

# MANAGEMENT

## The Consequences!



Running a property business can be complex: “it’s rather like juggling cats”, one agent recently confided to ISA, “and demands a finely-tuned balance between different needs - the freehold owners of the building on the one hand and the tenants or lease-holders on the other”

### **Consequences of Management: (1):**

A managing agent, by the terms of contract, will often assume a form of ‘Loco in parentis’, and suffer liability if things go wrong, particularly if breaches of statutory procedure occur. For example, the owner of a block of flats will not take too kindly to prosecution for breach of CDM regulations, if the job of organising repairs had been delegated to the managing agents, and they failed to give proper advice or follow the correct procedures.

### **HSE v Perryman Properties Ltd**

Consequences of not complying with the CDM Regulations are emphasised by the recent successful prosecution brought by the Health and Safety Executive against Perryman Properties Ltd.

### **CDM breach**

The case, which was brought by the Health and Safety Executive (HSE), was heard at the City of London Magistrates Court on 9 February. Perryman Properties of Craven Park Road, London N15 6BL pleaded guilty to breaching Regulations 4(1)(a) of the Construction (Design and Management) (CDM) Regulations 2007. The Court heard that on and around 14 April 2008, Perryman Properties Ltd employed Demetrius Michael to carry out construction work without managing the project properly or checking he was competent.

Demetrius Michael of Lonsdale Drive, Oakwood in Enfield pleaded guilty to breaching Section 3(2) of the Health and Safety at Work etc. Act 1974.

Demetrius Michael was fined £6,000 and ordered to pay the full costs of £4,430.13. Perryman Properties Ltd was fined £7,000 and ordered to pay £4,486.35 costs.

The Court heard that Perryman Properties hired Michael to refurbish Unit 7, Fountayne Road in Haringey, a building that had been used as manufacturing premises. He was instructed to partition it into approximately 30 separate units. Mr Michael subcontracted some of the work to Ahmet Ergun, an employed builder trading as Ergun Building Services.

### **Injury from a fall at height**

On 19 May 2008, an unskilled labourer Aydin Acay, was working with Mr Ergun, who had been instructed by Mr Michael to inspect part of the roof. Mr Acay stepped onto a section of asbestos cement sheeting and fell about six-and-a-half metres onto a concrete floor, suffering two fractured vertebrae.

<p><b>Clients liability</b></p>	<p>The investigation found that Perryman Properties Ltd failed to appoint a construction, design and management co-ordinator and a principal contractor; failed to check the competence of people they had appointed and because of this they employed an incompetent contractor, Demetrius Michael. The company also failed to ensure there were suitable management arrangements for the project.</p> <p>In turn, Demetrius Michael failed to ensure that the workers, for whom he was ultimately responsible, including Mr Acay and Mr Ergun, were not exposed to risk including those of falling from height.</p> <p>HSE Inspector Paul Hems said:</p> <p>"Clients have one of the biggest influences over the way a project is run and because of this, they are accountable for the impact their approach has on the health and safety of those working on the project. Perrymans Properties Ltd's failure to discharge its client duties contributed to the creation of an unsafe working environment at the site.</p> <p>As the person in control of the site, Demetrius Michael failed to ensure that work was properly planned, appropriately supervised and carried out in a manner and as a result of this Mr Acay fell through a fragile roof and suffered serious injuries to his lower spine and his hands".</p>
<p><b>Consequences of Management (2):</b></p> <p><b>Restriction on smoking in common areas</b></p> <p><b>Need for signage</b></p>	<p><b>The Smoke-free (Premises and Enforcement) Regulations 2006 (SI 3368) and The Smoke-free (Exemptions and Vehicles) Regulations 2007 (SI 765).</b></p> <p>Whether you are a smoker or not, the 'light-up' brigade continues to come under siege.</p> <p>Managers of communal property need to be particularly aware of anti-smoking legislation, particularly clause 3 of the Smoke-free (Exemptions and Vehicles) Regulations, (Private Accommodation). In particular, although a private dwelling, such as a self-contained flat is not required to be a 'smoke-free area' under current legislation, any parts shared in common with other dwellings, are. This might include a communal garage, outhouse or other structure, or indeed the halls and passageways shared in common as a means of access. A hallway shared by two flats is under the same level of control as the lift and communal parts in a multi-flat unit.</p> <p>Similar controls apply to any office or work-shop within a private dwelling, if persons are invited to enter that part which is used for work. For example, a surveyor who works from a room at home and 'smokes like a chimney,' can continue to do so as long as that part of the accommodation is not shared by a secretary or others, including any visitor. There is no exemption to permit 'consenting adults' to 'puff away together.'</p> <p>To supplement and reinforce the 'no smoking' prohibition <b>The Smoke-free (Signs) Regulations 2007</b> requires at least one A5 notice to be posted in a prominent position, stating "<i>No smoking. It is against the law to smoke in these premises.</i>"</p> <p>The regulations are regarded by many as unnecessarily bureaucratic and heavy-handed, particularly for small multiple units of accommodation, and office accommodation attached to a dwelling. However, a complaint from a 'concerned citizen' or a spot-inspection carried out for some other reason could lead to prosecution by the local authority licensing team.</p> <p>The landlord owner of a HMO or multiple-accommodation unit, fined for not having notices posted, would almost certainly expect the managing agents to meet the cost, if the agents had not given due advice of the legal requirements in relation to common parts.</p> <p>The requirement might also be a matter to point out on survey of a self-contained flat, if correct procedures are not in force in the common areas.</p>

