EMPLOYMENT TRIBUNALS

Appellant: Reddish Demolition Ltd

Respondent: Andrew Woodall (one of Her Majesty's Inspectors of Health and Safety)

Heard at: Manchester **On:** 5-8 June 2018

Before: Employment Judge Feeney
Mr T Wilson
Ms S Khan

REPRESENTATION:

Appellant: Mr A Welch, Counsel
Respondent: Mr I Wright, Counsel

JUDGMENT

The judgment of the Tribunal is that:

1. The appellant's appeal fails and is dismissed

2. The prohibition notice is modified as set out below.

REASONS

1. This case concerned an appeal brought under section 24 of the Health and Safety at Work Act 1974 ("HSWA") against a prohibition notice served under section 22 of the Health and Safety at Work by Andrew Woodall, a Health and Safety Executive Inspector.

2. Section 24 of the HSWA states:

> "(2) A person on whom a notice is served may appeal to an Employment Tribunal; 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 circumstance think fit."

3. Section 82(1)(c) of HSWA states:

> "(1) In this Act –
>
> (c) Modifications include additions, omissions, amendments and related expression shall be construed accordingly."

4. Both sides agreed that the latest authority relevant to appeals is **HM Inspector of Health and Safety v Chevron North Sea Limited [2018**] Supreme Court, and the following judgment was referred to:

> "A section 24 appeal is not limited to a review of the genuineness and/or reasonableness of the inspector's opinion but requires a Tribunal to form its own view of the facts paying due regard to the Inspector's expertise. It is also common ground that the Tribunal should be focussing on the risk existing at the time when the notice was served. When the inspector serves a notice section 22 makes clear that what matters is that he is of the opinion that the activities in question involve a risk of serious personal injury. If he is of that opinion a notice comes into existence. However as it seems to me when it comes to an appeal the focus shifts. The appeal is not against the inspector's opinion but against the notice itself. The inspector's opinion about the risk and the reasons why he formed it and served the notice could be relevant as part of the evidence shedding light on whether the risk existed, but I can see no reason for confining the Tribunal's consideration to the material that was or should have been available to the inspector. It must in my view be entitled to have regard to other evidence which assists in ascertaining what the risk in fact was. If, as in this case, the evidence shows that there was no risk at the material time then notwithstanding that the inspector was fully justified in serving the notice it will be modified or cancelled as the situation requires. In my view on an appeal under section 24 the Tribunal is not limited to considering the matter on the basis of the material which was or should have been available to the inspector since it is entitled to take into account all of the available evidence to the state of affairs at the time of the service of the prohibition notice including information coming to light after it was served."

5. In that case an inspector had visited an oil rig in the North Sea and determined that some metal safety barriers were corroded and were unsafe as a result. He issued a prohibition notice but subsequent expert opinion after laboratory testing ascertained that in fact despite the corrosion the railings were perfectly safe, and it was that evidence which the court wished to ensure could be taken into come account.

6. Section 22 HSWA regarding a prohibition notice states:

> "(1) This section applies to any activities which are being or are likely to be carried on by or under the control of any person being activities to or in relation to which any of the relevant statutory provisions apply or will if the activities are so carried on apply.
>
> (2) If as regards any activities to which this section applies an inspector is of the opinion that, has carried on or likely to be carried on by or under the control of the person in question, the activities involve or, as the case may be, will involve a risk of serious personal injury, the inspector

may serve on that person a notice (in this part referred to as 'a prohibition notice').

(3) A prohibition notice shall –

(a) State that the inspector is of the said opinion;

(b) Specify the matters which opinion give or, as the case may be, will give rise to the said risk;

(c) Where in his opinion any of those matters involves or as the case may be will involve a contravention of any of the relevant statutory provisions, state that he is of that opinion, specify the provision or provisions as to which he is of that opinion and give particulars of the reasons why he is of that opinion;

(d) Direct that the activities to which the notice relates shall not be carried on by or under the control of the person on whom the notice is served unless the matter specified in the notice in pursuance of paragraph (b) above and any associated contraventions or provisions so specified in pursuance of paragraph (c) above have been remedied."

7. In **Railtrack PLC v Smallwood [2001]** it was held that an inspector was entitled to issue a prohibition notice after the Ladbrook Grove railway disaster prohibiting the carrying on of railway activities on the relevant route even though the activities had been stopped at the time. "Activities" were still carried on for the purpose of section 22 even if they were temporarily interrupted or suspended.

