

The Corporate Manslaughter and Corporate Homicide Act 2007 and Human Rights, Part II: has universal legal protection of the right to life been advanced in a custodial setting?

ABSTRACT

Part I of the paper considered whether the Corporate Manslaughter and Corporate Homicide Act 2007 (CMCHA) has served as a vehicle for the government to comply with its duties under the Human Rights Act 1998 and the European Convention on Human Rights 1950, or whether the reservations expressed at the time have proved to be well founded. Part II will focus on the provisions relating to deaths in custody and assess to what extent the Act has acted as a means for protecting vulnerable detainees and inmates.

While the CMCHA 2007 was implemented in April 2008, it was not until September 2011 that it was extended to apply to custodial deaths. At the time the inclusion of the death in custody provisions were strongly resisted by the government on a number of grounds, including cost, risk aversion and the view that existing methods of accountability were adequate, and although since 2011 it has been possible to prosecute an organisation for corporate manslaughter if a child or adult dies in custody, no such prosecution has ever been attempted. This paper considers the obstacles that stand in the way of such a prosecution, and concludes that the UK is not complying with its duty under Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 to secure the right to life in custodial institutions.

Introduction

Prior to the enactment of the Corporate Manslaughter and Corporate Homicide Act 2007, in circumstances where an individual was killed as a result of corporate negligence, the courts and prosecuting authorities had to rely on the common law offence of involuntary manslaughter. However, problems arose in imposing criminal liability on an artificial legal body: the courts ruled that the principle of vicarious liability does not extend to manslaughter, and instead, the courts had to draw upon the ‘identification principle’¹ - which operates on the basis that a body corporate is imputed with the physical being and will of its directing mind.² In relation to the offence of involuntary manslaughter a corporation's guilt could only be established if it was possible to link the grossly negligent act of an employee through a chain of command, to the ‘controlling’ or ‘directing mind’.³

The difficulty with such an approach was that an organisation could only be convicted if a person in the organisation, who is sufficiently senior to represent the ‘directing mind’ of the organisation, was proved to have the requisite knowledge and fault. However, the complexity of multi layered structures within a corporation (other than in small private companies)

¹ *R v HM Coroner for East Kent ex p Spooner* (1989) 88 Cr App R 10 (DC).

² This rule is criticised by C. Wells, ‘Culture, Risk and Criminal Liability’ (1993) *Criminal Law Review* pp558-561 and 563.

³ A. Pinto & M. Evans (2008) *Corporate Criminal Liability*, London: Sweet & Maxwell, p219.

proved an obstacle to establishing the necessary link between a culpable employee and the directing mind. The few companies convicted of manslaughter prior to the CMCHA were small companies where it was easier to identify a culpable individual within the organisation.⁴

Similar obstacles have faced the prosecuting authorities with regard to the police force. Where deaths in police custody occur, even where it is found that there has been the "most serious neglect of duty"⁵ there is rarely a successful prosecution of individual police officers⁶, and criminal liability of police forces for management failure which may be in part to blame for the loss of life have never been subject to criminal prosecution.⁷ In effect, prior to the CMCHA, a police force, lacking any legal status as an organizational/corporate body, had general immunity from prosecution for the common law offence of manslaughter.

Any organizational culpability resulting in the death of an individual tended to be limited to a prosecution under health and safety legislation, or an action under the civil law. At common law, civil liability may be imposed on prison and police authorities when a detainee dies,⁸ and this duty of care extends not only to actions by state officials but also to actions of other inmates and self-harm.⁹ Furthermore, under s7(1)(a) and s8 of the Human Rights Act 1998, a deceased prisoner's family may pursue a civil claim in his name 'in respect of his ill-treatment and death in custody', provided the deceased was aged over 18 years at the time of his death¹⁰.

