

THE INDUSTRIAL TRIBUNALS AND FAIR EMPLOYMENT TRIBUNAL PRELIMINARY HEARING

CASE REF: 11411/20

CLAIMANT: Kirkistown Castle Golf Club

RESPONDENT: Inspector David McCambley

In the Matter of an Appeal against a Prohibition Notice dated 13 March 2020, bearing Serial Number HS 1775/01/19-2020 (M)

Judgment by consent pursuant to Rule 59 of the Industrial Tribunals and Fair Employment Tribunal Regulations 2020

The Judgment of the Tribunal following the agreement of the parties at a hearing dated 1 September 2020 and pursuant to Rule 59 of the Industrial Tribunals and Fair Employment Tribunal Rules 2020 is that the Prohibition Notice dated 13 March 2020 is affirmed, with the modifications as appear in the modified Prohibition Notice appended to this judgment, pursuant to Article 26 (1) of the Health and Safety at Work (Northern Ireland) Order 1978.

Constitution of Tribunal:

Employment Judge (sitting alone): Mrs B Gamble

Appearances:

The Appellant was represented by Mr M Corkey, of Counsel, instructed by Stewarts Solicitors.

The respondent was represented by Mr C Holmes, of Counsel, instructed by Moore McKay English Solicitors.

The modified Prohibition Notice is as set out in the Schedule to this Judgment.

Employment Judge:

Date and place of hearing: 1 September 2020, Belfast.

Date decision recorded in register and issued to parties:

SCHEDULE

“The Health and Safety at Work (Northern Ireland) Order 1978
(as amended by the Health & Safety at Work (Amendment) (Northern Ireland) Order 1998)
Articles 24, 25 & 26

MODIFIED PROHIBITION NOTICE

(AS MODIFIED BY THE INDUSTRIAL TRIBUNAL, 1st September 2020, CRN 11411/20)

Name : Honorary Secretary

Address: Kirkistown Castle Golf Club, Main Road, Cloughey, Co.Down, BT22 1JA

Trading as Kirkistown Castle Golf Club

I **David McCambley** (Health & Safety Inspector) of Ards and North Down Borough Council, being an Inspector appointed under Article 21 of the said Order hereby give you notice that I am of the opinion that the following activities, namely:-

The playing of golf in the direction of the current location of the first hole, including from any of the tee boxes within the area demarcated by a blue line and hatched blue on the attached map i.e. playing of golf on the shared 1st/18th fairway in a North-Easterly direction within the area demarcated by a blue line on the attached map

which is under your control

at

Kirkistown Castle Golf Club, Main Road, Cloughey

involves a risk of serious personal injury, and that the matters which give rise to the said risks are:

that persons residing at or visiting premises which share the course boundary with the shared 1st/18th fairway (being persons not employed by the club), are not adequately protected from being struck by golf balls leaving the course as a result of errant shots

and that the said matters involve a contravention of the following statutory provisions:

Article 5 (1) of the Health and Safety at Work (Northern Ireland) Order 1978

General duties of employers and self-employed to persons other than their employees

“Article 5 (1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health and safety.”

because

the number of golf balls that have been quantified as having left the course and entered the amenity spaces of adjoining properties indicates that Kirkistown Castle Golf Club has not, in so far as is reasonably practicable, controlled the risks to the health and safety of adjoining residents of those properties and their visitors (being persons not in the employment of the club).

and I hereby direct that the said activity shall not be carried on by you or under your control after Tuesday 1st September 2020 unless the said contravention and matters have been remedied. I further direct that the measures specified in the schedule which forms part of this notice shall be taken to remedy the said contraventions.

Signature _____ (Name of Inspector)

Date _____

being an Inspector appointed by an instrument in writing made pursuant to Article 21 of the said Order and entitled to issue this Notice.

This is a relevant notice for the purposes of the Environment and Safety Information (NI) Order 1993. This page only will form the register entry.

**Any Correspondence relating to the Notice should be addressed to
The Head of Environmental Health, Protection and Development
Ards and North Down Borough Council
2 Church Street, Newtownards, BT23 4AP
Telephone: 0300 013 3333**

Serial Number HS1775/01/19-2020 (M)

The Health and Safety at Work (Northern Ireland) Order 1978
(as amended by the Health & Safety at Work (Amendment) (Northern Ireland) Order 1998)
Articles 24, 25 & 26

SCHEDULE

- 1. The playing of golf in the direction of the current location of the first hole, i.e. play on the shared 1st/18th fairway in a North Easterly direction within the area demarcated by a blue line and hatched blue on the attached map must cease from the date of the Notice. For the avoidance of doubt, play in the direction of the current location of the first hole i.e. play on the shared 1st/18th fairway in a North-Easterly direction beyond the area demarcated by a blue line on the attached map is unaffected by this Notice.**
- 2. This cessation of the playing of golf at paragraph 1 must remain in place until Kirkistown Castle Golf Club has remedied the risks to the health and safety of residents of and visitors to properties adjoining the shared 1st/18th fairway insofar as is reasonably practicable, by completion of all works reasonably required [to include, for the avoidance of doubt, applying for and obtaining any planning permission that may be required] to reverse the direction of play of the current 1st and 18th holes, such works to be carried out to the reasonable satisfaction of the said Inspector.”**

See Accompanying Notes

NOTES

1. **Failure to comply with this Prohibition Notice is an offence as provided by Article 31(1)g of The Health and Safety at Work (Northern Ireland) Order 1978 and Article 31(2) and the Schedule 3A of that Order renders the offender liable:-**

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding £20,000 or both.
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or both.

2. Except for an immediate Prohibition Notice, an Inspector has power to withdraw a Notice or extend the period specified in the notice, before the end of the period specified in it. If you wish this to be considered you should apply to the Inspector who issued the notice, but you must do so before the end of the period given in it. Such an application is not an appeal against this notice.