8. In addition on an appeal an Employment Tribunal may rephrase a notice (**Chrysler (UK) Limited v McCarthy [1978]**) and extend time limits for remedying the breach. Argument on appeal may turn on the question of whether or not the safety measure(s) required were reasonably practicable and so whether or not there was a breach of the statutory duty.

9. Regarding the risk of serious personal injury, for a notice to be issued the risk need not be imminent. In any appeal the burden is on the inspector to show on a balance of probabilities there was the relevant risk whereupon the burden falls on the employer to show all that was reasonably practicable was done to avoid it.

10. We note there is no authority or definition of serious personal injury.

11. In relation to relevant statutory authority, section 6 of the Working at Height Regulations [2005] is relevant. Section 6 says:

"Avoidance of risks from work at height

(1) In identifying the measures required by this regulation every employer shall take into account of a risk assessment under regulation 3 of the Management Regulations.

(2) Every employer shall ensure that work is not carried out as to height where it is reasonably practicable to carry out the work safely otherwise than at a height.

(3) Where work is carried out at a height every employer shall take suitable and sufficient measures to prevent, so far as reasonably practicable, any person falling a distance liable to cause personal injury.

(4) The measures required by paragraph (3) shall include –

(a) His ensuring that the work is carried out –

(i) From an existing place of work; or

(ii) (In case of obtaining access or egress) using an existing means which complies with schedule 1 where it is reasonably practicable to carry it out safely and under appropriate ergonomic conditions; and

(b) Where it is not reasonably practicable for the work to be carried out in accordance with subparagraph (a) is providing sufficient work equipment for preventing so far as reasonably practicable a fall occurring.

In this case is was 4(b) that was engaged.

(5) Where the measure taken under paragraph did not eliminate the risk of a fall occurring every employer shall –

(a) So far as is reasonably practicable provide sufficient work equipment to minimise –

(i) The distance and the consequences; or

(ii) Where it is not reasonably practicable to minimise the distance or consequences, of a fall; and

(b) Without prejudice to the generality of paragraph (3) provide such additional training and instruction or take other additional suitable and sufficient measures to prevent so far as reasonably practicable any person falling a distance liable to cause personal injury."

12. The issue of "falling distance liable to cause personal injury" was considered in **Campbell v East Renfrewshire Council [2004]** where it was decided that this did involve a fall from one surface to another, but did not include falling down a sloped embankment. In **Gilchrist v Asda Stores Limited [2015]** it was accepted that working whilst standing on a kick stool which was 18 inches high was work in a place where a person could fall a distance liable to cause personal injury and thus was 'work at a height' within the meaning of the regulations.

13. **R v The Board of Trustees of the Science Museum [1993]** Court of Appeal stated that "risk" meant the possibility of danger and there was no need to show there had been actual danger.

Comments on the Evidence

14. Before making our findings of fact we wish to comment on the evidence provided as we were concerned that the appellant's witness statements did not address the central issue, and that we began the case with the view that there was a factual dispute in relation to where Mr Dymond was sitting at the relevant time. Therefore, on the first day when we were unable to proceed because of Mr Welch's indisposition the Tribunal in chambers spent some time examining the photographs and working out what was the scissorlift and what was likely to be a purlin or strut of the building from which the asbestos sheets were being removed. It therefore came as a surprise on the first day of cross examination to ourselves and to the respondent's counsel when Mr Welch agreed that Mr Dymond was sitting on a purlin. Mr Dymond's witness statement did not say this at all, neither did the respondent's appeal, and neither did the respondent's skeleton argument. Instead, all three stated he was standing on the middle rung of the scissorlift.

15. Further, considerable time was directed towards the asbestos issue which was not the subject of the prohibition notice. Nevertheless, the fact that the main fact at issue as to where Mr Dymond was situated was not referred to in the witness statements, and was actually denied in the ET3 and the skeleton argument, was of some serious concern to us.

Findings of Fact

16. The appellant, whose managing director is Mr Lloyd, had successfully tendered for work at West Chirton Industrial Estate, North Shields, and had produced a construction phase plan for the work they intended to do, which was described as:

> "The work consists of the removal and disposal of asbestos based material, soft strip and demolition of water tower and low level flat roof extension including grubbing up slabs and foundations. On completion all accessible openings will be secured and party wall will be weatherproofed."

