



# EMPLOYMENT TRIBUNALS

**Appellant:** Mr J Lingard

**Respondent:** Lancaster City Council

**Heard at:** Manchester (preliminary hearing in public via CVP)

**On:** 6 June 2022

**Before:** Judge Brian Doyle

**Representation:**

Appellant: Not in attendance or represented

Respondent: Mr F Livesey, Counsel

## JUDGMENT

The appellant's appeal against an improvement notice dated 28 August 2020 is struck out under rule 37 of the Employment Tribunals Rules of Procedure 2013 because it has no reasonable prospect of success.

## REASONS

1. This a preliminary hearing to determine the respondent's application to strike out the appellant's appeal against an improvement notice dated 28 August 2020. The application is made under rule 37 of the Employment Tribunals Rules of Procedure 2013 because it is said that the appeal has no reasonable prospect of success.
2. If the appeal is not struck out, then I would have proceeded to consider whether and how to deal with the merits of the appeal.
3. The improvement notice was issued under sections 21 and 23 of the Health and Safety at Work etc Act 1974 in respect of premises known as "The Old Hall" or "The Old Hall Inn" in Heysham. The notice concerned arrangements made in relation to health and safety risks raised during the Covid-19 pandemic.
4. The appellant, Mr J Lingard, presented the appeal against that improvement notice via an ET1 form on 14 September 2020. It seems to me that the appeal is made for or on behalf of The Old Hall (Heysham) Ltd, as that is the registered company whose business it is. I note from the Companies Register that Mr

Lingard is a director of the company and that there is an active proposal to strike the company off the register.

5. None of that is of any significance because the appeal has been accepted for determination by the Tribunal on 2 December 2020. The correct identity of the subject of the improvement notice and of the appellant is something that could have been regularised at the hearing this morning.
6. In the event, Mr Lingard did not attend the hearing and neither he nor the company were represented at it. My hearing clerk took the precaution of telephoning Mr Lingard; leaving a voicemail for him; and sending an email to him – all without success. I delayed the start of the hearing by 15 minutes to see whether he would join the hearing, which was being conducted by video conference. I reviewed the history of the appeal, which does involve some earlier postponements, and I considered the documents before me in the form of an electronic bundle and a chronology, with a short written submission by the respondent. I was satisfied that it was appropriate to proceed in accordance with rule 47.
7. The important consideration here is that the respondent has already withdrawn the improvement notice. It did so on 30 October 2020. It had been overtaken by events. The respondent explained its position in its response to the appeal dated 12 February 2021.
8. On an appeal, the Tribunal's only powers under section 24 of the 1974 Act is to cancel or affirm the notice, and if it affirms the notice, it may do so in its original form or with such modifications as the Tribunal thinks fit.
9. The improvement notice having been withdrawn, there is thus no extant notice that is capable of being cancelled, affirmed, or modified. Moreover, the only other remedies that the appellant appears to seek are an apology and some form of publicity for the fact that the notice has been withdrawn (or cancelled, as the case may be). The Tribunal has no jurisdiction to determine an appeal in respect of a notice that is no longer in existence, and, in any event, it would have no power under section 24 to grant the appellant the additional remedies that he seeks.
10. Taking all these considerations into account, the Tribunal is unable to determine the appeal on its merits and it has not explored those at this hearing. Instead, the proper course of action is for the Tribunal to order that the appellant's appeal against an improvement notice dated 28 August 2020 is struck out under rule 37 of the Employment Tribunals Rules of Procedure 2013 because it has no reasonable prospect of success.

Judge Brian Doyle

DATE: 6 June 2022

JUDGMENT SENT TO THE PARTIES ON

8 June 2022

FOR THE TRIBUNAL OFFICE

**Notes**

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.