

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)
BETWEEN:

UKSC/2025/0143

MERRYCK LOWE

Appellant

and

THE GOVERNORS OF SUTTON'S HOSPITAL IN CHARTERHOUSE

Respondent

APPELLANT'S CASE

I Introduction

1. This appeal concerns compliance with two statutory requirements for landlords to give their tenants prescribed information relating to residential tenancy deposits. Those requirements are found in subsections 213(5) and (6) of the Housing Act 2004 (the “**Housing Act**”) and article 2 of the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 (the “**2007 Order**”). The requirements have taken on expanded significance under the reforms introduced by the Renters’ Rights Act 2025¹ (the “**Renters’ Rights Act**”) and apply, subject to transitional provisions, to every claim for possession under an assured tenancy in England where a deposit is paid.²

MHB/244

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2. The essential issues are these.

(1) Landlords are required to inform their tenants, by reference to the terms of the tenancy agreement, of the circumstances in which they may retain all or part of the deposit.³ Is that requirement met where the landlord gives incorrect information, fails to refer to the correct terms and refers to a non-existent clause?

¹ See section 26 of that Act.

² The comparative provisions in Wales, Scotland and Northern Ireland are identified in a short appendix to this written case.

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³ Article 2(1)(g)(vi) of the 2007 Order.

MHB/234

(2) Landlords are also required to give to their tenants confirmation in the form of a signed certificate (or in a form substantially to the same effect as a signed certificate) that certain information is accurate to the best of their knowledge and belief *and* that they have given their tenant an opportunity to sign any document containing the information provided by the landlord by way of confirming that the information is accurate to the best of their knowledge and belief.⁴ Is that requirement met where a landlord fails to sign the certificate they provide, but sends it under cover of a signed letter simply saying “*please find enclosed... the ‘Prescribed Information’ as required under the legislation*”?

3. The appeal concerns provisions of the Housing Act since amended by the Renters’ Rights Act. However, the relevant sections, and article 2 of the 2007 Order, remain substantially as they were at the time of the events giving rise to this appeal. This written case therefore addresses the law in the present tense, except where stated otherwise. As before the Court of Appeal, issue (1) is referred to as the “**Information Ground**” and issue (2) as the “**Confirmation Ground**”. MHB/6-17

4. The relevant facts and procedural history are set out in the Statement of Agreed Facts and Issues. In briefest summary: (i) the relevant tenancy of Flat 2, Preachers Court, Charterhouse, London EC1M 6AU was granted by the Respondent to the Appellant on the terms of a written agreement dated 24th January 2010 (the “**Tenancy Agreement**”); (ii) approximately eight months after that document was signed, the Respondent’s agent provided the Appellant with a copy of a document purporting to give him the information prescribed by the Housing Act and 2007 Order (the “**Prescribed Information Document**”), under cover of a signed letter. The Appellant in these proceedings under section 214 of the Housing Act claimed a penalty payment for alleged breaches of the legislative requirements. The finding of His Honour Judge Luba KC (the “**Trial Judge**”) that the Respondent could only be liable to make one penalty payment (subject to the issues in this appeal) was not challenged in the Court of Appeal. The Appellant’s position, if his appeal succeeds, is that the Respondent should be ordered to pay him the sum which the Trial Judge held at [178] that he MHB/187-198

⁴ Article 2(1)(g)(vii) of the 2007 Order.

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would have ordered under section 214: £3,300, being the amount of the deposit which he paid.

II The statutory scheme

- MHB/242
5. By Chapter 4 of Part 6 of the Housing Act 2004, Parliament introduced various requirements applicable to landlords who received tenancy deposits from their assured shorthold tenants. Section 212 (as originally enacted) required the appropriate national authority to make arrangements for securing the availability of schemes for safeguarding tenancy deposits paid in connection with shorthold tenancies. A “*tenancy deposit scheme*” was one which was “*made for the purpose of safeguarding tenancy deposits paid in connection with shorthold tenancies and facilitating the resolution of disputes arising in connection with such deposits*”, and which complied with the requirements of Schedule 10 (a definition in substance unchanged by subsequent amendments). The policy aims underpinning the Chapter, then, were twofold: to ensure that deposits were protected, and to facilitate the resolution of disputes arising in connection with deposits – as where, at the end of a tenancy, a landlord asserts a right to deduct sums from the deposit pursuant to the terms of the tenancy agreement.

6. Section 213 of the Housing Act relevantly provides as follows (emphases added).

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(5) A landlord who has received such a tenancy deposit must give the tenant and any relevant person such information relating to –

(a) the authorised scheme applying to the deposit,

(b) compliance by the landlord with the initial requirements of the scheme in relation to the deposit, and

(c) the operation of provisions of this Chapter in relation to the deposit, as may be prescribed.

(6) The information required by subsection (5) must be given to the tenant and any relevant person –

(a) in the prescribed form or in a form substantially to the same effect, and

(b) within the period of 30 days beginning with the date on which the deposit is received by the landlord.

7. The information prescribed by section 213(5) of the Housing Act is found in the MHB/244
Housing (Tenancy Deposits) (Prescribed Information) Order 2007. Article 2 is as
follows (emphases added).

(1) *The following is prescribed information for the purposes of section 213(5) of the Housing Act 2004 (“the Act”) –* MHB/234

- (a) the name, address, telephone number, e-mail address and any fax number of the scheme administrator of the authorised tenancy deposit scheme applying to the deposit;*
- (b) any information contained in a leaflet supplied by the scheme administrator to the landlord which explains the operation of the provisions contained in sections 212 to 215 of, and Schedule 10 to, the Act;*
- (c) the procedures that apply under the scheme by which an amount in respect of a deposit may be paid or repaid to the tenant at the end of the assured tenancy (“the tenancy”);*
- (d) the procedures that apply under the scheme where either the landlord or the tenant is not contactable at the end of the tenancy;*
- (e) the procedures that apply under the scheme where the landlord and the tenant dispute the amount to be paid or repaid to the tenant in respect of the deposit;*
- (f) the facilities available under the scheme for enabling a dispute relating to the deposit to be resolved without recourse to litigation; and*
- (g) the following information in connection with the tenancy in respect of which the deposit has been paid—***
 - (i) the amount of the deposit paid;*
 - (ii) the address of the property to which the tenancy relates;*
 - (iii) the name, address, telephone number, and any e-mail address or fax number of the landlord;*
 - (iv) the name, address, telephone number, and any e-mail address or fax number of the tenant, including such details that should be used by the landlord or scheme administrator for the purpose of contacting the tenant at the end of the tenancy;*
 - (v) the name, address, telephone number and any e-mail address or fax number of any relevant person;*
 - (vi) the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy; and***
 - (vii) confirmation (in the form of a certificate signed by the landlord) that—***
 - (aa) the information he provides under this sub-paragraph is accurate to the best of his knowledge and belief; and***

(bb) he has given the tenant the opportunity to sign any document containing the information provided by the landlord under this article by way of confirmation that the information is accurate to the best of his knowledge and belief.

MHB/464 8. The emboldened passages above are those which are of immediate relevance to the grounds of appeal. As Lewison LJ noted in *Northwood Solihull Ltd v Fearn* [2022] 1 WLR 1661 at [9], article 2(1)(g)(vii) “*is the only part of the 2007 Order which can plausibly be read as prescribing a “form” as opposed to “information”*”. That is an important insight: section 213(6)(a) of the Housing Act allows flexibility in the form adopted, but not in relation to the information which is actually supplied. The question is not whether the information supplied is substantially to the same effect as that which is prescribed.

