

■ ■ CPS authorises first corporate manslaughter charge under new Act

On 23 April 2009 the Crown Prosecution Service authorised a charge of corporate manslaughter against Cotswold Geotechnical Holdings Ltd in relation to the death of Alexander Wright on 5 September 2008. This is the first application of the Corporate Manslaughter and Corporate Homicide Act 2007.

Mr Wright, a junior geologist employed by Cotswold Geotechnical Holdings, was taking soil samples from inside a pit, which had been excavated as part of a site survey. Mr Wright was killed when the sides of the pit collapsed.

The company has also been charged with a failure to discharge its duty contrary to Section 33 of the Health & Safety at Work Act 1974. Peter Eaton, a director of the company, has been charged with gross negligence manslaughter and an offence contrary to Section 37 of the Health & Safety at Work Act 1974.

An organisation is guilty of corporate manslaughter under the 2007 Act 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 its activities were organised by senior management.

Kate Leonard, reviewing lawyer of the CPS Special Crime Division, said the CPS had concluded there was “sufficient evidence for a realistic prospect of conviction for this offence”.

According to Companies House, Cotswold Geotechnical Holdings had a turnover of £330,000 in 2008. It seems likely that the company, and Mr Eaton, may well have

been prosecuted under existing legislation had the new Act not come into effect. There had been a number of successful prosecutions of smaller companies for manslaughter before the new Act came into force. One of the purposes of the new Act is to make it easier to prosecute large firms for corporate manslaughter without a requirement to identify a directing mind.

If Cotswold Geotechnical Holdings pleads not guilty the Court will have to give consideration to the meaning of senior management as contained within the Act. This is likely to be quite straightforward in smaller companies with 1 or 2 directors and very few employees but may well cause greater difficulties when dealing with much larger companies with several layers of management.

In the event of a guilty plea, or the conviction of the company, the Court will have to consider an appropriate fine. The Sentencing Advisory Panel has not yet finalised its guidelines although there has been a proposal that the starting point for a fine should be 5% of a convicted company's average annual turnover over 3 years.

A conviction of an individual for gross negligence manslaughter carries a maximum sentence of life imprisonment. A conviction for corporate manslaughter attracts an unlimited fine and the possibility of a publicity order.

Mr Eaton will appear before Stroud Magistrates Court on 17 June 2009 to face charges as an individual and on behalf of the Company. The matter will be sent to Crown Court for full trial or sentencing.

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