

Corporate Manslaughter

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News that the Nottinghamshire NHS Foundation Trust might face a charge of corporate manslaughter for its management of Valdo Calocane who murdered three innocent members of the public in Nottingham in 2023 will have caused some sleepless nights at other Trusts.



The defence advanced by a former Chair of the Trust at the Nottingham Public Inquiry, that if there were any faults they were clinical decisions over which the Board had no control, has some foundation, but is unlikely to win the day in Court.

To prove Corporate Manslaughter prosecutors, need to demonstrate that the way the organisation was managed had;

1. Caused a person's death,
2. What happened amounted to a gross breach of a relevant duty of care owed to the deceased,
3. The way in which the service was organised by its senior team was a substantial element in the breach.

The bar is drawn quite high and there is limited case law involving public sector organisations.

The penalty for organisations found guilty is an unlimited fine.

What is not widely appreciated is that a number of other NHS Trusts may face a similar charge in the coming months [*including the Chester NHS Trust*].

So, what would be the consequences for an NHS Trust being found guilty?

Sacking the Board would be futile. Most of those who had served on the Board at the time of the offence would be long gone. The DH could close the offending

Trust down and transfer its services to other Trusts. Good politics some would argue.

The officers involved [*and perhaps the non-executives*] would find it difficult to pass a "fit and proper person" test if they wanted to continue with an engagement with the NHS.

However, most will have already secured new posts, moved on or retired.

Any significant fine would generate a problem but one of manageable proportions.

An NHS Trust with a budget of £290m or more could easily absorb a £1m fine. In any case it would just add to any existing deficit.

It would probably be less than the Trust spent defending itself in Court!

An interesting but unanswered question is whether Ministers, who, because of the changes introduced into the Health Bill and will shortly be firmly in charge of the NHS, will in



future be in the legal chain of accountability?

The real damage would be to the reputation of NHS.

In these limited number of cases, my own view, is that Ministers would have little choice but to take prompt and decisive action in a way that demonstrates to the public that they take major breaches in a duty of care very seriously indeed and will demand that the NHS learns and takes urgent corrective action to prevent a reoccurrence.

Failure to do so having really serious consequences for Boards involved.