Similarly, negligent conduct by a police force resulting in the death of an individual is vulnerable to a prosecution under the Health and Safety at Work etc Act 1974, although such

⁴ A notable pre-CMCHA example is *R v Kite* [1996] 2 Cr. App. R. (S) 295, the first conviction in England and Wales of a company for manslaughter. In that case OLL Ltd, a small company, operated an activity centre. The company was prosecuted following an accident in which four pupils drowned on a canoeing trip at the centre. Evidence established that the company routinely employed unqualified staff and did not train them, and that the supervision of the canoeing trip was grossly inadequate. The company was fined £60,000, which was said to represent its entire asset, and its managing director, Peter Kite, was sentenced to three years' imprisonment, reduced on appeal to two.

⁵ Independent Police Complaints Commission 2006, 'Report of the review into the events leading up to and following the death of Christopher Alder on 1st April 1998', Stationary Office Ltd.

⁶ <http://www.inquest.org.uk/> [Accessed 12.10.18]. A rare example is that of PC Simon Harwood who on 17 October 2011 was charged with the manslaughter of Ian Tomlinson. Tomlinson collapsed and died after he was hit by a baton and pushed to the ground by PC Harwood at the G20 protests in London. Harwood pleaded not guilty to the charge and his trial is due to be heard in October 2012.

⁷ Sanders A., Young R. and Burton A. (2010) *Criminal Justice*, (4th edn) Oxford: Oxford University Press, 223-8; Smith G. (2006) 'A Most Enduring Problem: Police Complaints Reform in England and Wales' 35(1) *Journal of Social Policy* 121; see <http://inquest.gn.apc.org> [Accessed 06.03.19].

⁸ *Reeves v Commissioner for the Police of the Metropolis* [2000] AC 283.

⁹ *Kirkham v Chief Constable of Greater Manchester Police* [1990] 2QB 283. The police were liable for the death of a prisoner after negligently failing to pass on information relating to his suicidal tendencies. See also *Reeves v Commissioner for the Police of the Metropolis* [2000] AC 283.

¹⁰ S. Livingstone, T. Owen and A. Macdonald, (2015) *Livingstone, Owen, and Macdonald on Prison Law*, Oxford: Oxford University Press, p132.

prosecutions have been rare, and convictions rarer:¹¹ to date only one such successful prosecution has been recorded against a police force, namely, the de Menezes case.¹²

In more recent years, the position has been strengthened by the duty of all public authorities to safeguard the prisoner's right to life under Article 2¹³ of the European Convention on Human Rights (ECHR) - ranked as the most fundamental provision in the Convention¹⁴ and according to which the police, prison service and other public authorities¹⁵ have a positive duty to ensure that they take reasonable measures to protect the lives of persons held in detention.¹⁶ In *Kats v Ukraine*¹⁷ the European Court of Human Rights declared that: 'Persons in custody are in a particularly vulnerable position and the authorities are under an obligation to account for their treatment'¹⁸ and concluded that where an individual dies in suspicious circumstances while in custody, this should automatically raise an issue as to whether the State has complied with its obligation to protect that person's Article 2 right to life. In *Tyrell v HM Senior Coroner County Durham and Darlington*¹⁹ Burnett LJ concluded that *Kats* had broadened the positive obligations under Article 2 to encompass not only the obligation to take reasonable measures to avert a real or immediate risk to the right to life, but also an obligation to account for the cause of any death which occurs in custody, and in *R (Amin) v Secretary of State for the Home Department*²⁰ the court determined that when taking prisoners into custody, the State is accountable for failures in their care. The European Court of Human Rights has however taken a more cautious approach towards a state's obligations under Article 2 where a prisoner takes his own life: the duty of care is only owed where the authorities knew or should have known of the individual's suicide risk and any duty is limited to taking reasonable steps to avoid a prisoner's death.²¹

In spite of the Article 2 route, there were until recently few options available to aggrieved parties where death has occurred in police custody and critics have long asserted that criminal

¹¹ A police force will avoid liability under s3 HSWA if it can establish, on a balance of probabilities, that it was not practicable or not reasonably practicable to do more than was in fact done to satisfy the duty or requirement, or that there was no better practicable means than was in fact used to satisfy the duty or requirement.

