

## Group Briefing

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# Criminal liability for company “managers”

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When can a manager be prosecuted for offences committed by a body corporate? A recent decision of the Court of Appeal, DPP v TN, found that a manager can be prosecuted for company offences where he/she has functional responsibility for a significant part of the company's activities and has direct responsibility for the area in controversy.

### THE CHARGES

Mr TN was charged with offences under the Waste Management Act 1996 relating to dumping and waste-related activities at a facility in Co Kildare, operated under a waste licence granted to Neiphin Trading Limited. The Director of Public Prosecutions (DPP) charged Mr TN in his capacity as the manager of the facility.

### THE LAW

Section 9(1) of the Waste Management Act provides that where:

- » a company commits an offence
- » and the offence is proven to have been committed with the consent or connivance of or to be attributable to neglect on the part of
- » a director, manager, secretary or other similar officer of the body corporate

- » that person and the body corporate are guilty of an offence.

Similar provisions imposing personal liability on directors, managers, secretaries and other similar officers for offences committed by a company are included in various other statutes, including the recently enacted Criminal Justice (Corruption Offences) Act 2018, the Competition Act 2002, the Companies Act 2014 and the Health, Safety and Welfare at Work Act 2005, to name but a few.

### THE COURT

The trial judge directed the jury to enter a verdict of not guilty because the prosecution failed to adduce sufficient evidence (on which a jury could convict) that Mr TN was a manager of the company for the purposes of section 9(1). Relying on authorities from the 19th



This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

and early 20th centuries, the trial judge found that a ‘manager’ is someone who is a decision-maker in the company and has the power to direct its affairs or to decide corporate strategy.

The Court of Appeal questioned reliance on outdated case-law and approached the matter in the modern context. The Court observed that in modern commerce responsibilities are distributed in such a way that it is difficult to say that one individual is responsible for the management of the whole of the affairs of a company. In the modern context a company might have a finance manager, HR manager, IT manager, chief financial officer, chief marketing officer and so on, each with a significant role in a particular area of the company, but with potentially very little or no involvement in others. This does not mean that he/she is not a ‘manager’ of the company.

The Court found that a ‘manager’ for the purposes of the offence at issue, and other similarly formulated offences, is a person who has functional responsibility

### MR TN’S ROLE IN THE COMPANY

The waste site was the company’s core activity. Mr TN had no involvement with the company’s finances or with business strategy. He was paid by way of fees to a company of which he and his wife were directors. However the evidence adduced showed that:

- » he was described in an organisational chart and in annual environmental reports sent to the EPA as ‘the facility manager’ and was shown to be at the top of the management pyramid;
- » he signed correspondence on the company’s letterhead as “TN Director” and “TN Managing Director”, and later “TN Environmental Consultant”;
- » he engaged in exhaustive correspondence with the EPA on behalf of the company;
- » he was on site whenever an audit inspection was to take place;
- » he dealt with members of the public and with neighbours of the site.

for a significant part of the company’s activities and direct responsibility for the area in controversy. A ‘manager’ does not have to be actively involved in every area of the company’s business. Mr TN had no involvement in the financial side of the business, but he had direct responsibility for the operation of the facility and for compliance with the terms of its waste licence.

The Court also commented that the phrase “other officer” as used in the section (and in comparable sections) must refer to individuals having a similar stature and exercising similar responsibility to what might be expected of a company director or secretary.

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