MHB/246-247 9. Parliament has enacted various sanctions for non-compliance with those requirements. A tenant could apply to the county court under section 214(1). Under section 214(3), if the tenancy had not ended the court *had* to make an order either that the person holding the deposit should repay it, or that it should be paid into an authorised custodial scheme. If the tenancy had ended then, under section 214(3A), the court could order the person holding it to repay all or part of it within 14 days. In all cases, under section 214(4) the court *had* to order the landlord to pay the applicant (either tenant or relevant person) an amount not less than the amount of the deposit and not more than three times the amount of the deposit – the so-called penalty payment. The court had no discretion to order no payment at all, but only in relation to the amount. Under section 215(2), no ‘no-fault’ notice of seeking possession under section 21 of the Housing Act 1988 could be given by a landlord who had not complied (even belatedly) with section 213(6)(a). That sanction was disapplied (by section 215(2A)) only where the deposit had been returned to the tenant in full or with agreed deductions, or an application under section 214(1) had been determined, withdrawn or settled by agreement. Section 21 of that Act has now been repealed by the Renters’ Rights Act, which has introduced a new section 215(3) of the Housing Act stipulating that a court may make an order for possession of a dwelling-house let under an assured tenancy under which a deposit is paid *only if* the requirements of sections 213(5) and (6)(a) have been complied with (even belatedly). In other words, the Renters’ Rights Act has *extended* the scope of the section 215(3) sanction (subject

to subsection (4), which disappplies it where ground 7A or 14 in Schedule 2 to the Housing Act is relied upon, and subsection (5), which disappplies it where the deposit is repaid or a penalty payment claim has been resolved or withdrawn). The penalty payment scheme in section 214 remains in force.

MHB/246

10. Those sanctions underline the importance which Parliament ascribed to compliance with the prescribed information requirements. In *Ayannuga v Swindells* [2013] HLR 9 at [30], Etherton LJ quoted and endorsed what was said by Cox J of the relevant provisions of the Housing Act in *Suurpere v Nice* [2012] 1 WLR 1224 at [41]: *“Parliament regards the landlord’s obligation to provide the prescribed information as being of equal importance to his duty to safeguard the tenant’s deposit... The requirement for landlords to provide such detailed information, together with the sanction for non-compliance, demonstrate the importance attached to the giving of particulars, certified as accurate by the landlord, which will enable tenants to understand how the scheme works and how they may seek the return of their deposit”*.

III Statutory interpretation and compliance with statutory requirements

11. In general terms, whether a document satisfies a statutory requirement depends upon the proper interpretation of the statute in question, read in its context and having regard to its purpose: see *Akbars Restaurant (Middlesbrough) Limited v Secretary of State for the Home Department* [2026] UKSC 26 at [32] and [33], where Lord Sales went on to explain that “[s]tatutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered” (*R (O) v Secretary of State for the Home Department* [2023] AC 255, [29]-[31]). At [47], Lord Sales explained that the determination of the purpose of a statutory provision has to be linked to the language Parliament has chosen to use, since “it is the words of the provision itself read in the context of the section as a whole and in the wider context of a group of sections of which it forms part and of the statute as a whole which are the primary means by which Parliament’s meaning is to be ascertained” (again citing *R (O)*).

MHB/274

12. That case concerned whether a penalty notice was valid, which turned on whether it complied with section 15 of the Immigration, Asylum and Nationality Act 2006, which required a penalty notice to state, specify and explain the various matters listed under

subsection (6). All of the courts below had held that it was valid, but the Supreme Court unanimously allowed an appeal. The Supreme Court noted that the statutory requirement was expressed in mandatory terms (at [40]), and that “*in setting out an obligation on the Secretary of State to state why she thinks the employer is liable to the penalty which the Secretary of State has decided to impose under subsection (2), section 15(6)(a) requires the Secretary of State to explain her thought process in coming to that view.*” The purpose of section 15 was to inform an employer in receipt of a penalty notice why it was being imposed and, also, in consequence, to enable them to be able to make an informed decision whether to appeal on that point ([51]). The notice did not satisfy that purpose, because it did not specify the specific offence alleged to have been committed. MHB/272 MHB/275

13. Lord Sales also referred to *R v Soneji* [2006] 1 AC 340 which, as he explained at [53], introduced a new framework for addressing the question of what effect breach of a procedural requirement set out in statute would have on subsequent proceedings. The relevant approach is to ask whether it was a purpose of the legislation that an act done in breach of the provision should be invalid. That analysis applies where Parliament has *not* specified the consequences of a particular breach: see *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2025] AC 1075. However, even where the *Soneji* framework is applicable, the purpose served by a particular rule requiring notice to be given of some matter may nonetheless indicate that Parliament intended that it should operate strictly, as a ‘bright line rule’, so that any failure invalidates the notice and the procedural step (see *Akbars Restaurant*, per Lord Sales at [54], and *A1 Properties*, per Lord Briggs and Lord Sales at [62]). MHB/276

14. In *Avon Freeholds Limited v Cresta Court E RTM Company Limited* [2026] UKSC 31, the Supreme Court revisited *A1 Properties* and emphasised that, where a consequence of non-compliance is *expressly* stated, effect must be given to that consequence and there is no scope for carrying out the more nuanced *Soneji* analysis (which may involve a consideration of the gravity of the consequences of non-compliance): see [46]-[49]. Given the expressly stipulated consequences of a breach of section 213(6)(a) of the Housing Act, a *Soneji* approach is unavailable: effect must be given to them, regardless of the perceived gravity of the consequences of the failure to comply, or of whether the failure can fairly be characterised as a ‘technical’ one. MHB/276 MHB/244

15. The issue in this appeal is not the consequence of non-compliance, but rather the anterior question: has there been compliance in the first place? That turns on the interpretation of documents tendered in purported satisfaction of legislative requirements, which engages distinct principles. In modern times, those principles have been anchored in the decision of the House of Lords in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] A.C. 749.

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IV The significance of *Mannai*

16. *Mannai* concerned the interpretation of a break notice required to be served under a lease. The clause in question (clause 7(13)) entitled the tenant to break the lease “by serving not less than six months’ notice in writing on the landlord or its solicitors such notice to expire on the third anniversary of the term commencement date”. The tenant served a notice expiring on 12th January 1995. That was a mistake: the third anniversary of the term commencement date was 13th January 1995. The Court of Appeal had overturned the judge’s finding that this did not matter, holding itself bound by *Hankey v Clavering* [1942] 2 K.B. 326. By a majority (Lord Steyn, Lord Hoffmann and Lord Clyde, Lord Goff and Lord Jauncey dissenting), the House of Lords allowed the appeal.

17. The question was whether the tenant’s *intention* to determine the lease on the anniversary date had been communicated. The notices were expressed to be “pursuant to clause 7(13)”, so that it was clear that the tenant intended to invoke that clause (per Lord Clyde at 782G). The majority proceeded on the basis that the reasonable recipient should be credited with knowledge of the terms of the lease, so that the objectively discerned intention of the tenant was obvious, in light of the fact that the obvious purpose of the break notice was to inform the landlord that the tenant had decided to determine the lease in accordance with the right reserved to it. The correct test was that set out by Goulding J in *Carradine Properties Ltd v Aslam* [1976] 1 W.L.R. 442 at 444: “is the notice quite clear to a reasonable tenant reading it? Is it plain that he cannot be misled by it?” (per Lord Steyn at 772 C-D, Lord Hoffmann at 780G, and Lord Clyde at 781F to 782G).