¹² J. Barker & S. Foster 'The use of fatal force, article 2 of the European Convention and the Jean Charles de Menezes case' (2010) 15(2) *Cov. L.J.* 39.

¹³ S. Foster 'Case comment *Renolde v France* (5608/05) Unreported October 16, 2008 (ECHR)' (2008) *Cov. L.J.*, 13(2), 32-34.

¹⁴ *McCann v UK* (1995) 2 EHRR 97, at para 147, *R (on the application of Bloggs 61) v Secretary of State for the Home Department* [2003] 1 WLR 2724 at para 63.

¹⁵ Human Rights Act 1998, s.6 provides that 'it is unlawful for a public authority to act in a way which is incompatible with a Convention right'. The meaning of public authority is expanded by s.6(3)(b) to include any person 'certain whose functions are of a public nature' and would therefore include for example prisons run by private companies.

¹⁶ *Osman v United Kingdom* (1998) 29 EHRR 245.

¹⁷ (Application No 29971/04) (2008) 51 EHRR 1066.

¹⁸ *Ibid*, para [104]. In this case the prisoner's death was the result of inadequate medical assistance in circumstances where the prison authorities were aware of the deceased's HIV status.

¹⁹ *Tyrell v HM Senior Coroner County Durham and Darlington* [2016] EWHC 1892 (Admin), 153 BMLR 208.

²⁰ *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51, [2004] 1 AC 653, at para [19].

²¹ *Orange v Chief Constable of West Yorkshire Police* [2006] 1 WLR 1155.

liability for *institutional* failures is lacking both with regard to fatalities due to corporate negligence, and for deaths attributable to the negligent act or omission of a police force.²²

When deaths in police custody occur, successful prosecutions of individual police officers are rare, and police forces themselves have never been vulnerable to prosecution for management failure which may be to blame for the loss of life. Prior to 2007, if a detained mentally ill person died in hospital, a prisoner hanged himself in his cell or a foreign national died while being deported, there was no formal corporate accountability available, nor enforceable sanction for the deadly institutional and systemic failings that may have been responsible. While investigations and inquests into any questionable death, like Jimmy Mbenga's play an important role, they lack the authority of a criminal sanction. A conviction of corporate manslaughter on the other hand would mean an organisation could face unlimited fines, be ordered to change their policies and also forced to publish details of their failings: The inclusion of the police as an organization that falls within the remit of the Act under s.2 (1) (d) CMCHA 2007 thus potentially heralded a significant development.

The Corporate Manslaughter and Corporate Homicide Act 2007s.2(1)(d)

In 2007 the CMCHA was enacted, introducing a statutory offence of corporate manslaughter. By virtue of Schedule 1, the offence of 'Corporate Manslaughter' not only applies to private companies but also in 'some measure to all the public bodies the performance of whose functions are most likely to involve causing deaths'²³. These include, *inter alia*, the Ministry of Defence, the Department of Health, and HM Prison Service. Section 2(2) of the Act further provides that a duty of care is owed to anyone who is detained at a custodial institution such as a prison, a young offender institution/secure training centre, a juvenile justice centre or a remand centre; or in a custody area at a court or a police station.

The Act provides²⁴ that a relevant organisation may be convicted of corporate manslaughter if the manner in which its activities are managed or organised causes a death and amounts to a gross breach of a duty to take reasonable care for a person's safety; a substantial part of the breach must have been attributable to senior management failure in the organisation.

Although the CMCHA provides various exemptions for the police and other law enforcement bodies, on September 1, 2011, s.2(1)(d) came into force and police forces have become subject to the CMCHA in respect of deaths in custody²⁵. Implementation of the clause covering custody deaths was delayed by over three years in order to give police forces and prisons time to inspect their custody facilities and make sure they were up to standard.