17. It was anticipated that the work would begin on 11 September and end on 20 October. Mr Lord told us in evidence that there was a week's break in the work relatively early on.

18. In addition to the site plan there was also a method statement and risk assessments. These were referred to and it was indicated, as it was in evidence, that they were live documents and could be amended as matters went along and new problems/issues were discovered. This is recorded as:

> "Any amendments required throughout the works (project live), work will cease in immediate area and site supervisor to discuss with Managing Director. Only when approved by Managing Director an addendum will be created and site personnel affected by the particular work activity will be brief

> by the site supervisor whilst on site to create an addendum. A compliance test must be carried out by the site supervisor."

19. A specific reference to working at height was included at 3.5 which referred to the method statement and risk assessment also. 3.5 states:

> "Working at height using MEWPs (mobile extending working platforms) is required duration operation 3 for the removal of asbestos cement roof sheets. Only trained, authorised and competent operatives to remove asbestos (non licenced) and work at height. Operatives must hold valid IPAF with relevant category training."

20. In relation to operation 3, removal of asbestos cement roof sheets, the method statement/risk assessment stated as follows:

> "Operatives using bulk croppers will access underside of roof area while positioned in rough terrain diesel scissorlift. (Our note to scissorlift is an MEWP). Fixing bolts are to be cut through using bolt croppers before being manhandled into the working platform and lowered down to ground floor level. Individual sheets will be positioned inside of working platform before lowering down to ground level for disposal. Sheets will be kept in whole sheets if possible and stored in container for transportation to licenced facilities. Any breakages will be placed on red asbestos bags before placing into clear bags clearly marked 'asbestos waste' and taped up at the end. Rainwater goods will be removed again by operatives working off a scissorlift."

21. One of the hazards identified was "falls from height/risk to others below" and "misuse of scissorlift" (overloading etc). High winds were also identified. Control measures were for falls from heights, etc:

> "3.2 Operatives to remain in working platform at all times while extended. At no time must they access external part of the roof structure. Area below to be cordoned off using high visibility tape and lookout to be in attendance during this operation.
>
> 2.3 Operatives working on this task will be fully training in operating the scissorlift, working at height and removing not licenced asbestos…Operatives to work within manufacturers guidance."
>
> 2.4 All work at height to cease during high winds."

22. On 25 September 2017 Mr Woodall, the HM Inspector of Health and Safety, was asked by his manager, Zoe Wood, Acting Principal Inspector of Health and Safety, to undertake a site visit to a warehouse building on West Chirton Industrial Estate, North Shields, Concerns had been raised that roof work might have been being carried out in an unsafe manner. It was initially reported to us that someone had been seen on the roof over the weekend. However, it is not absolutely clear that that is the way in which the initial complaint was raised. We had no documentary evidence of how the complaint was raised and Mr Woodhall did not know. However, we do know from Mr Woodall's evidence that the previous year there had been a

fatality as a result of someone falling through an asbestos cement roof panel at the same site.

23. As Mr Woodall arrived and was entering the building he noticed that bits of asbestos cement sheeting were being dropped to the floor. In his statement he said this was being broken off on the roof and dropped to the floor by an operative working for a scissorlift. However, on reflection under cross examination he stated that whilst he saw "bits" falling to the ground, at least two bits, and he saw Mr Dymond later on the scissorlift and the roof, he could not be 100% sure that the two events were connected, and therefore it was possible that the two matters were unconnected. He said he took photographs as he entered the building, of which the first one was AW1.

24. AW1 showed the back view of an individual in a safety workman suit standing with one leg on the middle rung of the guard rail round scissorlift, one hand on something, possibly a purlin or a roof sheet, and the other leg appeared to be going over the purlin.

25. Mr Woodall spoke to another worker who directed him to the site supervisor, Peter Blackman, who was working out of a second scissorlift at the other side of the building. Mr Blackman lowed his scissorlift and came over to speak to the inspector. Mr Blackman explained the working method, which was removing the bolts using a burning torch, sheets were then removed whole and lowered to the floor via the scissorlift, as at that point Mr Woodall's concern was that roof sheets were being broken up and dropped to the floor from a height. As he was talking to Mr Blackman Mr Woodall looked up and noticed that what turned out to be Mr Dymond was by this stage sat astride a section of the roof structure and appeared to be working on an asbestos cement roof sheet. From where Mr Woodall was he appeared to be positioned partially over the edge by the scissorlift guardrails. He asked Mr Blackman to get Mr Dymond down and took two photographs.