18. Lord Steyn noted at 767(E) that “this is not a case of a contractual right to determine which prescribes as an indispensable condition for its effective exercise that the notice

must contain specific information". As Lord Hoffmann recognised at 774C, the clause in the lease did not require the tenant to use any particular form of words: "*he must use words which unambiguously convey a particular meaning, namely an intention to terminate the lease on 13 January*". In an important passage, Lord Hoffmann at 776A-C said this.

If the clause had said that the notice had to be on blue paper, it would have been no good serving a notice on pink paper, however clear it might have been that the tenant wanted to terminate the lease. But the condition in clause 7(13) related solely to the meaning which the notice had to communicate to the landlord.

19. Lord Clyde was also careful to emphasise the limits of corrective construction, and that the principles would not save every notice: 781E. He reasoned that the landlord, knowing of the terms of the lease, would be expected to know that there was no formal requirement for the tenant to specify in the notice the date of termination of the lease, and that there was no evident reason why the tenant had specified 12th January rather than 13th January. The close proximity of 13th made it evident that it was erroneous and that the date intended was the date on which the parties had agreed for determination.
20. The decision outlined an approach to interpretation of general application. But the key point is the recognition that, regardless of how a notice is to be interpreted, its validity will nonetheless turn on whether it satisfies the necessary requirements.

V The correct approach

21. The decision in *Mannai* may have heralded a more benevolent approach to the interpretation of contractual and statutory notices. However, on a proper analysis of the authorities which preceded and which have followed it, it left largely unaffected the principles relevant to consideration of whether a document, properly construed, satisfies a particular legislative requirement.

Authorities after Mannai

22. The correct approach was explained by the Court of Appeal in *Speedwell Estates Ltd v Dalziel* (2002) H.L.R. 43 (in which Rimer J gave the leading judgment). That concerned the requirement for a tenant seeking to exercise the right to enfranchise to give a tenant's notice under section 8(1) of the Leasehold Reform Act 1967. Paragraph 6(1)

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of Schedule 3 provided that such a notice should be in the prescribed form and contain various particulars. That was qualified by the Leasehold Reform (Notices) Regulations 1997, which stipulated that the required form was Form 1, but that the notice could be “*substantially to the same effect*”. Rimer J held that the *Mannai* principles should also apply to notices required by a statute. However, after referring to what Peter Gibson LJ said in *York v Casey* (1998) 31 H.L.R. 209, that “*one should bear in mind that in a statutory context there may be requirements which have to be observed and without which a notice will be invalid*”, Rimer J said this at [22].

MHB/543 *Taking due note of the first part of that, I consider that the better approach is to look at the particular statutory provisions pursuant to which the notice is given and identify what its requirements are. Having done so, it should then be possible to arrive at a conclusion as to whether or not the notice served under it adequately complies with those requirements. If anything in the notice contains what appears to be an error on its face, then it may be that there will be scope for the application of the Mannai approach, although this may depend on the particular statutory provisions in question. The key question will always be: is the notice a valid one for the purpose of satisfying the relevant statutory provisions?*

23. Save for one aspect of the tenants’ notices before him, he held that there was “*no scope for enlisting the Mannai principles*”. He expressly rejected the submission that, if the landlord knew all the facts, it mattered not that the tenants did not provide all of the particulars required by the legislation. His reasoning bears setting out in full.

MHB/544 *[24] In my judgment, that approach to the present problem is unsound. First of all, I do not accept that the sufficiency or otherwise of the particulars required to be provided by the prescribed form of notice used in cases such as the present can or should be assessed by reference to the extent of the landlords’ actual knowledge of the facts. It is likely that in many cases the landlords will already know some of the information required to be provided by Form 1—for example, details of the relevant lease and that it is a long lease at a low rent—and that the provision of information about this in the prescribed form may well tell them little they do not already know. The point, however, is that there is nothing optional about the information required to be contained in a tenant’s notice under Part 1 of the 1967 Act. Schedule 3 provides that it “shall be in the prescribed form, and shall contain the following particulars . . .”. Those are mandatory requirements and if the tenant wants his notice to be a valid one, he must comply with them. If he does not, then he runs the risk that his notice will not do the statutory work he requires of it. The purpose behind the provision of the particulars which the prescribed form requires is to inform the landlord of the nature and basis of the tenant’s claim and as to the basis on which any price is to be assessed. As Slade L.J. said in *Dymond v. Arundel-Timms and Others* [1991] E.G. 109, at 113, “The purpose of the legislature in requiring a tenant to supply the information set out in para. 6(1) is plainly to assist the landlord in deciding what course to adopt in response to the tenant’s notice.”*

MHB/544

[25] Secondly, I anyway do not regard the Mannai case as supporting [counsel for the tenants'] approach. The House of Lords did not suggest that anything less than full compliance with clause 7(13) would operate to effect a valid operation of the break clause in that case. The majority held that, on the true construction of the break notice, it had been validly operated: it communicated the information which the clause required. Similarly, in cases such as this one, if the tenant is to exercise his Part 1 rights validly, he has to serve a notice in the prescribed form containing the mandatory particulars. If and to the extent that he does not provide those particulars, it is no answer that it does not matter because the landlord already knows them. In principle, subject only to the saving effect of paragraph 6(3) of Schedule 3 with regard to inaccuracies in the information provided, any omissions either will or may be fatal to the validity of the notice.

24. That analysis was explained and endorsed by Chadwick LJ in *Burman v Mount Cook Land Ltd* [2002] Ch 256, who at [11] said this.

MHB/311

The relevant enquiry is what does the statutory language require. The task is to construe the words which Parliament has used in the context of the statutory scheme. It is only when the court has informed itself of the true nature of the statutory requirement that it can sensibly address the second question: does the notice in this case meet that requirement?

25. That was a case about tenant's notices exercising rights of enfranchisement under the Leasehold Reform, Housing and Urban Development Act 1993. Having reviewed the statutory scheme and noted the importance of the landlord's counternotice (at [18]), Chadwick LJ explained that the question "*what does section 45(2)(a) of the 1993 Act require?*" was not open to doubt: [19]. It required a notice to state that the landlord admitted that the tenant had on the relevant date the right to acquire a new lease of his flat, and which (if any) of the tenant's proposals were not accepted by the landlord along with the landlord's counter-proposal.

MHB/315

26. At [20], Chadwick LJ referred to *Mannai* and *Carradine* and noted that "*it is important to appreciate that, in neither of those cases, did the break clause in the lease require the notice to be given in any particular form*", so that "*the relevant question was whether the notice was sufficient to leave the recipient in no doubt as to the information which the giver of the notice wished to communicate.*" At [23], he explained that, had the break clause in those cases required the notice to be in a particular form, the result would have been different. Chadwick LJ referred to Peter Gibson LJ's insight in *York v Casey* that "*one should bear in mind that in a statutory context there may be requirements which have to be observed and without which a notice will be invalid*" (there being no difference between the statutory and contractual context). He

MHB/317

MHB/320 concluded at [28] that the judge had asked the wrong question. The question was not “*whether a reasonable tenant could be misled into thinking that the landlord’s counter-notice did not admit the right to a new lease?*”, but “*does the counter-notice served by the landlord state that the landlord admits that the tenant had on the relevant date the right to acquire a new lease of his flat?*” If that question was answered in the affirmative, then a further question arose: “*does the counter-notice served by the landlord state which (if any) of the proposals in the tenant’s notice are accepted by the landlord and which (if any) of those proposals are not so accepted?*” The notice in question contained neither statement. Chadwick LJ concluded that “*it would be enough if, upon a true construction of the notice, it could be found to contain such a statement or statements*”, but was “*satisfied that there is no permissible process of construction which leads to that conclusion*”.

