

First conviction for the new offence of corporate manslaughter

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.

On 17 February 2011 at Winchester Crown Court Cotswold Geotechnical Holdings Ltd was fined £385,000 having become, two days earlier, the first company to be convicted of the new offence of corporate manslaughter. The fine reflected the fact that the company, described in court as in a parlous financial state, was a small, one director, business which was given 10 years in which to pay the fine.

A 27-years-old geologist working for Cotswold Geotechnical Holdings was investigating soil conditions in a deep trench on a development plot in Stroud when it collapsed and killed him on 5 September 2008. He was left working alone in the 3.5 metre-deep trench to 'finish-up' when the company's director left for the day. About 15 minutes later the trench collapsed, burying the geologist up to his head. The owner of the plot climbed into the trench and removed some of the soil to enable the geologist to breathe but more earth fell quickly into the pit covering the geologist completely and, despite the plot owner's best efforts, he died of traumatic asphyxiation.

In convicting the company, the jury had found that the company's system of work in digging trial pits was wholly and unnecessarily dangerous. By requiring junior employees to enter into and work in unsupported trial pits, typically from 2 to 3.5 metres deep, the company had ignored well-recognised industry guidance that prohibited entry into excavations more than 1.2 metres deep.

The company's director, Peter Eaton, had previously been charged with gross negligence manslaughter but a judge had earlier ruled that he was too unwell to stand trial.



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This case once again demonstrates the need to follow the advice and guidance which is readily available, for example on the HSE's website at www.hse.gov.uk/index.htm. Hazards associated with working in excavations are well-known and specific guidance on this issue is given in the HSE's publication HSG 185 "Health and safety in excavations, be safe and shore" first published in 1999. There is almost no ground which can be relied upon to stand unsupported in all circumstances. It is clear from available guidance that excavations will collapse; what is not clear is when they will collapse. It is foreseeable that an open, unsupported trench will collapse and consequently it is essential that methods of work are developed that eliminate the necessity for persons to enter a deep trench to work.

The penalties for the offence of corporate manslaughter under the 2007 Act are an unlimited fine, publicity orders and remedial orders. The Sentencing Council's Definitive Guideline for the offence of corporate manslaughter is that "the appropriate fine will seldom be less than £500,000 and may be measured in hundreds of thousands of pounds or more".

For advice on health and safety law, or any of the issues arising from the Cotswold Geotechnical Holdings case contact Robin Cooper on 01707 690957 and at robin.cooper@hrjlaw.co.uk or Abigail Bearne on 01707 690974 and at abigail.bearne@hrjlaw.co.uk