²² A. Sanders, R. Young & A. Burton (2010) *Criminal Justice*, (4th edn) Oxford: Oxford University Press 191-4; G. Smith 'A Most Enduring Problem: Police Complaints Reform in England and Wales' (2006) 35(1) *Journal of Social Policy* 121; see <http://inquest.gn.apc.org>; <http://www.justice.org.uk> (accessed 6.9.11.).

²³ J. Horder, (2012) *Homicide and the Politics of Law Reform*, Oxford: Oxford University Press, p117.

²⁴ CMCHA 2007, s.1(1).

²⁵ CMCHA 2007 s.5; The CMCHA 2007 (Commencement No.3) Order 2011 (SI 2011/1867 (C. 69)).

A police force is now deemed a relevant organisation, and custody providers too, whether public²⁶ or private (contracted service providers) may attract liability under the Act²⁷ for deaths of individuals being transported to and from immigration detention centres²⁸ - such as that of Jimmy Mubenga, an Angolan deportee who died after being restrained by G4S guards on a British Airways plane scheduled to fly to Angola²⁹.

The offence is aimed at systemic failures to manage safety in organizations; in line with liability for corporations under the Act, the management failure in the police force need not be the sole cause of death and the conduct which causes the breach must fall “far below” what could reasonably be expected. Although the CMCHA lacks a specific test in the assessment of what is “reasonable”, it seems likely that it will “be measured by standards ordinarily expected of a reasonably diligent police force, competent in the compliance and enforcement of health and safety matters”³⁰. In the event for example, of a detainee committing suicide in his cell, the reach of the provision has been said to embrace³¹ scrutiny of the design of the cell itself – for example, whether ligature points were present that should have been removed - as well as the custody sergeant, although, as will be discussed later in this paper, the latter is subject to much debate.

The new legislative framework introduced by CMCHA 2007 s.2(1)(d) means in effect that public bodies can now face prosecution if senior management failings amount to gross negligence and result in the death of someone in custody. The argument advocating for the inclusion of the custody provision was made forcefully by campaigners such as Liberty - at its initial stage the Bill applied solely to private organisations, and it was only after intense lobbying that an amendment was secured extending its remit to public bodies. The extension of the offence to deaths in custody clearly represented a significant symbolic statement and was broadly welcomed.³² It was also anticipated that this new statutory regime would have a tangible impact, ensuring accountability and encouraging best practice in order to advance the protection of life.

Impact

Criminal sanctions can only ever be effective if they are put into effect. According to Inquest, there have been 150 deaths in police custody since 2012³³ (not including deaths in other

²⁶ If the provider is a public body it is the Home Office, as opposed to the prison itself (as it is not a corporate body,) that can be prosecuted under the CMCHA 2007.

²⁷ CMCHA 2007 s.2(1)(d) applies to all deaths in police custody suites, as well as prison cells, mental health detention facilities, young offenders’ institutions, immigration suites and Ministry of Defence institutions.

²⁸ “Persons held in detention or custody” includes being held or transported under immigration or prison escort arrangements: CMCHA 2007 s.2(2).

²⁹ On October 12, 2010 Mr Mubenga lost consciousness while the British Airways flight was on the runway at Heathrow. He was taken to hospital, where he was pronounced dead; see <http://www.guardian.co.uk/uk/2010/oct/14/security-guards-accused-jimmy-mubenga-death> [Accessed 28.03.19].

³⁰ S. Griffin and J. Moran, ‘Accountability for Deaths Attributable to the Gross Negligent Act or Omission of a Police Force’ (2010) 74 *Journal of Criminal Law* 363.

³¹ <http://www.guardian.co.uk/uk2011/aug/28/corporate-homicide-law-prison-police> (accessed 10.11.11).

