

Far too soft on crime

The government has been nobbled. Those responsible for deaths at work will get off scot-free

It would be a lot for you or me. For Balfour Beatty plc, £150,000 is nothing. Its turnover in the first six months of this year was nearly £2bn. But this, last Friday, was the price of a human life. Michael Mungovan was a student trying to make a bit of money. He was told to switch off a live rail on a train line in south London. He wasn't qualified to do it, and his partner wasn't authorised to supervise him. But they were sent out at midnight on to the Vauxhall viaduct: one of the most dangerous sections of track in the United Kingdom. Mungovan was walking down the line when he was hit from behind by a train.

It was a staggering example of corporate neglect. The fine was supposed to "reflect the seriousness of the offence". But penalties like this are levied in proportion to the turnover of the business which employs the workers, rather than the turnover of the parent company. Balfour Beatty Rail Infrastructure Services is a mere spore from the gills of the Balfour Beatty mushroom. It's in the interests of any company whose workers are exposed to danger to ensure that they are hired by a subsidiary.

But the real issue is that, though the coroner's inquest reached a verdict of "unlawful killing", the company was prosecuted not for corporate manslaughter, but for the lesser offence of exposing its workers to risk. If you drop a brick from a tower block and it lands on the pavement, you can expect to be prosecuted for endangering the public. If you drop a brick from a tower block and it lands on someone's head, you can expect to be prosecuted for manslaughter. In last Friday's case, the fact that someone was killed did not change the nature of the offence. Mungovan's death was legally

irrelevant. The government's Health and Safety Executive (HSE) knew that there was no point in prosecuting the firm for killing Mungovan. To make that charge stick, you must prove that one of the directors of the company was personally responsible for the death. The bigger the company, the harder this is. The result is that the only corporations which have been convicted of manslaughter are one-horse outfits in which the director himself was supervising the dangerous work.

This is why the Hatfield case collapsed last month. The train crash in October 2000, in which four people died and 120 were injured, was the result of a broken rail which Railtrack and its contractors had failed to fix. But the prosecutors were unable to prove that the directors had "consented or connived" in the failure to mend the track. A board can avoid prosecution by demonstrating that it hadn't the faintest idea what its company was doing. Neglect can thus be used as a defence against the charge of neglect.

It would be easier to prosecute directors if they had a legal duty to ensure that their company was complying with health and safety laws. But, bizarrely, they do not. As the Centre for Corporate Accountability (CCA) points out, it is the directors who make all the key decisions governing safety at work. They decide how much money is spent on safety training and equipment; whether or not anything is done when a dangerous practice has been identified; how the conflicting objectives of safety and profit are balanced. The HSE's studies suggest that 70% of the deaths and major injuries in the workplace are the result of management failure. But as the directors have no legal duty, they can't be charged with neglecting it.

For seven years, the British government has been promising to do something about this. In 1997, soon after the Southall rail crash, the home secretary, Jack Straw, announced that he would introduce "laws which provide for conviction of directors of companies where it's claimed that as a result of dreadful negligence by the company as a whole, people have lost their lives". Nothing happened until 2000. Then the Home Office produced a report proposing a law to permit directors, in extreme cases, to be charged with gross carelessness or reckless killing.

Labour's manifesto in 2001 promised "law reform ... to make provisions against corporate manslaughter". Nothing has happened. In May last year, the Home Office published a press release announcing "a draft bill on corporate manslaughter", with "a timetable for legislation". It promised to release the details in autumn 2003. Autumn came and went. Nothing was announced.

The Home Office promised the CCA that the bill would be published "by the end of the year". It wasn't. The Home Office then announced that it would publish "proposals" at the beginning of 2004. It didn't. It then said they would be produced "in the spring".

They weren't. Last month, Tony Blair told the TUC conference "we will publish proposals on corporate manslaughter in the current parliamentary session". It's not clear why we should believe him, or why we should assume that if they do materialise, they will ever be turned into law.

But even if they are, it is now clear that there will be no legal penalties for directors. In 2002, the Home Office, without announcing to the public that there had been a change of policy, sent a letter to British corporations. It assured them that "individual directors, etc, will not be held liable".

The government has been nobbled. Since Straw first promised to change the law, big business has used its lobbying power to stop this happening. The minutes of a meeting of the Health and Safety Commission (which oversees the HSE) in 2003 reveal that it decided to drop its demand for a new law after "a note from the CBI [the Confederation of British Industry] ... was circulated".

Now the HSE has adopted the corporate line: that the best way of dealing with the problem is to rely on voluntary compliance. There is no evidence that this works, and plenty that it doesn't. In 1996, the Conservatives – using the same argument – cut health and safety enforcement by 25%. The following year, for the first time in decades, the number of deaths at work rose, by 20%. Even the directors accept that prosecution is the most effective way of holding them to account: when 120 of them were questioned about it in 2000, two-thirds agreed that "an increase in the possibility of inspection and prosecution, especially of individuals, would provide the best prompt for employers to improve their approach".

And why shouldn't it? There are criminal sanctions for every other kind of manslaughter, because the authorities understand that fear of the law is what stops us from doing other people in. But, somehow, according to everyone from the CBI to some who have written on these pages, this doesn't apply to company directors. Perhaps they belong to a different species.

The health and safety enforcers now have no choice but to rely on corporate goodwill: their funding has been slashed by the government. They no longer have the resources to enforce the existing laws, let alone any new ones. Enforcement of the safety laws is being dismantled, life by bloody life.