MHB/477-493

27. As Lewison LJ explained in *O G Thomas Amaethyddiaeth CYF v Turner* [2023] 2 P. & C.R. 15, it is essential not to lose sight of Lord Hoffmann’s ‘blue paper vs pink paper’ point in *Mannai*. At [17], Lewison LJ said this.

It is, I think, clear from Mannai that if a notice fails to satisfy the substantive conditions upon which its validity turns, the question of how it is to be interpreted does not arise. In Trafford MBC v Total Fitness UK Ltd [2002] EWCA Civ 1513; [2003] 2 P. & C.R. 2 the question was whether a break clause had been validly exercised. Having referred extensively to Mannai, Jonathan Parker LJ (with whom Mummery LJ agreed) said at [49]:

"The process of determining whether a notice complies with the requirements of the provision pursuant to which it is given (be that provision statutory or contractual) involves, as a first step, a consideration of what, on its true construction, the notice says. The contents of the notice then have to be matched against the relevant requirements in order to determine whether it meets them. Speedwell Estates and Burman make it clear that, at this second stage, there is no basis in either Carradine or Mannai for, in effect, rectifying any defects or omissions in the notice so as to bring it into line with the relevant requirements."

28. The decision in *Kahlon v Isherwood* [2011] H.L.R. 38 is also consistent with that essential approach. The case concerned the validity of a notice required by paragraph 7 of Schedule 2A to the Housing Act 1988, exempting an assured tenancy from taking effect as a shorthold tenancy. The notice was required to be in the prescribed form or (by the Assured Tenancies and Agricultural Occupancies (Forms) Regulations 1997) in a form “*substantially to the same effect*”. Patten LJ (with whom Stanley Burnton and

Rix LJ agreed) was referred to *Mannai*, but relying on *York v Casey* explained at [23] that “*while that approach may operate to correct obvious factual mistakes in the notice, it cannot, in my view, operate to fill gaps in the form of notice of the kind we are concerned with on this appeal*”, since “*either the notice contains all the necessary matters of substance or it does not*”.

29. And in *Pease v Carter* [2020] 1 W.L.R. 1459, on which the Courts below relied, Arnold LJ (with whom Floyd and Underhill LJ agreed) noted in his summary the cases following *Mannai* at [22] that *York v Casey* and *Speedwell v Dalziel* establish that the *Mannai* approach “*is applicable to statutory notices, but with the qualification that it remains necessary to consider whether the notice satisfies the relevant statutory requirements*”, which involves a consideration of the purpose of those requirements. Underhill LJ added at [57] that, in relation to the second of Arnold LJ’s points at [39], “*there must be no reasonable doubt as to what the notice was intended to say*”.

MHB/517

Authorities from before Mannai

30. That basic approach is consistent with the pre-*Mannai* decisions of the Court of Appeal in various areas. An example is notices under the Landlord and Tenant Act 1954 (conferring security of tenure upon business tenants), section 25 of which requires notices to give particular information: see, for example, *Tegerdine v Brooks* (1978) 36 P. & C.R. 261 and *Morrow v Nadeem* [1986] 1 W.L.R. 1381, which adopted and endorsed the dictum of Barry J in *Barclays Bank Ltd v Ascott* [1961] 1 W.L.R. 717 (itself based on the summary of Hodson L.J. in *Bolton’s (House Furnishers) Ltd v Oppenheim* [1959] 1 W.L.R. 913).

MHB/293

...the question which the court really has to consider is whether the statement or notice given by the landlord has given the proper information to the tenant which will enable the tenant to deal in a proper way with the situation, whatever it may be, referred to in the statement of notice.

31. The same approach can be seen in residential landlord and tenant decisions of the Court of Appeal concerning: (i) the validity of notices of seeking possession under section 33 of the Housing Act 1980, which were required to give particulars of the ground relied upon (for example, *Torridge District Council v Jones* (1985) 18 H.L.R. 107); (ii) the validity of notices under section 20 of the Housing Act 1988 required in order for an assured tenancy to take effect as a shorthold tenancy (for example, *Panayi*

MHB/494-499

& *Pyrkos v Roberts* (1993) 25 H.L.R. 421 and *Andrews v Brewer* (1997) 30 H.L.R. 203),

MHB/412-421

and which needed key dates to be set out and specified information to be given (*Manel v Memon* (2001) 33 H.L.R. 24); and, (iii) the validity of notices of seeking possession under section 8 of the Housing Act 1988 (for example, *Mountain v Hastings* (1993) 25 H.L.R. 427), requiring the landlord to give particulars of the ground relied upon.

MHB/590

32. In *Torridge District Council v Jones*, Oliver LJ (with whom Ralph Gibson LJ agreed) noted that “*the point is really a very short one*”, distilled as follows: “*aye or no, does the statement in the notice which was actually served on the appellant, non-payment of rent, constitute sufficient particulars to comply with the provisions of section 33(2)?*”

VI The Information Ground

MHB/535- 551

33. Applying the test distilled by Rimer J in *Speedwell Estates Ltd v Dalziel*, the matter should be approached as follows. First, it is necessary to look at the particular legislative provisions pursuant to which a landlord is to provide a tenant with the information specified. Secondly, and having done so, it is possible to arrive at a conclusion as to whether or not what is provided satisfies the statutory requirements. If not, then the landlord will not have complied with the requirement. If an error is made, but it is obvious what the landlord intended to state, then properly construed it may comply. However, it is essential that the document, so construed, is matched against the statutory requirement, keeping in mind the ‘blue paper vs pink paper’ test. Put another way, though the *Mannai* principles may be relevant to the exercise of discerning what the communication objectively conveyed to the reasonable recipient, that exercise cannot supply information which the landlord did not give.

MHB/200 - 203

34. Given the content of the Prescribed Information Document in this case, the legislative requirement will have been satisfied either if: (i) the requirement is limited to informing the tenant, in general terms, that the circumstances in which all or part of their deposit can be retained can be found in their tenancy agreement; or, (ii) properly construed, the Prescribed Information Document gave the Appellant the information prescribed by reference to the terms of his tenancy agreement.

What does the legislation require? MHB/244

35. The starting point is section 213 of the Housing Act, which sets out various “*requirements relating to tenancy deposits*” amounting to a list of things which the landlord *must* do: (i) deal with the tenancy deposit in accordance with an authorised scheme (section 213(1)); (ii) comply with the initial requirements of an authorised scheme within the period of 30 days beginning with the date on which it is received (section 213(3)); and, (iii) give the tenant (or any “*relevant person*” who paid the deposit on behalf of the tenant in accordance with arrangements made with the tenant) such information as may be prescribed. The word “*must*” is used in *both* section 213(5) and section 213(6): the information *must* be given and it *must* be given in the prescribed form (or in a form substantially to the same effect) within the period of 30 days beginning with the date on which the deposit is received. By section 213(9), the draftsman stipulated that the provisions applied “*despite any agreement to the contrary*”.