³² Inquest Press Release, ‘Move Towards Greater Accountability for Deaths in Custody Welcomed’, 31/08/11, <http://www.inquest.org.uk/>

³³ <https://www.inquest.org.uk/deaths-in-police-custody> [Accessed 30.04.19].

detention facilities nationwide), and according to the Independent Office for Police Conduct's report 'Deaths in or following Police Custody',³⁴ between 2017-18, 23 people died in or following police custody. Moreover, if the nature and circumstances in which these deaths occurred is broadened to include for example road traffic fatalities, fatal shootings and suicides, this figure increases significantly, to 283³⁵. Yet to date there has not been a single charge for a death in custody under the CMCHA. Although the number of deaths in custody is relatively small compared to the number of arrests it is of concern that no charge has been brought and of note that most of these suspects were arrested for relatively minor offences which were often linked to intoxication, public order offences, and driving offences, and many were suffering from mental health disorders³⁶.

The data on deaths of young people in custody is equally stark: since 2012, at least 48 young people (under the age of 21) have died in custody³⁷, and for the age group 18-21 this figure leaps to a shocking 98³⁸. These figures provide clear evidence of the inability of the Corporate Manslaughter and Corporate Homicide Act 2007 to operate as a deterrent against unsafe custody practices or as a means to offer universal protection of life for those held in custody. It has long been asserted that because a prisoner is almost entirely dependent on the respective prison to safeguard his or her health and safety³⁹ the duty of care owed by the state is one of the most serious responsibilities there can be; it is 'onerous and profound'⁴⁰. Given that young offenders represent some of society's most vulnerable and disadvantaged individuals, the fact that significant numbers of young offenders still die in the care of the State is a matter of grave concern indeed.

The reason for the failure of the prosecuting authorities to invoke these provisions has been attributed at least in part to the legislative framework itself, which Ashworth and Horder have criticised as being 'highly technical'⁴¹, while for Doyle and Scott the problem lies with Act's 'senior management' test⁴², which undermines the capacity of the Crown Prosecution Service to convict a prison for an avoidable death in custody.

One key issue pertains to the precise nature and extent of the duty owed. While the CMCHA 2007, s.2(1)(d) states that a duty is owed under the law of negligence by the organisation to 'someone for whose safety the organisation is responsible' its exact reach remains unknown. With regard to prisoner suicide for example, it has been suggested that the Act may only be applicable where the prisoner was already being monitored under the prison service procedures at the time or where appropriate measures had not been taken to identify the

³⁴ https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/deaths_during_following_police_contact_201718.pdf, p.3 [Accessed 24.04.19].

³⁵ In 2017/18, there were the following number of fatalities in each category: 29 road traffic fatalities; 4 fatal police shootings; 23 deaths in or following police custody; 57 apparent suicides following police custody; 170 other deaths following police contact that were independently investigated. Ibid.

³⁶ Ibid, pp13-14.

³⁷ <https://www.inquest.org.uk/deaths-of-children-and-young-people-in-prison> [Accessed 24.04.19].

³⁸ Ibid

³⁹ J. Horder, (2012) *Homicide and the Politics of Law Reform*, Oxford: Oxford University Press, p137.

⁴⁰ See Lord Hunt's comments in Hansard, *HL Debates*, 5th series, vol. 688, part 26, col. GC 186, 15 January 2007. Available at: <http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text> [Accessed 01.04.19].

⁴¹ A. Ashworth, and J. Horder, (2013) *Principles of Criminal Law*, 7th edn, Oxford: Oxford University Press, pp.153-4.

⁴² D. Doyle, and S. Scott, 'Criminal Liability for Deaths in Prison Custody: The Corporate Manslaughter and Corporate Homicide Act 2007', (2016) *The Howard Journal Vol 55 No 3*.

known risk factors or ‘triggers’⁴³. Thus far, there has been no judicial consideration of its scope.

The second issue concerns the term ‘senior management’. As noted in Part I of this article, the inclusion of a senior management element has all but wholly deterred prosecution of complex corporate homicide cases more generally, and it would appear that the difficulties encountered in initiating corporate manslaughter prosecutions of large multi layered corporations is mirrored here; in fact, it is arguable that the problems associated with complex corporate homicide prosecutions are magnified in the custodial setting.

