



# First prosecution under Corporate Manslaughter and Corporate Homicide Act 2007

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The first prosecution under the Corporate Manslaughter and Corporate Homicide Act 2007 (the "Act") has been announced by the CPS. A small firm involved in geological site investigations is to be prosecuted following the death of an employee who was taking soil samples inside a pit which subsequently collapsed and crushed him. The sole director of the company has also been charged with gross negligence manslaughter.

The Act came into force more than a year ago, largely as a result of difficulties in successfully prosecuting larger organisations under the old law. The key reason was the requirement to demonstrate a senior "controlling mind", who was personally guilty of gross negligence manslaughter.

## "Senior management"

The Act abolished the "controlling mind" test. Instead, it asks whether there has been a gross breach of a duty of care by the organisation and whether the organisation of activities by **senior management** collectively was a significant element.

As this is the first case to be prosecuted under the Act it will be watched with interest, in particular if not guilty pleas are entered. However, it seems unlikely that there will be much discussion as to who might constitute "senior management" under the Act: the case concerns a small company with only one director, who is also being

prosecuted in his own right for gross negligence manslaughter.

## Sentencing

If the company is convicted of corporate manslaughter, an unlimited fine could be imposed. The Sentencing Advisory Panel is yet to provide formal guidelines on fines under the Act but previous indications had been that fines should range from 2.5% to 10% of **turnover**. Whether or not turnover will in fact form the basis of the Panel's recommended tariff remains to be seen. The company's turnover for 2008 was £333,000 which, even at the top end of the Panel's recommended range, would result in a fine of £33,000. This is probably not the large fine envisaged when the Act came in and is well within the range of a successful prosecution under the Health and Safety at Work etc Act 1974.

## Conclusion

One of the key drivers for the Act was the difficulty under the old law of prosecuting larger organisations and it is therefore surprising that the first prosecution under the Act is against a small company with only one director, where there is usually much less difficulty in showing a link between negligence and the corporate entity. In the absence of the Act, it is likely that the company would still have been charged with manslaughter (under the old law) and the director would also have faced a charge of gross negligence manslaughter.

For further information on this subject, please contact



**Ann Metherall**

**Partner**

0117 902 6629

ann.metherall@burges-salmon.com



**Catharine Gilbert**

**Solicitor**

0117 307 6886

catherine.gilbert@burges-salmon.com

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Burges Salmon LLP, Narrow Quay House, Narrow Quay, Bristol BS1 4AH

Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400

Chancery Exchange, 10 Furnival Street, London EC4A 1AB

Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266

www.burges-salmon.com

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