<p><b>Consequences of Management (3):</b></p> <p><b>Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA):</b></p>	<p><b>S. 37 of The Health and Safety at Work Act 1974</b> made provision for a body corporate to be proceeded against and punished if proved guilty of an offence ‘committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate.’ The provision is still in force, but consequences have been made stricter in the event of a fatality, by introduction of CMCHA 2007.</p> <p>CMCHA 2007 is specifically for prosecution of organisations and not individuals where a person’s death has occurred, and the organisation has committed a gross breach of duty of care to the deceased victim under the law of negligence. The organisations include a wide range of government departments, but also corporations and partnerships which employ people.</p>
<p><b>Duty of care</b></p>	<p>The ‘relevant duty of care’ is defined by S2(1) as:</p> <ul style="list-style-type: none"> <li>a. a duty owed to it employees or to other persons working for the organisation or performing services for it;</li> <li>b. a duty owed as occupier of premises</li> <li>c. a duty owed in connection with –             <ul style="list-style-type: none"> <li>i. the supply by the organisation of goods or services;</li> <li>ii. the carrying on by the organisation of any construction or maintenance operation;</li> <li>iii. the carrying on by the organisation of any other activity on a commercial basis, or</li> <li>iv. the use or keeping by the organisation of any plant, vehicle or other thing.</li> </ul> </li> </ul> <p>CMCHA 2007 is particularly relevant to persons who die whilst held in custody; are detained as patients in secure accommodation, or are being transported to secure accommodation. However the first prosecution of corporate manslaughter under the Act is to be tried at Bristol Crown Court against the sole director of Cotswold Geotechnical Holdings Ltd, following the death of a young geologist after a mud-slide in a trench.</p>
<p><b>Sentencing guidelines</b></p>	<p>On 15 February 2010, the <b>Sentencing Guidelines Council</b> (SGC) issued guidelines under S 170(9) of the <b>Criminal Justice Act 2003</b> for instances where Corporate Manslaughter is proved, and recommends that the appropriate fine should not be appropriately related to turnover or profit. It will seldom be less than £500,000 but may be measured in millions of pounds. This is in addition to any order to pay the prosecution costs. Compensation would normally be addressed by a civil action.</p> <p>The guidelines advise that it will be relevant if the fine has the effect of putting the defendant out of business, but in bad cases this result might be an acceptable outcome.</p> <p>The issues of the Act do have a consequence for all property managers and those in charge of sites, workplaces, and processes to ensure that safety management is treated diligently, and from senior management downwards, and not merely by a ‘lip-service’ approach.</p>
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