

Second corporate manslaughter prosecution gets underway

On Friday 1 July the CPS announced that Lion Steel Ltd is to be charged with Corporate Manslaughter under the Corporate Manslaughter and Corporate Homicide Act 2007 ("the **CMCHA**"). This follows the death of one of its employees after he fell through a roof panel and died as a result of injuries sustained in the fall. The first hearing will take place at Tameside Magistrates' Court on the 2 August 2011.

Lion Steel is the second company to be charged under the CMCHA.¹ Lion Steel is also charged under section 2 and 33 of the Health and Safety at Work Act 1974 ("**HSWA**") for failing to ensure the safety at work of its employees.

Three of the company directors will also face charges for gross negligence manslaughter as well as charges under section 37 of the HSWA pursuant to which directors or officers of the company can be prosecuted for the same HSWA offence as the company if that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on their part.

Prosecuting the company in the alternative (i.e. prosecuting for both corporate manslaughter and the health and safety offences) will mean that even if a link between the death and the breach cannot be established (and which is required for the corporate manslaughter offence), the company could nevertheless be convicted for the HSWA offence – in which case it would only be necessary to prove a failure to ensure safety, rather than how or why the accident happened.

As we foreshadowed in our previous client briefing, "[A further toughening of the law for breaches of health and safety](#)" **November 2008** it is not surprising to find that a prosecution for corporate manslaughter is accompanied by a prosecution of the individual directors themselves in relation to the same matter. However, since the accident occurred before the Health and Safety (Offences) Act 2008 came into force in January 2009, the three company directors will only face a fine if convicted rather than a custodial sentence, which would have been the case had the offence occurred after January 2009.

If convicted of corporate manslaughter the company faces an unlimited fine. Since 15 February 2010, courts must have regard to the Sentencing Guidelines Council ("**SGC**") definitive guideline in which it is made clear that fines for companies and organisations found guilty of corporate manslaughter may be millions of pounds and should seldom be below £500,000; for other health and safety offences that cause death, fines from £100,000 up to hundreds of thousands of pounds should be imposed. "[Definitive sentencing guidance for corporate manslaughter confirms rejection of turnover test](#)" **February 2010**.

Furthermore, the SGC guideline envisages that Publicity Orders, which a court has the power to impose under the CMCHA and which was implemented on 15 February 2010, "should be imposed in virtually all cases". Clearly, this will lead to a greater reputational impact for any company convicted.

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¹ The first company to be prosecuted, Cotswold Geotechnical Holdings Ltd, was convicted earlier this year and fined £385,000.

Companies will not have failed to notice the increasing focus by prosecutors and regulators on good corporate governance and the higher stakes for both the company and its directors where they fall short. Having sound policies, systems and practices in place, which are followed, remains the best advice.

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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