26. These further photographs clearly showed Mr Dymond sitting astride a roof strut or purlin with his feet on the middle rail of the scissorlift guard rail. He had his right hand on a piece of asbestos cement, and his left hand appeared to be resting on possibly another roofing sheet. Mr Woodall checked his camera whilst he was waiting for Mr Dymond to come down and saw that it had captured climbing out of the scissorlift onto the roof structure. He had not been aware of exactly what had been captured when he walked into the building; he had just taken the photograph. As far as he could recall, he did not speak to Mr Dymond but just to Mr Blackman, and stated that he had concerns over the working practices regarding working at height and the removal of the asbestos cement sheets. He went to look at the paperwork for the job: the method statement and the training certificates.

27. During discussions with Mr Blackman regarding the method statement Mr Woodall said he was told that during the removal works it was found that metal sheeting was secured directly on top of the asbestos sheets and in these circumstances the workers were unable to follow the removal process as described in the method statement so had devised their own system. Mr Blackman and Mr Dymond both denied this and they both said this was the first occasion that there had been an issue with an asbestos sheet where they had been unable to remove it from below. This was because in the past some broken asbestos sheets had been

repaired by a tin sheet being screwed over them. This had not been apparent when Mr Lloyd had bid for the job and when the documentation had been drawn up as no efforts had been made or thought necessary to check the roof from above.

28. Mr Dymond said at Tribunal that he had gone up to have a look to see what the problem was, and he also said he thought that "if he wiggled it this might solve the problem". However, at the time Mr Woodall did not know this was Mr Dymond's thinking.

29. Mr Woodall then advised he would be serving prohibition notice due to the working practices, including unsafe working at height and uncontrolled removal of asbestos. He spoke to his manager, Ms Wood, and they agreed that from what he had observed it was possible that the worker could have fallen, and that he might have fallen to the ground behind the scissorlift which was a distance liable to cause personal injury. As such it was agreed that a prohibition notice under the Working at Height Regulations 2005 was appropriate and proportionate.

30. Mr Woodhall wrote the prohibition notice whilst he was there. This said, "I hereby give you notice I am of the opinion that the following activities, namely working on roof or accessing roof by climbing out of the scissorlift to remove roof sheets…". He then stated that there was a risk of serious personal injury, the risk being that "persons are at risk of falling a distance likely to cause personal injury" and that there was thereby a contravention of the Working at Height Regulations 2005, regulation 6(3), because "you have not taken suitable and sufficient measures to prevent persons from falling".

31. Mr Blackman then drafted a handwritten addendum to the method statement, saying:

> "Operatives using a cherry picker will get above the roof sheets, unscrew the repaired sheets (Tim) and peel back the tin sheets. The cement sheets will have the bolts blown from underneath and then be lifted down in full sheets. They will then be stacked into the skip.
>
> Hazards:
>
> - Falls from height/risk to others below.
> - Inhalation of dust.
> - High winds.
> - Underground culverts and voids.
>
> Control Measures:
>
> - Operatives to wear harness and be trained in the use of cherry picker.
> - Operatives to use masks provided which are suitable for works.
> - All work at height to cease during high winds.

- Areas to be scanned and taped off where ducts/voids are present."

32. It was agreed this was a suitable amendment and that work stopped whilst the appellant obtained a cherry picker for the next day to undertake the work in accordance with the addendum. It is to the appellant's credit that they remedied the problem immediately.

33. Mr Blackman asked Mr Woodall to ring the business owner, Mr Melvin Lloyd, to explain what had happened. He did so and explained to him the exiting of the scissorlift to access the roof. Mr Lloyd was not happy and said he thought it was harsh and that he wanted the individual prosecuted for working outside the risk assessment method statement (RAMS). In Mr Woodall's view they were not working outside the RAMS as the RAMS did not include what to do if they came across repaired roof sheets which required them to work above them rather than the planned method of removing the bolts from beneath the sheets. Mr Lloyd said he felt it was not fair.

