

**DANGER
AREA**

*Look after your staff
or face the charge of*

CORPORATE MANSLAUGHTER!

Commercial lawyer Jo Tall looks at recent tragic case and outlines key steps every business should take to avoid prosecution for corporate manslaughter.

Many business owners decide to become limited companies precisely because they believe this will limit their liability. Many do not realise that when it comes to the health and safety of the employees of a company, the “corporate veil” can be lifted and unlimited fines imposed as the recent case involving Cotswold Geotechnical Holdings Ltd shows.

In September 2008, 27-year-old junior geologist, Alexander Wright from Cheltenham was killed when the sides of the trench in which he had been collecting soil samples collapsed and crushed him. Mr. Wright had been left working alone in the 3.5 metre-deep trench to ‘finish-up’ when the company director left for the day. The two people who owned the development plot decided to stay at the site as they knew Mr. Wright was working alone in the trench. About 15 minutes later they heard a muffled noise and then a shout for help. Despite the plot owners’ best efforts, Mr. Wright died of traumatic asphyxiation.

The company that employed Mr. Wright, Cotswold Geotechnical Holdings Ltd (‘Cotswold’), was a relatively small company with a sole director who also managed the company’s affairs. It was charged with the criminal offence of corporate manslaughter. Whilst there have been several prosecutions of individuals following fatal rail crashes or ferry disasters, this was the first time that a prosecution had been brought against

a company under the new Corporate Manslaughter and Corporate Homicide Act 2007. On 17 February 2011, the company was fined £385,000. This represented 115% of the company’s turnover in the year of the accident. Peter Eaton, the director of Cotswold, was also personally charged with gross negligence manslaughter and other health and safety offences, but was too ill to stand trial.

The crux of the case was that Cotswold had failed to take all reasonably practicable steps to protect Mr. Wright from working in that way. It had ignored well-recognised industry guidance, that prohibited entry into unsupported excavations more than 1.2 metres deep, by requiring junior employees to enter into and work in unsupported trial pits; typically from 2 to 3.5 metres deep.

What is the law?

Whilst previously the law was deficient in that organisations could only be convicted of corporate manslaughter if a single individual, the “controlling mind” at the very top of the company was personally guilty, under the new Act the management structure as a whole is scrutinised. If the way in which a business’s activities are managed or organised by senior management causes a death, this constitutes a gross breach of a duty of care to the deceased. The test is whether the business’s conduct fell far below what could have been reasonably expected in the circumstances.

WHEN IT COMES TO THE HEALTH AND SAFETY OF THE EMPLOYEES OF A COMPANY, THE “CORPORATE VEIL” CAN BE LIFTED AND UNLIMITED FINES IMPOSED

Note that individuals, including directors or managers, cannot be prosecuted under the new Act. However, if there is evidence that a fatality has been caused by gross negligence of individuals, they can still be prosecuted and jailed for manslaughter under common law. Indeed, in recent years, both employers and directors have received sentences of between one year to 14 years imprisonment.

What are the penalties?

The size of the fine in the Cotswold case was less than the starting point of £500,000 recommended by the Sentencing Guidelines Council only because of the small size of the business (now with four employees) and because of its fragile financial position, it was given ten years to pay the fine. However, the law is that the fine may be unlimited. Courts may also require a business to take steps to address the failures behind the death (a remedial order). Finally, the courts may also impose a publicity order, requiring the business to publicise details of its conviction and fine. Not good for business!


What precautions can you take?

As an employer, you should hopefully already be complying with health and safety legislation. However, you should examine the processes and systems that you use to comply with the law. For example:

- the systems of work and equipment used by employees
- the condition of worksites and other premises occupied by your business
- products or services supplied to customers
- whether senior management have been briefed on procedures

The resources listed that follow will help you and if in doubt, please do consult a lawyer. You owe it to your staff (and it will help you sleep well!).

Where to find out more:

- HSE has published guidance for directors on their responsibilities for health and safety – ‘Leading health and safety at work: leadership actions for directors and board members’ (INDG417)
- The full text of the Corporate Manslaughter and Corporate Homicide Act 2007 is available on the Office of Public Sector Information website: www.opsi.gov.uk
- Further guidance on the offence, including background information, is available on the websites of the Ministry of Justice (www.justice.gov.uk) and Northern Ireland Office (www.nio.gov.uk)
- Guidance on health and safety at work is available from the Health and Safety Executive (www.hse.gov.uk) and the Health and Safety Executive for Northern Ireland (www.hseni.gov.uk). 

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