

APPEALS AGAINST IMPROVEENT AND PROHIBITION NOTICES:

- SUMMARY OF LAW AND PROCEDURE.
- THE TEST TO BE APPLIED BY TRIBUNAL.
- ASSESSING THE MERITS OF A POTENTIAL APPEAL.

THE LAW RE IMPROVEMENT NOTICES

- SECTION 21 HSWA 1974:
 - INSPECTOR MAY SERVE NOTICE IF OF OPINION:
 - A BREACH IS BEING COMMITTED; OR
 - HAS BEEN, & LIKELY TO CONTINUE.
 - EFFECT OF APPEAL:
 - NOTICE SUSPENDED

THE LAW RE PROHIBITION NOTICES

- SECTION 22 HSWA 1974:
 - INSPECTOR MAY SERVE NOTICE IF OF OPINION:
 - ACTIVITY BEING CARRIED ON/LIKELY TO BE CARRIED ON GIVING RISE TO RISK OF SERIOUS PERSONAL INJURY;
 - NO REQUIREMENT THAT ANY OFFENCE.
 - EFFECT OF APPEAL:
 - NOTICE NOT SUSPENDED AUTOMATICALLY



APPEAL PROCEDURE

- SECTION 24 HSWA 1974:
 - MAY REFUSE THE APPEAL AND (A) AFFIRM NOTICE, OR (B) AFFIRM AND MODIFY THE NOTICE;
 - MAY ALLOW APPEAL, AND CANCEL THE NOTICE.



ANY POINT IN APPEALING?

- PRIOR TO 2008:
 - NO.
 - TEST BASED ON REASONABLENESS AND HONESTY;
 - LOW STANDARD FOR HSE TO MEET;
 - ACCEPTANCE OF NOTICE NOT EQUATE TO ADMISSION OF CRIMINAL CONDUCT.



ANY POINT IN APPEALING?

- POST 2008: CHILCOTT V THERMAL TRANSFER LTD(2009)EWHC 2086(ADMIN)
 - TEST BROADER THAN REASONABLENESS;
 - FOCUS ON TIME OF NOTICE BEING SERVED;
 - PAYING DUE REGARD TO EXPERTISE;
 - WOULD THE TRIBUNAL HAVE SERVED THAT NOTICE;
 - ENTITLED TO HAVE REGARD TO INFORMATION WHICH MAY NOT HAVE BEEN IN EXISTENCE AT DATE OF NOTICE.

TO WHAT EVIDENCE ENTITLED TO HAVE REGARD?

- CHILCOTT:PARA 12 PER CHARLES J.
 - “...THE COURT’S FUNCTION IS TO IDENTIFY ON THE EVIDENCE BEFORE IT, WHICH IS NOT RESTRICTED TO MATTERS THAT WERE IN EXISTENCE BEFORE A PARTICULAR DATE, WHAT THE SITUATION WAS AS AT THAT PARTICULAR DATE” .



ROTARY YORKSHIRE LTD V HAGUE

- (2014)EWHC 2126(ADMIN):
 - “...THE EMPLOYMENT TRIBUNAL REACHES ITS OWN DECISION, PAYING DUE REGARD TO THE VIEWS AND THE EXPERTISE OF THE INSPECTOR. IT DECIDES WHETHER IT WOULD HAVE SERVED THE NOTICE AT THE TIME IT WAS SERVED ON THE BASIS OF THE INFORMATION WHICH WAS AVAILABLE TO THE INSPECTOR OR OUGHT REASONABLY TO HAVE BEEN AVAILABLE FOLLOWING SUCH INVESTIGATION AS OUGHT REASONABLY TO HAVE BEEN UNDERTAKEN”.

HSE V CHEVRON NORTH SEA LIMITED:

- 2016: CSIH29
- *“The fundamental problem with the approach of Laws LJ is that it prohibits an appeal on the facts in a situation where it can be demonstrated that the facts or information upon which the inspector proceeded were wrong. That is the essence or purpose of many appeals on the facts. In short, there is no sound basis for restricting appeals under section 24 to what would in essence be a form of judicial review of the inspector’s opinion”.*



HSE V CHEVRON

- *“An appeal on the facts is a much wider concept and, endorsing the views of Sullivan and Charles JJ, it enables an appellant to prove, using whatever competent information is available at the time of the Tribunal’s hearing on the appeal, that the factual content of the notice was wrong and that, accordingly, however reasonable the inspector’s opinion was at the time, had the true facts been known, he would not have reached it”.*



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CHEVRON LATEST

- LEAVE TO APPEAL TO SUPREME COURT GRANTED.
- HEARING IN DECEMBER 2017.



GOING FORWARD:

- TO APPEAL OR NOT:
 - STANDARD TO BE MET BY HSE MUCH HIGHER;
 - IF APPEAL, WILL BE SISTED IN ANY EVENT IF CRIM PROCS IN CONTEMPLATION;
 - FAILURE TO DO SO COMMENTED UPON IN CRIM PROCS;
 - IF DON'T APPEAL:
 - REPUTATIONAL DAMAGE;
 - OFFENCE TO FAIL TO COMPLY WITH NOTICE (COST).



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