



# Road Safety Conference WALES

*In Association with*



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government



## Driver Assessment & Training in a Work Related Environment



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Legal update keeping you and your drivers  
within the law

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# Overview

- Focus on new legal challenges and taking responsibility for employees on the road
- An updated legal review
- The impact of poor risk management from a legal point of view

# New legal challenges and taking responsibility for employees on the road

- Corporate Manslaughter
  - 12 months on
  - Peter Eaton and Cotswold Geotechnical
  - Has the legislation overtaken events?
- Health and Safety (Offences) Act
  - Magistrates now have increased powers
  - Is 6 months in prison a sufficient wake up call for Directors?
  - Is this more of a threat than Corporate Manslaughter?

# **New legal challenges and taking responsibility for employees on the road**

- **Criminal prosecution**
  - Do employees realise the penalties for poor driving?
  - Should employers be more accountable for their employees driving such as aiding and abetting?
- **Civil Claims**
  - What is the true cost of accidents to your organisation, does anyone accurately measure this?

# legal review

- The risk assessment the first line of defence to S3 and S5 HSWA offences
  - No corporate risk assessment = No Defence
  - What must the prosecution prove
    - An undertaking with responsibility for the health and safety of your employees or anyone affected by your undertaking, also applies to agency situations
    - A breach of your health and safety procedures
    - Injury, damage or loss

## legal review

- Note reversal of burden of proof in the case of R V Chagot Ltd (2008) UKHL 73
- Prosecution need to demonstrate
  - A Health and Safety obligation
  - An injury to a third party/employee
  - If an injury occurs there is a prima facie breach
  - Organisation has to prove their innocence rather than prosecution needing to prove guilt

# legal review

- But we have a policy!
  - Police Authority case where the driver wrongly used the statutory exemption
  - Employer will still be liable for employees actions
- Mobile phone use
  - Portuguese truck driver using laptop
  - Lord Ahmed texting, presumably work related
  - Lynne-Marie Howden, first hands free distraction case

# The impact of poor risk management from a legal point of view

- Risk of prosecution
  - Poor risk management, policies or implementation
  - The coach and horses principle- one successful prosecution will lead to many more
  - Innocent or guilty you will end up in the hands of a lawyer

# The impact of poor risk management from a legal point of view

- The business case
  - Do not end up in the hands of a lawyer it will cost you money
  - Fines tend to fit the crime
  - Civil claims are a drain on the bottom line of you and your insurers
  - Impact upon your reputation