3. The issue of this notice does not relieve you of any legal liability resting upon you for failure to comply with any provision of this or any other enactment, before or after the issue of this notice.

4. **Your attention is drawn to the provision for appeal against this notice to an Industrial Tribunal. Details of the method of making an appeal are given below** (see also Article 26 of the Health and Safety at Work (NI) Order 1978).

a) An appeal can be entered against this notice to an Industrial Tribunal.

The appeal should be sent to: -

The Secretary
Office of Industrial Tribunals and The Fair Employment Tribunal
Killymeal House
2 Cromac Quay, Ormeau Avenue
Belfast BT7 2JD
Tel: 028 9032 7666
Fax: 028 9025 0100
Email: mail@employmenttribunalsni.org

If the appeal is by post it should be sent by recorded delivery.

b) The appeal must be commenced by sending in writing to the Secretary of the Tribunals a notice containing the following particulars:-

- 1. The name and address of the appellant and, if different, an address within the UK to which he requires notices and documents relating to the appeal to be sent.
- 2. The date of the notice or notices appealed against and the address of the premises or place concerned.
- 3. The name and address (as shown on the notice) of the respondent.
- 4. Particulars of the requirements or directions appealed against.
- 5. The grounds of appeal.

A form which may be used for appeal is attached. Alternatively you can visit www.employmenttribunalsni.co.uk for full information and to make an appeal using the on-line claim form.

c) Time limit for appeal - A notice of appeal must be sent to the Secretary of the Tribunals **within 21 days from the date of service** on the appellant of the notice or notices appealed against. However, if it is not reasonably practicable for an appeal to be brought within this time, then an application can be made in writing to the Secretary and the tribunal may extend this period.

d) The entering of an appeal does not have the effect of suspending the Prohibition Notice. Application can be made for the suspension of the notice to the Secretary of the Tribunals, but the notice continues in force until a tribunal otherwise directs. An application for suspension of the notice must be in writing and must set out:

- the case number of the appeal, if known, or particulars sufficient to identify it, and

- the grounds upon which the application is made. It may accompany the appeal.

e) The rules for the hearing of an appeal are given in:-
The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure)
Regulations (Northern Ireland) 2020 SR 2020 No. 3

NOTES (continued)

ENVIRONMENT AND SAFETY INFORMATION (NORTHERN IRELAND) ORDER 1993

1. A notice which is relevant for the purpose of this Order (see overleaf) will be included as an entry in a public register kept by **Ards and North Down Borough Council**. A relevant notice is one which does not impose requirements or prohibitions solely for the protection of persons at work.
2. The register entry shall be made within fourteen days of either the right of appeal against the notice expiring, or of such an appeal being disposed of. Where a notice is cancelled on appeal no entry shall be made.
3. When the Council is satisfied that a relevant notice has been complied with, an entry shall be made in the register to show this. If a notice is withdrawn or amended the entry shall be deleted or amended. These alterations of the register shall be made within seven days.
4. Entries shall be kept in the register for a period of at least three years.
5. If you think that the entry for this notice on the register will disclose information about a trade or secret manufacturing process you should give written notification to the Council within fourteen days of the date of service. The Council will then draft an entry which in its opinion will not reveal the secret, and serve this on you.
6. If you are not satisfied with this draft entry you may, within fourteen days from the date of its being served on you, serve notice in writing on the Council of your intention to appeal, whereupon the Council will send you a copy of a panel of at least three persons, all of whom shall be practicing barristers or solicitors. You may then serve a notice in writing, within twenty-eight days from the date the copy of the panel was sent to you, on the Council naming a member selected from the panel and setting out the grounds of your appeal. The Council will then arrange for the hearing of the appeal by the person you have named. The person hearing the appeal will either decide that the entry should be made as drafted, or, if he considers that it does not afford reasonable protection to the secret, he will direct an entry to be made in such terms as he may specify.
7. If you make a written notification (see paragraph 5) the Council will not make an entry in relation to the notice other than one which only specifies your name and address, identifies any place involved and specifies the relevant statutory provisions and the Council will delete any entry already made which is not in such terms. A fuller entry will only be made when (a) you give your written consent to the draft or to an entry in such other terms as you agree with the Council, or (b) where no consent is given, the time allowed for appeal to the Council has expired, or (c) on appeal, the person hearing the appeal has directed that the entry shall be made.

**APPEAL TO AN INDUSTRIAL TRIBUNAL UNDER THE HEALTH AND SAFETY AT WORK
(NORTHERN IRELAND) ORDER 1978**

To: The Secretary Office of Industrial Tribunals And The Fair Employment Tribunal Killymeal House	FOR OFFICAL USE		
2 Cromac Quay Ormeau Avenue Belfast BT7 2JD	Date Received at OITFET	Case No.	Initials
Telephone: 028 90327666 Fax No: 028 90250100 mail@employmenttribunalsni.org			

1. Full name of appellant (or title if company or organisation):

2. Address of Appellant (registered office if applicable):

Telephone No:

3. Address of Appellant or his representative for service of documents if different from 2 above.

Telephone No:

4. Details of Notice appealed against:

*Prohibition/Improvement

Date of Notice _____ Serial No. _____

*Delete as appropriate

5. Address of the premises or place to which the Notice refers:

(2)

6. Name and full address of Inspector as shown on Notice:

Telephone No:

7. Particulars of the requirements or directions appealed against:

The grounds for this appeal:

(Please give full grounds of appeal in order to minimise further correspondence)

Signature: _____ Date: _____

Status (if company or organisation) _____”

Proposed amendment to prohibited zone - blue line



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