

# Review

## Safety, Health & Environment



### CPS come out all guns blazing for first corporate manslaughter prosecution

The Corporate Manslaughter and Corporate Homicide Act 2007 ("the Act") came into force on 6 April 2008. It had taken just over a year for the Crown Prosecution Service ("CPS") to announce that it authorised the first charge of corporate manslaughter under the Act against Cotswold Geotechnical Holdings Limited on 23 April 2009.

The prosecution emanates from an accident in September 2008 when Alexander Wright, employed by the company as a junior geologist, was killed whilst taking soil samples from inside a pit which had been excavated as part of the site survey when the sides of pit collapsed crushing him.

Kate Leonard, reviewing lawyer at the CPS explained, "under the Corporate Manslaughter and Corporate Homicide Act 2007 an organisation is guilty of corporate manslaughter if the way in which its activities are managed or organised causes a death and amounts to a gross breach of a duty of care to the person who died. A substantial part of the breach must have been in the way activities were organised by senior management. I have concluded that there is sufficient evidence for a realistic prospect of conviction for this offence".

With the introduction of the Act, the prosecution arsenal in respect of offences in relation to breaches of health and safety legislation comprises:-

1. Gross negligence manslaughter (the old offence).
2. Corporate manslaughter as implemented by the Act (the new offence).
3. Offences under the Health & Safety at Work etc. Act 1974 ("HSWA") and other subservient regulations. In general terms, those offences under HSWA can be sub-divided as between corporate/organisational offences and individual offences as outlined below:-
  - a. Corporate/organisational offences - breaches of general duties under Sections 2 & 3 in relation to employees and non-employees respectively.
  - b. Individual offences - breaches of Section 7 committed by an employee, or Section 37 committed by a Director, Manager, Secretary or other similar officer as a result of their consent, connivance or neglect.

Despite the fact that the Act only provided for an organisational offence as opposed to individual offences, it is clear that the Act is to be supplemented by other weapons in the prosecution arsenal, so as to encompass individual offences. This approach is demonstrated by the prosecution's strategy against Cotswold Geotechnical Holdings Limited and one of its Directors, Peter Eaton. It is clear that the Prosecution have utilised all of the weapons available to it in its arsenal by bringing the following charges:-

1. The new offence of Corporate Manslaughter under the Act against the company.
2. Gross Negligence Manslaughter against Peter Eaton.
3. Breach of the general duty under Section 2 of the HSWA against the company.
4. Breach of Section 37 HSWA against Peter Eaton on the basis that the company committed a breach of Section 2 by virtue of his consent, connivance or neglect.

The multiplicity of charges not only has the effect of combining corporate/organisational offences with individual offences, but also gives the prosecution a fall back position should the company and/or Mr Eaton be acquitted on the more serious manslaughter charges.

The combination of company/organisational and individual offences is entirely consistent with the Government's objective to make management collectively and individually accountable for health and safety failures. Of significance in this respect is the fact that with the introduction of the Health and Safety (Offences) Act 2008 which came into force on 16 January 2009, the individual offences under Section 7 and Section 37 HSWA now have the potential to carry a term of imprisonment of up to 2 years.

Board members and senior management of companies/organisation should ensure that they have an effective Health & Safety Management System which is properly resourced, underpinned by appropriate competency and is reviewed, monitored and audited to establish its effectiveness in practice. Should the worst happen, the Health & Safety Management System and the role of directors and senior managers within it will come under scrutiny.

## FURTHER INFORMATION

For further information about the issues raised in this article and advice on effective health and safety management generally, please contact Rob Elvin or Gary Lewis.

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