

Corporate manslaughter – some questions

To most involved in the construction industry, the fact that the UK's first ever corporate manslaughter (or homicide, if you are north of the Tweed) prosecution arose from a construction accident will have come as no surprise. It is, however, worth considering whether there are any lessons to be learned from the prosecution.

The Corporate Manslaughter and Corporate Homicide Act 2007 came in to force in April 2008. Under the Act, 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.

The Cotswold Case

On 5th September 2008, Alexander Wright, a geologist employed by Cotswold Geotechnical Holdings Limited, was taking soil samples for the purpose of investigating the soil conditions in a deep trench on a development plot in Stroud when the trench collapsed and killed him. At the time of the accident, Cotswold employed eight people and a director by the name of Peter Eaton was in overall control of the way the company managed its affairs.

On 23rd April 2009, in the first application of the 2007 Act, the Crown Prosecution Service authorised a charge of corporate manslaughter against Cotswold in relation to the death of Mr Wright. Cotswold were also charged with a breach of s.2 of the Health and Safety at Work etc Act 1974. In addition, Peter Eaton was charged with gross negligence manslaughter and with a breach of s.37 of the 1974 Act.

In 2010, a judge ruled that Mr Eaton was too unwell to stand trial. After the judge had ruled that Mr Eaton should not stand trial, he asked the prosecution to consider whether the different burdens of proof for the two remaining charges might confuse a jury.

To convict on the corporate manslaughter charge, the jury required to be satisfied that there had been a gross breach of a duty of care to the person who had died. For the breach of s.2 of the Health and Safety at Work etc Act 1974, the jury only required to decide if Cotswold had ensured, so far as was reasonably practicable, the health, safety and welfare at work of Mr Wright.

Under the 2007 Act, where it falls to the jury to determine whether or not there has been a gross breach of a relevant duty of care, they are bound to consider whether the evidence shows that the organisation failed to comply with any health and safety legislation that relates to the alleged breach, and, if so, how serious that failure was and how much of a risk of death it posed.

The jury is also entitled, but not obliged, to consider the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such failure or to have produced tolerance of it and to take in to account relevant health and safety guidance.

The possibility of confusion was obvious. In the event, the prosecution asked the jury only to consider the offence of corporate manslaughter. On 15th February 2011, after a three week trial, Cotswold became the first company to be convicted of the offence of corporate manslaughter.

The prosecution's case was that Mr Wright was working in a dangerous trench because Cotswold's systems had failed to take all reasonably practicable steps to protect him from working in that way. In convicting the company, the jury found that Cotswold's system of work in digging trial pits was wholly and unnecessarily dangerous. The company ignored well-recognised industry guidance that prohibited entry into excavations more than 1.2 metres deep, requiring junior employees to enter into and work in unsupported trial pits, typically from 2 to 3.5 metres deep. Mr Wright was working in just such a pit when he died.

Cotswold were subsequently fined the sum of £385,000, which the trial judge, Mr Justice Field, permitted them to pay over 10 years at £38,500 a year, by reason of Cotswold being in a "parlous financial state". The judge said the fine marked the gravity of the offence and should act as a deterrent, having the effect of companies adhering to health and safety guidance. Whilst the 2007 Act allowed the court to make remedial and publicity orders, neither were used by the court in this instance.

Lessons to Learn

Against this background, what have we learned about the operation of the 2007 Act?

Firstly, the Cotswold case has highlighted the real issue of the differing standards of proof for breaches of the 2007 Act as against breaches of the 1974 Act. In this case, the judge raised the issue and invited the prosecution to consider the position, the outcome being that only the corporate manslaughter charge went to the jury. Quite how such a quandary will be resolved with a more high profile defendant remains to be seen. It is difficult to envisage the easier to prove breaches of the 1974 Act, in which the courts have the same sentencing power as to the imposition of a fine, being dropped in such cases.

Secondly, the fact that the first corporate manslaughter case was brought against a company with eight employees leaves unresolved the interpretation of certain of the key aspects of the 2007 Act. To secure a conviction, the prosecution required to show that a substantial part of the breach must have been in the way activities were organised by senior management. In this instance, Mr Eaton was the senior management. The 2007 Act was not brought in to address the difficulties in prosecuting organisations the size of Cotswold, it was required due to the difficulties in securing manslaughter convictions against larger corporate bodies with more sophisticated management structures.

Thirdly, the fine imposed upon Cotswold has clearly, and quite properly, been heavily influenced by the company's financial state. In their guidelines relative to the 2007 Act, the Sentencing Guidelines Council stated that the appropriate fine for a corporate manslaughter conviction would seldom be less than £500,000 and may be measured in millions of pounds.

Publicity orders

The guidelines also state that publicity orders should ordinarily be imposed.

It is reasonable to conclude that, in light of the deluge of publicity the case attracted, the judge formed the view that there was nothing to be gained in imposing such an

order. It is difficult to envisage the next corporate manslaughter prosecution attracting any less publicity than the Cotswold case. Indeed, should proceedings be brought against a large corporate body, there is likely to be more media interest, not less. In such circumstances, other than the stigma attaching, it is difficult to see the benefit in making such an order.

In conclusion, the Cotswold case has highlighted one significant issue in the future prosecution of most, if not all, corporate manslaughter cases and left unaddressed many of the issues that will be relevant to the prosecution of the larger corporate bodies that the Act was brought in for in the first place. It will take the prosecution of such a body to resolve these issues.

Recent reports suggest that Scotland Yard are currently considering bringing a corporate manslaughter charge against G4S, the world's largest private security firm, in relation to the death of an Angolan deportee who collapsed and died while being deported on a commercial flight from Heathrow. G4S, are the company hired by the government to deport foreign nationals.

Cotswold is the first step along the road of prosecuting corporate manslaughter cases. There will be others and, until there are, the application of the law in practice remains unresolved.

Post Script

On 11th May 2011 Cotswold lost an appeal against its conviction for corporate manslaughter. The Lord Chief Justice, Lord Judge, also upheld the £385,000 fine. Lord Judge is reported to have observed that it was "unavoidable and inevitable" that the company would probably have to go into liquidation

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