‘Senior management’

‘Senior management’ is defined by the 2007 Act as persons who play significant roles in ‘the making of decisions about how the whole or a substantial part of its activities’ or the ‘actual managing and organising of the whole or a substantial part of those activities’⁴⁴. As many have observed, this vague and unhelpful term is reminiscent of the much criticised common law ‘directing mind’ test⁴⁵ in that it redirects focus back to individual culpability as opposed to systematic failure. Its interpretation in the context of a HM Prison service and the police force raises particularly difficult questions.

As noted in Part I of this article, despite the CMCHA having been in force for nearly ten years, we have yet to receive judicial guidance on how the courts should interpret the senior management test. In *R v Dr Errol Cornish and Maidstone and Tunbridge Wells NHS Trust*⁴⁶ the court suggested that the prosecution was not required to identify the specific senior managers involved in the breach of duty, but rather to identify the ‘tier’ of management that it considered to be the lowest level of senior management within the organisation that is culpable. However, the prosecution in the case failed and the impact of this proposed approach remains unclear.

Doyle and Scott note that the ‘senior management’ test fails to acknowledge both the reality of how the suicide and self-harm prevention procedures work in UK prisons and the complexity of the multi-tiered organisational structure within HM Prison Service.⁴⁷ The upper tiers – consisting of the Prison Governor, Deputy and Head of Functions – while undoubtedly falling within the definition of ‘senior management’, have little to do with day-to-day implementation of procedures to prevent deaths in custody. Instead, this usually takes place at a non-managerial level: ‘Actual management control of the procedures to prevent deaths in custody, at least in the prison context, are exercised, in practice, at a non-managerial level, and it is difficult to envisage how a supervising/specialist or a prison officer ... could meet the criteria specified in the CMCHA 2007 in terms of ‘senior management’.⁴⁸

⁴³ Ibid.

⁴⁴ CMCHA 2007, s. 1(4)(c).

⁴⁵ S. Griffin and J. Moran, ‘Accountability for Deaths Attributable to the Gross Negligent Act or Omission of a Police Force’ (2010) 74 *Journal of Criminal Law* 363.

⁴⁶ *R v Dr Errol Cornish and Maidstone and Tunbridge Wells NHS Trust* [2015] EWHC 2967 (QB).

⁴⁷ D. Doyle, and S. Scott, ‘Criminal Liability for Deaths in Prison Custody: The Corporate Manslaughter and Corporate Homicide Act 2007’, (2016) *The Howard Journal Vol 55 No 3.*, pp304–307.

⁴⁸ Ibid.

Similarly, in the police context, the Chief Constable, and the Deputy or Assistant Chief Constable as well as a police superintendent, responsible for the management of a specific police station, clearly fall with the Act's remit. However it is unclear how far liability under the Act extends.

A case in point is the custody officer. Custody officers bear primary responsibility for the health and safety of detainees, by monitoring and observing to minimise or negate any risk of self-harm in accordance with the procedures contained in PACE. In addition, responsibility for managing the first actions following a successful intervention⁴⁹ lies with the custody officer⁵⁰. Normally anyone appointed to the role must be at least of the rank of sergeant,⁵¹ but PACE s.36(4)⁵² permits for an officer *of any rank* to perform the role. In the context of the CMCHA and the definition of 'senior management' this raises similar issues to the prison context: because the role can be held by an officer of relatively low rank, and the term 'senior management' requires a certain level of authority emanating directly or indirectly, via a delegation of authority from the organisation's controlling mind,⁵³ it may well be that a custody officer would fall outside the remit of the Act. Yet the duties performed by the custody officer are pivotal with regard to a detainee's health and safety. So insurmountable are the obstacles created by the term that Doyle and Scott argue that it 'may nullify the intent of section 2(1)(d)'⁵⁴.

