moral stigma and level of censure.

FACK families last sat in the Scottish Parliament discussing the potential for Scottish specific legislation in January 2008. Nearly 11 years on, approaching 1500 loved ones have died as a result of work-related incidents in Scotland. And behind every one of these “statistics” is a person, like my wee brother.

This Bill is about Justice. It’s about prevention. It’s about family.