36. Parliament’s purpose in enacting the section was thus to ensure that a person who paid a deposit: (i) was given information about the scheme under which it was protected; (ii) had confirmation that the landlord had in fact protected their deposit; and, (iii) had information about how the parties’ respective rights in relation to the deposit would be governed in future. The importance which Parliament attributed to compliance with subsections 213(5) and (6) was made clear by the consequences of non-compliance set out in sections 214 and 215.

MHB/246 -
250

37. The next step is to consider what information Parliament considered that deposit-taking landlords should be required to provide. The 2007 Order, in article 2, sets out a simple list, headed by the words “*the following is prescribed information for the purposes of section 213(5) of the Housing Act 2004*”. In other words, *all* of the information in the list from sub-paragraphs (a) to (g) *must* be given. In some cases where the information might not exist, the otherwise absolute obligation is qualified in the subparagraphs of article 2 by the use of the word “*any*”: for example, “*any fax number of the scheme administrator*”.

MHB/234

MHB/244

38. The information which must be provided falls into different categories. Paragraphs (a) to (f) encompass the contact details of the administrator of the tenancy deposit

scheme, any explanatory leaflet supplied by the scheme administrator to the landlord, and the procedures available for resolving disputes at the end of the tenancy. Paragraph (g) relates to information particular to the landlord and tenant relationship. Within that paragraph, items (i) and (ii) require details of the amount of the deposit paid, and the address of the property which the tenancy relates. Their provision assists the landlord, tenant and scheme administrator to identify the deposit in question. Item (iii) consists of the contact details of the landlord, essential for the resolution of disputes between landlord and tenant. Items (iv) and (v) consist of the contact details of the tenant or relevant person. The purpose served by their provision is made clear in (iv): they set out the means by which the landlord *and scheme administrator* intend to contact the tenant in relation to the return of the deposit and any disputes. The inclusion of these details partly explains why the confirmatory certificate required by article 2(1)(g)(vii) is to include confirmation that the landlord has also given the tenant an opportunity to sign any document containing the prescribed information by way of confirming that the information is accurate to the best of their knowledge and belief.

MHB/234
- 235

39. Article 2(1)(g)(vi) – the subject of the Information Ground – requires the landlord to give information consisting of “*the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy*”. The draftsman’s purpose in including this requirement is obvious: to ensure that a deposit-payer is given the relevant information about the circumstances in which the landlord is entitled to retain all or part of the deposit. The drafting, by referring to the terms of the tenancy, presupposes that the information is *already* contained in the applicable terms of the tenancy agreement. Nonetheless, Parliament stipulated that the tenant should be given that information in a supplemental manner, by an effective reference to those terms. This might be done by setting out separately the content or effect of those terms, or at a minimum by drawing the tenant’s attention directly to the relevant terms.

40. Notably, Parliament did not in the 2007 Order or anywhere else prescribe a ‘form’ in which the information is to be given. As the Court of Appeal noted below at [10], the explanatory memorandum prepared by the Department for Communities and Local Government recognised that the requirement imposed by section 213(5) would not

MHB/105

be onerous, since the landlord would be able to provide the information in the tenancy agreement, rather than in a physically separate or prescribed form. Critically, however, in article 2(1)(g)(vi) the draftsman was clear that the tenant must *separately* and effectively be given the information, so as to avoid the need for them to search through their tenancy agreement to find it.

MHB/234

41. The particular importance of the information in (g) is clear from article 2(1)(g)(vii): the landlord must also provide the tenant with confirmation in the form of a signed certificate (or in a form to substantially the same effect) that the information given under sub-paragraph (g) (but not the other sub-paragraphs) is accurate to the best of their knowledge and belief. By introducing that requirement, Parliament emphasised to landlords the importance of giving accurate information, so that tenants would be fully informed about the circumstances and where to find in their tenancy agreement the relevant provisions regulating the parties' contractual rights in relation to the deposit. It is true that Parliament did not specify in express terms any consequence of signing a false certificate – but it did not need to. If the information provided under article 2(1)(g) is incorrect, then the landlord will not have complied with section 213(6) of the Housing Act, and will therefore be subject to the sanctions set out in sections 214 and 215 of the Housing Act. Notably, the Renters' Rights Act has made compliance with the prescribed information requirements a precondition to the making of a possession order (subject to exemptions where particular grounds are made out by the landlord) without Parliament in any way watering down what information must be provided.

MHB/244

MHB/246 - 250

42. In conclusion, the answer to the question, 'what does the legislation require?' is this: it requires a tenant to be told of the circumstances in which the landlord can retain all or part of their deposit, by reference to the terms of their tenancy agreement. To that extent, it is respectfully submitted that Adam Johnson J failed correctly to identify the purpose, appearing at [24] of his judgment to conclude that the purpose was simply for tenants to be told that their tenancy agreement sets out the parties' rights in relation to the deposit at the end of a tenancy. The requirement is more specific than that.

MHB/168

Was the legislative requirement complied with?

MHB/586-594

43. Paraphrasing Oliver LJ in *Torridge District Council v Jones*, the point is a very short one: yes or no, did the Prescribed Information Document contain the information which Parliament has prescribed in article 2(1)(g)(vi), so as to comply with sections 213(5) and (6) of the Housing Act? In other words, did it inform the Appellant of the circumstances in which the Respondent could retain some or all of his deposit, by reference to the terms of his tenancy agreement?

MHB/200

44. In this case, there is an equally short answer. The Prescribed Information Document did not give the information prescribed by article 2(1)(g)(vi). The statement in paragraph A16 was incorrect in three respects. First, there was no tenancy agreement attached to it. Secondly, the Appellant's tenancy agreement contained no clause 6, so the document did not refer at all to the relevant terms: clauses 5.3, 5.20.2 or 5.20.4. Thirdly, the Appellant's tenancy agreement did not stipulate that no deductions could be made from the deposit without written consent from both parties. So, other than the reference to a non-existent clause 6, all the Appellant was told in paragraphs A15 and A16 of the Prescribed Information Document about those circumstances was that "*no deductions can be made from the Deposit without written consent from both parties to the Tenancy Agreement*", which was incorrect.

45. Having regard to its purpose, the legislative requirement was not fulfilled. The only way in which the Appellant could appreciate that the Respondent's information was wrong, and identify for himself the right information, was to take up his tenancy agreement and search for and identify the relevant information himself. That is precisely what Parliament intended that he should not have to do: the burden of giving the information was placed upon the Respondent, and it was not for the Appellant to 'repair' the failure to do so by finding it for himself.

What is the relevance of the information being contained in the tenancy agreement?

46. The courts below all took the view that the failures identified above were not, in fact, failures at all, because they made no difference: the Appellant could read his tenancy agreement, recognise that it contained no clause 6 and by himself identify the clauses which governed deposit disputes. The essence of their reasoning was that the

‘reasonable tenant’ in the position of the Appellant would read the Prescribed Information Document alongside their own tenancy agreement: see the judgments of the Trial Judge at [135] and [136], of Adam Johnson J at [23] and [24], and of the Court of Appeal at [56] and [57]. The reasoning (at least in the High Court and Court of Appeal) was underpinned by the ‘benevolent’ approach taken to the interpretation of notices in the wake of *Mannai*, explained by Arnold LJ in *Pease v Carter*.⁵ Adam Johnson J at [23(ii)] and the Court of Appeal at [56] focused on identifying the “*meaning the information was intended to convey*” (per Asplin LJ): that it was intended to refer to the clause in the Appellant’s tenancy agreement which dealt with deposits. That meaning being clear, it was obvious when the Prescribed Information Document was read with the Tenancy Agreement that the clause to which the Respondent *intended* to refer was clause 5.3 (and, presumably, also clauses 5.20.2 and 5.20.4, since they completed the framework).