34. The next day the cherry picker arrived and the method was adopted. There was some controversy as to how many sheets were in the position where they had the tin screwed in to cover up broken sections. The impression from Mr Blackman's evidence was about seven; Mr Dymond thought there was only one, however he did state that his recall of what had happened in September 2017 was limited. Mr Blackman said that this was the first occasion this had happened. It was put to him that it was unusual coincidence that the inspector should walk in at the very moment when Mr Dymond decided to undertake his unsafe practice, but Mr Blackman stated that was the situation. It was also somewhat unusual that the very thing that had been complained of and had led to the visit was exactly what Mr Dymond was doing. However, although Mr Dymond was not exactly a satisfactory witness Mr Blackman came across as a credible witness and therefore we accept this evidence that this was the first time this had occurred. Mr Blackman agreed it was bad practice and although he was the supervisor and he had checked Mr Dymond periodically he could not be watching him all the time. Mr Blackman had not actually seen Mr Dymond do the manoeuvre whereby he had sat on the strut.

35. Mr Dymond's witness statement was surprising as it did not mention him sitting on the purlin/strut but did state that:

> "I had just stepped onto the handrail of the scissorlift to see what the problem was when the HSE officer arrived and I was told to come down. I accept I shouldn't have done it. There had been no issues before. I couldn't remove the sheet from underneath so I had to come from above. I stepped up to look to see what the problem was. I stepped on the middle handrail of the scissorlift to get a good look above the roof. I did not climb onto the roof at any stage. I did not leave the scissorlift at any stage."

36. This was clearly incorrect as it was accepted on the first day of the hearing that in fact he was sat on the strut and therefore whilst he may have been able to climb on it and leave one foot on the scissorlift rail this was clearly not the working method of safety on the scissorlift, which was to stay on the platform.

37. At one point Mr Welch in cross examination put to Mr Woodall that with the regulations on MEWPs safety harnesses were only required in relation to cherry pickers/boom and baskets. However, we discussed with Mr Welch the fact that clearly there would not be any discussion of harnesses, etc., with the scissorlift as no-one would have anticipated anybody standing on the guardrail. The modus operandi of a scissorlift was to stand on the platform. Accordingly there seemed to be no point whatsoever in suggesting that it was safe to use the scissorlift without a harness. Clearly it was safe as long as you stuck to standing on the platform. No-one would have written an advisory note based on the possibility of somebody standing on the handrail as per se that would have been an unsafe thing to do.

38. In addition we noted that the parties witness were in agreement that the distance from the top rail of the scissorlift to the platform floor was 90cms.

Parties' Submissions

Appellant's Closing Submissions

39. The appellant submitted that:

(1) The appellant took suitable and sufficient measures to prevent, so far as is reasonably practicable, any person falling a distance liable to cause personal injury and thus did not breach regulation 6(2).

(2) That the work undertaken including the actions of Mr Dymond did not involve a risk of serious personal injury. In particular:

Reasonable steps

(i) The work at the site was properly planned, i.e. the construction phase plan, method statement and risk assessment.

(ii) That the appellant's employees were properly trained.

(iii) The work carried out was properly supervised.

(iv) The equipment provided was appropriate and safe for the work undertaken at the site.

(v) The work undertaken did not involve any of its employees working on the roof such as would have required equipment such as safety harnesses or fall arresters. The employees were working from scissorlifts that had guards on the platforms and that negated the need for fall arrest equipment. The measures taken by the appellant to ensure that its employees did not fall from height was suitable and sufficient.

Risk or serious personal injury

(vi) The appellant argued that there was no risk of serious personal injury. As the case unfolded their submissions was that Mr Dymond would always have fallen into the scissorlift platform if he had fallen

at all and that this would not have occasioned serious personal injury. Further, that sitting on the purlin was safe as the structure was solid. it being subsequently used to hold up new panels.

40. In the submissions the appellant stated that Mr Dymond momentary stepped onto the middle handrail to look at a particular sheet and was not conducting any work on the sheet, and the way he was positioned a matter of feet above the floor of the platform of the scissorlift but always within its confines, he was not at risk of personal injury. However, this submission could not be fully sustained due to the photographs and the way the evidence developed. It was submitted, however, that his actions in any event did not create any material risk he would fall outside of the guarded area of the scissorlift onto the floor of the site. No sheet had been attempted to be removed from above the rood; Mr Dymond was simply seeing what the difficulty was.

