



HM INSPECTOR OF HEALTH AND SAFETY

-AND-

- CHEVRON NORTH SEA LIMITED

(UKSC 2016/0166- 14th December 2017)



SECTION 24(2) HSWA

'A person on whom a notice is served may within such period.....as may be prescribed appeal; and on such appeal the tribunal may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the tribunal may in the circumstances think fit.'



WHY APPEAL?

Dutyholders appeal because:

- (i) Notices are otherwise registered on a publicly accessible database.
- (ii) Commercial reasons related to tenders.
- (iii) Because the Notice was wrongly served.



ENGLISH LAW APPROACH TO SECTION 24(2)

Railtrack plc v Smallwood [2001] ICR 714

Chilcott v Thermal Transfer Ltd [2009] EWCA 2086

Hague v Rotary Yorkshire Ltd [2015] EWCA 696



CHILCOTT V THERMAL TRANSFER

- Fall from height on construction site.
- PN served- Insp of opinion that inadequate method statement/risk assessment.
- Subsequent tool box talk-Insp satisfied.
- Tribunal understood why PN served but cancelled it.



Chilcott v Thermal Transfer

- High Court allowed appeal because 'hindsight evidence' should not have been taken into account.
- In fact breach of statutory duty was a supervisory failure and not related to method of work.
- Notice remained cancelled at end of appeal.



HAGUE V ROTARY YORKSHIRE

- HV Room with transformers being commissioned. Exposed conductors and jointed cables.
- No documentary evidence to establish whether conductors left 'dead' when last worked on.
- No HVSAP available that day to test and prove 'dead.' PN served.



Hague v Rotary Yorkshire

- HVSAP attended next day and proved 'dead.'
- Tribunal and Court of Appeal affirmed Notice and did not take into account test evidence.
- CA approved *Chilcott* esp paras 10, 11 & 21 of Tribunal's judgment.



Hague v Rotary Yorkshire

(21) 'it seems to me that they were not focussing, as in my judgment they should, on the point at which the notice was served and determining...if they would have served the notice. Rather they were looking at the position with the benefit of hindsight....we can reach a different decision. That was not the process they were charged with.....'



SCOTTISH LAW APPROACH TO S24(2) *HM INSPECTOR V CHEVRON NORTH SEA*

- Offshore installation- inspection- examined stairways and staging around the helipad.
- Possible corrosion in stairway treads and grates so loading test carried out with fire axe which sheared through steel. PN served because opinion that stairways and staging were unsafe.



HM Inspector v Chevron

- Remedial works carried out before end of inspection save for forward stairway.
- Post inspection stairways and stagings removed and sent for load bearing testing to determine strength against British Standard. All met standard.



HM Inspector v Chevron

Both Tribunal and Court of Session [2016] CSIH 29 took the load bearing tests into account and cancelled the PN. Alternatively (if that evidence should be ignored) the tribunal affirmed the PN with a modification to cover only the forward access stairway.



HM Inspector v Chevron

The IH relied on para 12 of *Chilcott*:

'What the court's function is, 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 at that particular date. Did the relevant risk exist?....'



HM Inspector v Chevron

- So *Hague* expressly approved paras 10, 11 & 21 of *Chilcott* but did not refer expressly to para 12. The Court of Appeal did not take into account the later evidence.
- *Chevron* relied on para 12 and did take into account the later evidence.



The Supreme Court

- HSWA applies throughout GB and by extension (AOGBO 2013).
- Uniform approach to section 24(2).
- Likely to decide that either *Hague* or *Chevron* correct but SC free to take its own course.