47. It is respectfully submitted that this involves the same conceptual error as identified by Chadwick LJ in *Burman v Mount Cook Land Ltd*. By focusing on the Respondent’s *intention*, the courts below failed to address the relevant question, which is whether the requirement of article 2(1)(g)(vi) was satisfied. The question is not, as Adam Johnson J appeared to frame it at [23(ii)] of his judgment, whether the reasonable person would have understood what meaning the Prescribed Information Document was intended to convey (“*which was to say that the required information... could be found in a corresponding term in the tenancy agreement he did have*”). The correct question is whether the Prescribed Information Document in fact *gave* the tenant *specific information*: the circumstances in which the landlord could retain some or all of the deposit, by reference to the terms of the tenancy agreement.

⁵ And applied to the interpretation of a confirmatory certificate under article 2(1)(g)(vii) of the 2007 Order by the Court of Appeal in *Northwood Solihull Ltd v Fearn* [2022] 1 WLR 1661. At [49], Lewison LJ (with whom Snowden LJ (as he then was) and Newey LJ agreed) held that the failure to cross out the words “*We (being the Landlord)*” in a certificate signed by the landlord’s agent was an obvious error which the reasonable recipient of the certificate would have ignored.

48. Contrary to what the Court of Appeal thought at [51], that question does turn on the so-called 'blue paper vs pink paper' issue identified by Lord Hoffmann in *Mannai* ("If the clause had said that the notice had to be on blue paper, it would have been no good serving a notice on pink paper, however clear it might have been that the tenant wanted to terminate the lease"). The Respondent in this case did not supply the information prescribed by article 2(1)(g)(vi), even though it was clear that it intended and had attempted to set out the circumstances when the deposit could be retained and to refer to relevant provisions in the Tenancy Agreement. Whereas in *Mannai* the condition of the break clause related solely to the *meaning* which the notice had to communicate to the landlord, the requirement of article 2(1)(g)(vi) is not concerned with a landlord's *intention* to convey information, but rather with its actual conveyance.

MHB/118 -
119

MHB/477 -
493

49. The Court of Appeal was thus wrong at [51] to distinguish *O G Thomas and Kahlon v Isherwood*. Indeed, the analysis of Patten LJ in *Kahlon v Isherwood* is directly applicable. The application of *Mannai* principles may be available to correct obvious factual mistakes in the Prescribed Information Document – but it cannot operate so as to fill a gap of substance in that document. As Jonathan Parker LJ (with whom Mummery LJ agreed) said in *Trafford Metropolitan Borough Council v Total Fitness (UK) Ltd* [2003] 2 P & CR 2 at [49], "*there is no basis in either Carradine Properties Ltd v Aslam... or Mannai for, in effect, rectifying any defects or omissions in the notice so as to bring it into line with the relevant requirements*".

MHB/400
-411

MHB/608

50. It might be thought that it would be straightforward for many tenants to find out all of the prescribed information for themselves. However, Parliament clearly was not content to assume either that: (i) a tenant would be sufficiently savvy, legally literate or prepared to do that; or, (ii) they had in fact done so at the point of receiving the prescribed information or of a dispute arising. As Etherton LJ (with whom Lewison LJ agreed) said in *Ayannuga v Swindells* (in a passage quoted by Asplin LJ below at [39]):

[26]... What is required, therefore, to be provided under the Housing Order, but has not been provided in this case, is information relating to the scheme's procedures for the return of the deposit in the circumstances specified in paragraphs 2(1)(c) and (d) of the Housing Order.

MHB/284

MHB/284

[27] It is no answer for the respondent to assert that the information could have been obtained by the appellant making her own enquiries by means of the internet or telephoning the respondent's agent or the scheme's administrator or in some other way. Section 213(5) of the 2004 Act requires the information to be provided by the landlord.

51. That, it is submitted, applies with equal force to the information required by article

MHB/285

2(1)(g): information available elsewhere is not information provided, no matter how easily it can be found. Etherton LJ must have thought so: at [30] he referred to the categories of information in paragraphs 2(1)(c) to (f) of the Order (the subject of that appeal), noting that they are “*important and of real significance to the tenant*”, before endorsing the view of Cox J in *Suurpere v Nice* set out above at §10. Cox J's statement clearly encompassed the information required by article 2(1)(g)(vi), because she referred to “*the importance attached to the giving of particulars, certified as accurate by the landlord, which will enable tenants to understand how the scheme works and how they may seek the return of their deposit*”. As noted above, the certification requirement applies only to article 2(1)(g). That echoes what was said in the context of business tenancies by Barry J in *Barclays Bank Ltd v Ascott*, in response to the submission on behalf of the landlords that, if the tenant had studied the 1954 Act, or even perused the notices printed on the back, she would have appreciated that the

MHB/295

landlords' opposition was ineffective by reason of the failure to specify a ground: “*that may well be, but I do not think any duty is cast upon the tenant to rectify the landlords' notice or to ask the landlords the grounds for their opposition*”. In this case, article 2(1)(g)(vi) permits the information to be given by effective reference to the terms of the tenancy agreement, but it is not satisfied by an ineffective reference which: (i) does not give the tenant the requisite information, and (ii) leaves the tenant to identify for themselves which contractual provisions the landlord meant to state.

52. There is nothing surprising about Parliament assuming the least knowledge and ability on the part of the tenant. As Harman LJ colourfully put it in *Bolton's (House Furnishers) Ltd v Oppenheim* [1959] 1 W.L.R. 913 (a case concerning the validity of commercial landlord and tenant notices):

MHB/303

The reason why notices of this sort are so elaborate is again tenderness for the tenant. The tenant is supposed to be a person who is either almost illiterate or so poor that he cannot get advice and, therefore, he is to be shown very carefully

everything which may help him to resist the landlord's demands to get his own property back.

53. That reasoning applies here. The assumption underlying the prescription of the information about the circumstances in which the landlord can retain all or part of the deposit, by reference to the terms of the tenancy agreement, is that the tenant (whose English might be far from fluent) will not be able or prepared to find for themselves (in a potentially long and complex tenancy agreement) the terms governing deposit retention. Landlords are therefore required to set out information about those terms so as to assist their tenants to discern to the best of their ability whether any assertion of a right over the deposit by the landlord is lawful and whether to raise a dispute.

54. Looked at another way, the reasonable tenant contemplated by Parliament when it enacted the requirement is one who is neither willing nor able to locate for themselves the relevant provisions by reading their tenancy agreement, or to take advice. The actual tenant's ability, willingness or ingenuity in making good a failure by their landlord to give the prescribed information must be left out of account. Otherwise, the requirement would add nothing, because the reasonable tenant in a deposit dispute could always find out their rights for themselves. That would offend against the presumption that every word in an enactment is to be given meaning: see *Bennion, Bailey and Norbury on Statutory Interpretation* (8th ed.) at §21.2.

