8 February 2018

PRESS SUMMARY

HM Inspector of Health and Safety (Appellant) v Chevron North Sea Limited (Respondent) (Scotland) [2018] UKSC 7
On appeal from [2016] CSIH 29

JUSTICES: Lord Mance (Deputy President), Lord Sumption, Lord Reed, Lord Hodge, Lady Black

BACKGROUND TO THE APPEAL

The Respondent operates an offshore installation in the North Sea. In April 2013, the installation was inspected by Her Majesty's Inspectors of Health and Safety. The inspectors formed the view corrosion had rendered the stairways and stagings to the helideck (a helicopter landing platform) unsafe and served a prohibition notice on the Respondent under s.22 of the Health and Safety at Work Act 1974 (the "1974 Act").

In May 2013, the Respondent appealed against the prohibition notice to an employment tribunal under s.24 of the 1974 Act. In July 2013, the Respondent arranged for the metalwork which had been of concern to the inspector to be removed from the installation and tested. The results of the testing showed that all the metalwork passed the British Standard strength test with the exception of a panel which had been damaged during the inspection and could not be tested reliably. There was no risk of personnel being injured by falling through it. The Respondent sought to rely upon the expert report as part of their appeal to the tribunal.

The issue in the appeal is whether a tribunal is confined to the material which was, or could reasonably have been, known to the inspector at the time the notice was served or whether it can take into account additional evidence which has since become available.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lady Black gives the sole judgment with which the other Justices agree.

REASONS FOR THE JUDGMENT

On an appeal under s.24 of the 1974 Act, the tribunal is entitled to take into account all the available evidence relevant to the state of affairs at the time of the service of the prohibition notice, including information coming to light after it was served. **[24]**

It is vital for inspectors to be able to take prompt and effective action to ensure compliance with the provisions of the 1974 Act. A prohibition notice is a powerful tool in the inspector's hands. It not only allows an inspector to step in when he is of the opinion that a particular activity will involve a risk of serious personal injury, it also encourages employers to have good systems in place to improve public

safety. **[12]** However, the service of a prohibition notice on a business has the potential to do financial and reputational harm to it. **[13]**

The answer to the issue of what information the tribunal is entitled to take into account when forming its view of the facts at the material time is not clear from the wording of s.24 and must be considered in the light of the statutory scheme as a whole. **[17]**

An appeal against an inspector's notice is not against the inspector's opinion but against the notice itself. The tribunal in the present case had to decide whether the stairways to the helideck were so weakened by corrosion as to give rise to a risk of serious personal injury. There is no good reason for confining the tribunal's consideration to the material that was, or should have been, available to the inspector. The tribunal must be entitled to have regard to other evidence which assists in ascertaining what the risk in fact was. If the evidence shows that there was no risk at the material time, then the notice will be modified or cancelled as the situation requires. **[18]**

It is no criticism of the inspector when new material leads to a different conclusion about risk from the one he reached. His decision is often taken as a matter of urgency and without the luxury of comprehensive information. **[19]** The effectiveness of a notice is in no way reduced by an appeal process which enables the realities of the situation to be examined by a tribunal with the benefit of additional information. **[20]** This wider interpretation of s.24 does not undermine the role of prohibition and improvement notices in encouraging employers to have robust systems in place to demonstrate easily that no risk exists and therefore avoid the disruption of a prohibition notice which remains in force during the appeal process unless suspended by the tribunal. **[21]**

The appellant's arguments, that permitting the tribunal to look beyond the material available to the inspector will create delay and cost, do not change the conclusion on the wider interpretation of s.24. The appeal must be started within 21 days and will thereafter be under the control of the tribunal. **[22]**

There are potent considerations in favour of the wider interpretation of s.24. The only means by which a notice can be cancelled under the statutory scheme is an appeal. However, if the appellant's interpretation were correct a notice could not be dislodged even if the perceived risk of injury never in fact existed. In some cases, an employer might have to carry out unnecessary works. Further, even if, upon receipt of convincing evidence there was no risk the inspector would not seek to enforce the notice, the notice would still have the capacity to damage the reputation of the employer and his ability to do business. Furthermore, it cannot be right in those circumstances that an employer should be exposed to the possibility of criminal proceedings after his appeal is concluded. **[23]**

References in square brackets are to paragraphs in the judgment