Of course, it is certainly arguable that in a case where a death has occurred under the watch of an inexperienced custody officer, liability should be imposed on the police force either because a senior officer failed to ensure compliance with guidance for the handling of persons in police custody⁵⁵, or because a senior management decision to give overall responsibility for health and safety to a person at an inappropriately low level of authority or experience would be damning evidence of the way in which the organisation's activities are 'managed or organised' by its senior management. However, the complexity of the establishment makes proving a prison's liability highly unlikely, as the prosecuting authorities would encounter the same difficulties associated with establishing guilt of large corporate bodies.

Conclusion

One of the key aims of the new statutory regime ushered in by the CMCHA was to deter offending. As noted at the time of the passing of the Bill: 'a more effective corporate

⁴⁹ Ibid. "The terms 'successful intervention' and/or 'adverse incident' mean: Any incident which, if allowed to continue to its ultimate conclusion, would have resulted in the death, serious injury or harm to any person."

⁵⁰ Guidance on the Safer Detention and Handling of Persons in Police Custody, Second Edition 2012, NPIA, <http://www.homeoffice.gov.uk/publications/police/operational-policing/safer-detention-guidance-2012>, (accessed 18.04.12).

⁵¹ PACE 1983, s.33 (3).

⁵² PACE 1984, s.36(4) 'an officer of any rank may perform the functions of a custody officer at a designated police station if the custody office is not readily available to perform them.'

⁵³ S. Griffin, 'Corporate Manslaughter: A Radical Reform? (2007) *Journal of Criminal Law*, 71: 151.

⁵⁴ D. Doyle, and S. Scott, 'Criminal Liability for Deaths in Prison Custody: The Corporate Manslaughter and Corporate Homicide Act 2007', (2016) *The Howard Journal Vol 55 No 3.*, P.295.

⁵⁵ See *Guidance on the Safer Detention and Handling of Persons in Police Custody, Second Edition 2012*, NPIA and PACE 1984, Code C.

manslaughter offence would provide an incentive for organisations where serious failings exist in the management of health and safety risks to review current arrangements and organise themselves in a way that minimises failings that might cause death⁵⁶. The Act cannot be said to have a deterrent effect in relation to custodial institutions at present, however, because it is not being enforced.

Inquest has recorded over 5,600 deaths in prison and in police custody in England and Wales between 1990 and 2016⁵⁷, many of which raised ‘serious issues of negligence, systemic failures to care for the vulnerable, institutional violence, racism, inhumane treatment and abuse of human rights’⁵⁸. In spite of vulnerable offenders dying in our custodial institutions, the Act has never been invoked to prosecute such a fatality. Inquest also notes what appears to be a pattern of institutionalised reluctance to approach deaths in custody as potential homicides even where there have been systemic failings.

Furthermore, the CMCHA in its current form appears to offer little improvement on the common law doctrine; on the contrary, it acts as an impediment to securing convictions under the new regime much as it did pre 2007. With regard to deaths in custody the putting in place of effective criminal law provisions to protect the lives of those held in custodial institutions has clearly not yet been achieved.

The UK is under an obligation to secure the right to life under Article 2 of the European Convention on Human Rights 1950 by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the sanctioning of such breaches. At present it has failed to do so: the law is neither effective in relation to deaths in custody, nor does there appear to be a realistic prospect of sanction.

The unavoidable conclusion is that the complexity of the system, combined with the technicalities of the Act, present insurmountable obstacles at every step of the prosecution process. The death in custody provisions in the Act need to be amended if they are to provide any meaningful protection for vulnerable individuals in custody.

⁵⁶ Home Office, *Corporate Manslaughter and Corporate Homicide: A Regulatory Impact Assessment on the Government's Bill* (2006).

<https://webarchive.nationalarchives.gov.uk/+/http://homeoffice.gov.uk/documents/ria-corporate-manslaughter.pdf?view=Binary> [Accessed 23.04.19].

⁵⁷ <http://inquest.gn.apc.org/issues/home>

⁵⁸ *ibid*