MHB/660-663

55. The approach of the courts below thus collapsed the essence of the statutory requirement. It is respectfully submitted that, where Parliament has stipulated that information must be given, it is not for the courts to water down that requirement by inquiring into the ease with which an error is capable of identification and rectification ("*it would not have taken long to find it*" as Adam Johnson J observed at [23(ii)]). As Lord Neuberger and Lord Mance explained in *R (Buckinghamshire County Council) v Secretary of State for Transport* [2014] 1 WLR 324 (cited by Lord Sales in *Akbars Restaurant* at [50]): "*where the legislature has agreed a clearly expressed measure, reflecting the legislators' choices and compromises in order to achieve agreement, it is not for courts to rewrite the legislation, to extend or 'improve' it in respects which the legislator clearly did not intend.*"

MHB/168

MHB/275

56. To that extent, it is respectfully submitted that Adam Johnson J was wrong when, as Asplin LJ explained it below at [22], he “*noted that the court has to balance the requirement for proper compliance with the statute with a practical approach to the treatment of obvious errors which cause no real prejudice*”. That would amount to the re-writing of legislation under the guise of striking that balance, weighing up the court’s view of the consequences of non-compliance against its perceptions of the importance of what Parliament prescribed. It would moreover open the door to uncertainty in dealings between landlords and tenants. In a penalty payment claim, the appropriate point at which to account for culpability, consequences and prejudice is when deciding on the amount of the payment. The court retains a discretion to order anywhere between one and three times the amount of the deposit to be paid. It is also important to keep firmly in mind that, where non-compliance stands as a bar to an effective possession claim, a landlord can remedy their breach and thereafter obtain a possession order. The scheme thus reflects the careful balancing of competing interests, so as to spur landlords to comply with the protection and information-giving requirements (even belatedly) without depriving them forever of their right to recover possession. The role of the non-discretionary penalty payment is to provide a spur to compliance with protection and information-giving requirements within the statutory timeframes. A landlord whose non-compliance is technical and who causes no prejudice might expect to pay the lowest amount.

MHB/107-
108

57. Parliament’s approach is straightforward: where the statute requires basic information to be given, which is not given, the consequences are easy for landlords and tenants to comprehend, and easy for busy county court judges to apply. What those judges cannot do is to dispense with the requirement for information in a case of a technical breach causing no prejudice. What Mann LJ (with whom Ralph Gibson LJ agreed) said in *Panayi & Pyrkos v Roberts* (1993) 25 H.L.R. 421 is worth setting out:

I wish to give no encouragement to arguments which are based on what were described to us as ‘slips of the pen’ and which I have exemplified as ‘1793’ for ‘1993’. However, an insistence on accuracy seems to me likely to simplify the task of the county court and more importantly to enable tenants to know with certainty of their status.

MHB/498-
499

58. In any event, it is submitted that the courts below were wrong to think that the information given by the Respondent in this case contained an obvious error which,

applying *Mannai* principles, the reasonable recipient would have corrected as a matter of interpretation. The Prescribed Information Document did not just refer to a non-existent clause, but also gave incorrect information about the requirement of written consent for deductions to be made. The reasonable recipient of the Prescribed Information Document *would* be misled by it, into thinking that there was such a requirement, or into understanding that there was some other document containing a clause 6 which set out the parties' rights. The reasonable recipient would have had to disregard the statement that an agreement was attached, locate the correct agreement (in this case, supplied around eight months earlier), determine the relevance of clauses 5.3, 5.20.2 and 5.20.4 and, having done all of that, reconcile the provisions of the agreement with the incorrect statement in paragraph A16 of the Prescribed Information Document that the parties' consent was required to any deductions. As to that last step in the reasoning, the recipient would also need to determine for themselves that the Prescribed Information Document could not in point of law introduce new requirements not set out in the Tenancy Agreement.

MHB/200-203

MHB/202

59. Where, as in this case, article 2(1)(g)(vi) is not complied with, a tenant is entitled to a penalty payment under section 214 of the Housing Act. The courts below were thus wrong not to order the Respondent to make that payment.

MHB/234

MHB/246

VII The Confirmation Ground

What does the legislation require?

60. Article 2(1)(g)(vii) includes, in the list of information which the landlord *must* provide to their tenant, two particular confirmations. The effect of section 213(6)(a) of the Housing Act is that the confirmations can be given in a form substantially to the same effect as a certificate signed by the landlord, as well as in that prescribed form. However, they must nonetheless in fact be given. The two confirmations have different targets. On the one hand, (aa) requires the landlord to confirm the accuracy *only* of the information provided "*under this sub-paragraph*", being article 2(1)(g): the "*information in connection with the tenancy in respect of which the deposit has been paid*". On the other hand, (bb) requires the landlord to confirm that they have given the tenant an opportunity to confirm the accuracy of *all* of the information provided "*under this article*" given by the landlord. The apparent rationale for the distinction is

MHB/244

MHB/234

MHB/235

that the landlord is given an additional level of responsibility for the accuracy of the information which they provide in relation to the particular tenancy, but not for the accuracy of the information about the deposit scheme (likely to come from the scheme administrator itself). The tenant, however, is to be given an opportunity – if they wish to take it – to confirm the accuracy of all of the information provided, including in relation to the scheme.

61. Parliament's intention was therefore twofold. First, it intended that a tenant should have the comfort of knowing that their landlord had turned their mind to the accuracy of the important information provided in satisfaction of article 2(1)(g), underlining MHB/234 their entitlement to rely upon that information at the end of the tenancy in the event of a dispute. Secondly, it intended that tenants should be given the opportunity by their landlord of verifying for themselves the accuracy of the information given, and that landlords should also turn their minds to the need to provide that opportunity. That contemplates the landlord *first* inviting their tenant to confirm the accuracy, before providing their own confirmation. Sensibly, that structure provides an opportunity for any errors identified by the tenant to be corrected before the information is provided in its final form, supported by the landlord's signed certificate, constituting a complete record of all the details relevant to the parties and to the scheme administrator at the end of the tenancy.
62. The confirmation requirements are central to what Parliament envisaged not simply as the giving of information, but rather as a process in which the information is collated, checked and its accuracy confirmed and in which the tenant is to be invited to play a role. The sense of this is obvious: the tenant will likely be better placed to point out any errors in their own contact details. The importance of the tenant having that opportunity (regardless of whether they take it) is underlined by the requirement at article 2(1)(g)(vii)(bb) that the landlord confirm that they have MHB/235 provided it. The scheme is directed at achieving a record of correct information, for the benefit of all three parties involved in deposit returns and disputes: landlord, tenant and scheme administrator.

Was the requirement satisfied?

