



# EMPLOYMENT TRIBUNALS

**Claimant:** Britannia Hotels Limited (1)

Britannia Hotels Number 2 Limited (2)

**Respondent:** Environmental Health Officer Richard Parkinson (1)

Environmental Health Officer Thomas Gee (2)

**HELD AT:** Manchester

**ON:** 14 June 2023

**BEFORE:** Employment Judge Johnson

**MEMBERS:** Ms C Neild

Mr P Dobson

**REPRESENTATION:**

**Claimants:** Mr Stevenson (counsel)

**Respondents:** Mr Simkin KC (counsel)

## JUDGMENT

Upon the Tribunal having heard submissions from the parties in this appeal, the following decision is made regarding the following Prohibition Notices issued against the appellants on 22 September 2022 and in accordance with section 24(2) Health and Safety at Work etc Act 1974, the judgment of the Tribunal is:

In relation to Britannia Hotels Limited

- (1) Prohibition Notice 830938/RP1 is cancelled.
- (2) Prohibition Notice 830938/TG1 is cancelled.
- (3) Prohibition Notice 830938/TG2 is cancelled.

In relation to Britannia Hotels No.2 Limited

- (4) Prohibition Notice 830938/RP2 is affirmed.
- (5) Prohibition Notice 830938/TG3 is cancelled.

(6) Prohibition Notice 830938/TG4 is cancelled.

## REASONS

### Introduction

1. These proceedings arose from the Notice of Appeal presented on behalf of both appellant companies on 12 October 2022 challenging the 6 Prohibition Notices issued on 22 September 2022 under section 22 of Health and Safety at Work etc, Act 1974 (the Act), (3 in respect of each claimant) and with each of the respondents preparing 3 of the Prohibition Notices, (with their initials being used to identify who was responsible for each Notice prepared). The appeal was brought in accordance with section 24(2) of the Act.
2. The Notices were issued in respect of hotel rooms at the Adelphi Hotel, which is located in Lime Street in Liverpool.
3. The respondents prepared separate responses resisting the appeal and they were presented on 15 November 2022.
4. The case was the subject of case management at a preliminary hearing before Employment Judge Batten on 23 December 2022 and the appeal was listed for an appeal hearing of 2 days in length beginning today and case management orders were made.

### Issues and law

5. The Tribunal was asked to consider the appeal and in accordance with section 24(2) of the Act and determine whether in relation to each of the Prohibition Notices should be cancelled or affirmed, and if deciding to affirm, whether this should be in the Notice's original form or with such modifications as the Tribunal in the circumstances thinks fit.
6. There is no need to repeat the relevant statutory provisions under sections 22 and 24 of the Act as they are readily available, but in terms of case law, the Tribunal was asked that it should take note of the decision in the case of *HM Inspector of Health and Safety v Chevron North Sea Ltd* 2018 SC (UKSC) 132 (2018). This case reminded the Tribunal in determining its decision under section 24 of the Act, it was not limited to considering the material which was, or should have been, available to the inspector as it was entitled to take into account all the available evidence relevant to circumstances at the time of the service of the prohibition notice, including information which became available after the notice was served.

### Evidence and documents used

7. Mr Stevenson provided opening submissions in support of the appeal.

8. Mr Simkin provided a skeleton argument in support of the respondents' resistance to the appeal brought.
9. A joint hearing bundle was prepared which contained the Prohibition Notices, an expert report from Richard Renouf dated 4 April 2023, witness statements from relevant employees working at the Adelphi Hotel, the respondents and Frances Ellis from the Health and Safety Executive, together with documents and copies of photographs.

### **Outcome of today's hearing**

10. The Tribunal was listed to hear the appeal hearing over 2 days beginning today. However, it became clear following representations from counsel for the parties that they may be able to agree a joint approach concerning the outcome of today's appeal and time was allowed for these discussions to take place.
11. Employment Judge Johnson informed counsel that whatever was agreed, would need to be approved by the Tribunal and which would need to reflect its duty to make a decision in accordance with section 24(2) of the Act. Accordingly, any agreement would be in relation to each Prohibition Notice being subject to either a decision to cancel, or a decision to affirm in either the Notice's original form, or with appropriate modifications.
12. The parties were able to reach an agreement in principle and counsel explained the basis of the agreement to the Tribunal in order that a judgment could be made.
13. In terms of the first claimant, Mr Simkin confirmed that it was correct that this company did not have control or management of the Adelphi hotel at the material time. This was the sole responsibility of the second claimant and accordingly the Prohibition Notices RP1, TG1 and TG2 should be cancelled.
14. In terms of Notice TG3, the respondents have since become aware of evidence in relation to the subject matter described in the Notice (wardrobe in room 648) and they do not seek to continue with this Notice. Accordingly, this notice should be cancelled.
15. In terms of Notice TG4, the respondents were not aware when they issued this Notice on the afternoon of 22 September 2022, that the slimline wardrobe in question had been removed. Accordingly, taking into account section 24(2) of the Act, read in conjunction with the decision in Chevron (above), it was not appropriate to continue with this Notice and it should be cancelled.
16. Finally, in terms of Notice RP2, the second claimant no longer wishes to continue with its appeal and this Prohibition Notice relating to windows at the Adelphi Hotel, should be affirmed without any modification.
17. The Tribunal was satisfied that it was proportionate and in accordance with the overriding objective to approve a judgment reflecting the agreed submissions by the parties and the judgment was issued above reflecting this.

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Employment Judge Johnson

Date: 16 June 2023

JUDGMENT SENT TO THE PARTIES ON  
Date: 27 June 2023

FOR THE TRIBUNAL OFFICE