Respondent's Closing Submissions

41. The respondent stated there was sufficient evidence of activities in that Mr Dymond was working on the roof or accessing the roof, and there can be no doubt he climbed out of the scissorlift, as the photo shows, to sit on the purlin. The respondent accepted the evidence it did not necessarily support that Mr Dymond was working to remove roof sheets rather than just observing. If the Tribunal agrees with that proposition then it would be appropriate to modify the notice by deleting the words "to remove roof sheets", and that such a modification would not disturb the sense or direction of the notice.

42. Regarding a serious personal injury, it was not fanciful: it was a real risk:

- Mr Dymond could have fallen climbing on or off the purlin or from the purlin itself. He rested a hand on the roof structure;

- He could have fallen through the roof structure. There was no guarantee that the cement asbestos sheet that he rested his hand on was not fragile, and that this danger was anticipated as the appellant's own method statement stated that workers should stay on the scissorlift platform at all times;

- It was possible that Mr Dymond could have fallen to the ground if the purlin or the sheet had broken or if he had lost his balance and fallen backwards or sideways to his left and that if, as the appellant contends, the only possibility was him falling to the platform for the scissorlift, it had been established that height was at least 950mm, and it could not be said that a fall onto a metal contraption, either the floor of the scissorlift platform or the rails, would not cause serious injury; it was likely that it would do if he had struck any part of his body including his head.

- That there was a breach of regulation 6(3) because the method statement did not include a method to remove the roof sheeting if it had been secured by a piece of metal on top of it. As the roof had not been observed from above at any stage the respondent was unaware of this risk, however that does not mean that they do not have a duty to ensure a

safe system of working in that situation. It was agreed by everybody that a safe system of working in that situation was a cherry picker with a harness, which is what the addendum said;

- That there was no minimum distance that a person may fall which is not liable to cause personal injury. There is no case law or medical guidance which says that falling from a metre or less than a metre would not cause serious personal injury.

Conclusions

43. The Tribunal find that the appeal fails. We have no doubt that the activities of Mr Dymond, (even accepting the appellant's case that this was the first time he had climbed out of the scissorlift, swung his leg over the purlin and sat on the purlin, albeit with one or possibly two legs on a rail of the scissorlift) was a highly dangerous activity which could have resulted in serious personal injury to Mr Dymond.

44. We do not accept the respondent's proposition that because the method statement indicated using the scissorlift that that was the end of the matter for the appellant. As the appellant readily acknowledged, things develop during a job and addendums have to be made, and therefore everyone was aware that once it was not possible to do a job using the current method (in this case staying on the scissorlift platform), the job must cease, advice sought and addendum drawn up, which would have required work to cease while a cherry picker was hired, as is what happened after the inspector's visit. Therefore the method statement was inadequate.

45. In respect of the risk of serious personal injury, we have no doubt that Mr Dymond was at risk of serious personal injury if he had fallen. The appellant submitted that he could have fallen only onto the platform of the scissorlift. Even if this were true we find such a fall had the potential to cause serious personal injury. Mr Dymond could have hit his head on a rail or on the platform floor. The parties believed the distance from the top rail to the platform floor was 90cms (34.5 inches) which is higher than a kickstool. In any event the distance from the purlin to the platform floor would have been in excess of 90cms.

46. In any event we regard falling onto the platform as just a possibility. It was not by any means a certainty that this is what would have happened had he lost his balance when climbing out or back into the scissorlift or even whilst sitting on the purlin.

47. There was a real risk he could have fallen across the other side of the roof, through the asbestos panel if it broke, the purlin could break, or the claimant could miss or 'bounce' off the guard rails of the platform onto the floor of the building

48. Accordingly, there were no steps in place to prevent the risk of serious personal injury and the appeal fails.

Modification

49. However, we do agree that there should be a modification as at the time the prohibition notice was issued due to a number of factors including Mr Woodall

believed that Mr Dymond was actually attempting to move the panel. Although Mr Dymond referred to having an intention to try "wiggling" the panel to get it loose, we felt there was insufficient evidence that he actually did attempt this, and therefore the real risk was of falling even without attempting any work (clearly if he had attempted any work he was considerably more likely to lose his balance and fall).

50. Accordingly, we modify the prohibition notice to remove "to remove roof sheets".

Employment Judge Feeney

Date: 19th June 2018

RESERVED JUDGMENTAND REASONS
SENT TO THE PARTIES ON

2 July 2018

FOR THE TRIBUNAL OFFICE