- MHB/234
-235
63. The Prescribed Information Document contained wording which reflected that set out MHB/203
in article 2(1)(g)(vii). However, the confirmatory certificate was unsigned. The question is therefore whether the Respondent gave the confirmations “*in a form substantially to the same effect*” as a signed certificate. The courts below took the view that the covering letter filled the gap, drawing on the reasoning of the Court of Appeal in *Stidolph v American School in London Educational Trust Ltd* [1969] 20 P. & C.R. 802 (where it was held that an unsigned notice under section 25 of the Landlord and Tenant Act 1954 was sufficiently authenticated by the landlord’s solicitors’ signature on the covering letter). Adam Johnson J’s reasoning at [51] was that, “*If the Prescribed MHB/175 Information Document and the covering letter are read together, then the contents of the former were sufficiently authenticated by the signature on the latter, because that signature in effect confirmed that the landlord was content that it was providing the required information and as far as it was concerned was content to certify that it had done what was required*”.
64. The problem with that reasoning is that article 2(1)(g)(vii)(aa) requires the landlor MHB/234
to confirm not just that they have *provided* the information, but also that they have provided information that to the best of their knowledge and belief is *accurate*. Properly construed, the covering letter in this case did not give that specific confirmation or assurance. It did not state, for example, “*I confirm that the information provided in that document is accurate to the best of the landlord’s knowledge and belief*”. It stated, simply, that “*the ‘Prescribed Information’ as required under the legislation*” MHB/199
was enclosed. That was not sufficient. The circumstances of this case are therefore different from those considered in *Stidolph v American School in London Educational MHB/175 Trust*, on which Adam Johnson J relied (at [50]).
65. The signing of a covering letter saying “*the ‘Prescribed Information’ as required under MHB/199 the legislation*” is enclosed did not make clear to the recipient that the landlord was assuming responsibility for the accuracy of the information provided. The recipient of the Prescribed Information Document with the certificate unsigned would note that the space for the tenant’s signature appeared *above* that for the landlord’s, and the request in the covering letter that the document be signed and returned. That person MHB/203

would understand that they were being invited to confirm the accuracy of the information provided, and that their landlord would *thereafter* sign the certificate confirming to the best of its knowledge and belief the accuracy of the information provided, after making any corrections identified by the tenant. In other words, that tenant would understand that the landlord had consciously decided *not* yet to give the requisite confirmation, and that it would follow. Adam Johnson J recognised this at [44]: “*the course of action invited by Daniel Watney’s letter, namely of asking the tenant to sign first, was obviously intended to give the tenant the opportunity to sign which the statute required, and then to allow the landlord in turn to sign, in light of the tenant’s confirmation*”. The Trial Judge likewise reasoned at [128] that “*as a matter of logic, one would expect that the next signature, that of the landlord, would then be entered, on return, after receipt from the tenant of the form signed by him*”.

66. It follows that, unsigned, the words certified nothing. The covering letter did not suggest that the writer had turned his mind to or was accepting responsibility for the accuracy of the enclosed information so that his signature could be construed as somehow ‘authenticating’ the unsigned certificate.
67. Nor did it suggest that the writer was assuming responsibility for ensuring that the Appellant had been given the opportunity himself to confirm the accuracy of the information provided – which is what article 2(1)(g)(vii)(bb) requires. Before the Court of Appeal (as in section V(i) of the Appellant’s Grounds of Appeal to this Court), it was submitted that it cannot be satisfied unless the tenant has already been provided with that opportunity (see [67]-[70] of the Court of Appeal’s judgment). That point is not maintained: it is accepted that the requirement is not that the opportunity is in fact given: it is that the landlord *confirms* by signed certificate (or in a form substantially to the same effect) that the opportunity has been given. The giving of the opportunity is the collateral effect produced by a conscientious landlord giving an accurate confirmation that they have done so. But that reinforces the important aim of the confirmation requirement in the first place. Regardless of whether the opportunity contemplated by article 2(1)(g)(vii)(bb) can be provided at the same time as the rest of the prescribed information is given, the covering letter sent by the Respondent’s agent, properly construed, nonetheless failed to provide it. The fact that the covering letter offered the Appellant the opportunity to sign the

Prescribed Information Document does not mean that, properly construed, it adopted a *confirmation* that he had been given an opportunity to sign it by way of confirmation that the information the Respondent gave was accurate to the best of his knowledge and belief.

68. Accordingly, the requirements of article 2(1)(g)(vii)(aa) and (bb) were not satisfied MHB/234-235
by the provision of the Prescribed Information Document. On that alternative basis, the courts below should have found that the Respondent had failed to comply with sections 213(5) and (6) of the Housing Act and ordered it to pay the Appellant a penalty under section 214. MHB/244

VIII Hamer v Levy [2026] EWCA Civ 662 MHB/368-387

69. Since the decision in this case, the Court of Appeal on 22nd May 2026 (Baker and Lewis LJ) dismissed a tenant's appeal concerning compliance by a landlord with sections 213(5) and (6) of the Housing Act and article 2 of the 2007 Order, in the context of a possession order made under section 21 of the Housing Act (rather than the penalty payment regime). The appellant acted in person, but the Court was referred to *Pease v Carter* and the decision of the Court of Appeal in this case. Baker LJ directed himself at [66] that, "*The question is whether the information given to the appellant was MHB/500-517*
substantially to the same effect" as the information required by the 2007 Order." With respect, that was not the correct question. The question was whether the landlord had complied with the statutory requirements and *given* the information prescribed in the prescribed form or in a *form* substantially to the same effect. MHB/385
70. However, the Court of Appeal appeared to treat the information prescribed by article 2(1)(g)(vi) as having been provided in various documents, so that (notwithstanding MHB/234 errors) all of the information had been belatedly provided by the date of the eviction notice. In relation to the confirmatory certificate, the Court of Appeal applied the reasoning derived from the decision of the Court of Appeal in this case. Regardless of what the Court decided in relation to (g)(vi), it is respectfully submitted that it erred

in dismissing the appeal in relation to the absence of a confirmatory certificate, for the reasons set out above.⁶

IX Summary of Reasons

- (1) Sections 213(5) and 213(6) of the Housing Act required the Appellant to be given the information prescribed by article 2(1)(g)(vi) of the 2007 Order: the circumstances in which the Respondent would be entitled to retain all or part of his deposit, by reference to the terms of his Tenancy Agreement. MHB/244 MHB/234
- (2) The statutory requirement is not fulfilled where the tenant can only obtain the prescribed information by searching for it in their tenancy agreement.
- (3) Properly construed, the Prescribed Information Document did not give the information prescribed by article 2(1)(g)(vi) of the 2007 Order. MHB/234
- (4) Further, article 2(1)(g)(vii) of the 2007 Order requires a landlord to give their tenant two confirmations. The unsigned certificate on the Prescribed Information Document did not satisfy that requirement and nor, properly construed, did the Prescribed Information read with the covering letter provide those confirmations in a form substantially to the same effect as a signed certificate. MHB/234
- (5) On either of those grounds, the appeal should be allowed and the Respondent be ordered to pay the Appellant the sum of £3,300 by way of a penalty under section 214 of the Housing Act. MHB/246-247

TOM MORRIS
Landmark Chambers
8th September 2026

⁶ An application for permission to appeal to this Court was made on 28th July 2026, and has been assigned case ID UKSC/2026/0111.

IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)
BETWEEN:

UKSC/2025/0143

MERRYCK LOWE

Appellant

and

THE GOVERNORS OF SUTTON'S HOSPITAL IN CHARTERHOUSE

Respondent

APPELLANT'S CASE - APPENDIX

1. The position in Wales is governed by sections 45-47 and Schedule 5 of the Renting Homes (Wales) Act 2016 and the Renting Homes (Deposit Schemes) (Required Information) (Wales) Regulations 2022, and is substantially the same as in England: see, in particular, regulation 3(1)(g)(vi) and (vii).
2. In Scotland, regulation 42 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 requires landlords to provide tenants within set timeframes with information, which at 42(2)(f) includes substantially the same information as under article 2(1)(g)(vi) of the 2007 Order. There is no confirmation requirement.
3. In Northern Ireland, regulation 12 of the Tenancy Deposit Schemes Regulations (Northern Ireland) 2012 requires landlords within set time frames to provide tenants with information specified in Schedule 1. Paragraph 3(h) reflects 2(1)(g)(vi) of the 2007 Order, without requiring reference to the tenancy terms, and a confirmation requirement similar to (g)(vii)(aa) and (bb) is included.