

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

Case No. UKSC/2025/0143

Between:

MERRYCK LOWE

Appellant

and

**THE GOVERNORS OF SUTTON'S
HOSPITAL IN CHARTERHOUSE**

Respondent

RESPONDENT'S WRITTEN CASE

INTRODUCTION

1. The issues for determination are neutrally framed in the *agreed* Statement of Facts and Issues (“**SFI**”) at ¶1(1)-(2). The Appellant’s written case¹ reframes those issues in more partial terms; the Respondent repeats the agreed formulation.

2. The said issues concern whether the three courts below were *wrong* to conclude that the Respondent had satisfied section 213(5) Housing Act 2004 (“**HA 2004**”), and more specifically the requirements of two sub-sub-paragraphs within the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 (“**the 2007 Order**”), despite certain documents provided by the Respondent to the Appellant having the following imperfections:

(a) a document termed the Prescribed Information Document (“**PID**”) referred to MHB/200
“*Clause 6 of the Tenancy Agreement attached*” in setting out the circumstances in
which deductions might be made from the deposit, when the clause within the
tenancy agreement dealing with the deposit was actually clause 5.3, and no copy of
the agreement was attached; and

(b) the certificate confirming the PID was unsigned, but the PID was enclosed by a
signed covering letter (“**the Letter**”). MHB/199

¹ References to said written case are prefixed “**AWC ¶**” below.

3. The Respondent's case, in summary, is that the decisions below were correct for the following principal reasons:

- (a) HA 2004 and the 2007 Order are concerned with the substance of what the tenant is told. The 2007 Order prescribes information, not words. Section 213(6)(a) permits that information to be given "*in the prescribed form or in a form substantially to the same effect*"²; The requirements were intended to be "*kept to a minimum so as not to place unnecessary burdens on landlords and agents*"³. MHB/244 MHB/212
- (b) On Issue 1 in the SFI (or the 'Information Ground' as termed by the Appellant below), article 2(1)(g)(vi) of the 2007 Order requires the tenant to be informed of the circumstances in which the deposit may be retained, those circumstances being identified "*by reference to the terms of the tenancy*". It does not require the landlord to cite a clause number, nor to set out those circumstances exhaustively. MHB/234
- (c) The PID falls to be construed as a reasonable recipient, with knowledge of his tenancy terms, would have understood it. So construed, it told the Appellant that the circumstances in which his deposit might be retained were those set out in the clause of his agreement which dealt with the deposit: clause 5.3, which (on undisputed facts) had the heading "*Deposit*" in bold, was already in the Appellant's possession, had been signed by him, and had the relevant page initialed by him. MHB/193 The reference to "*Clause 6*" was an obvious error which could not have misled a reasonable recipient as the tenancy agreement did not contain a clause 6.
- (d) The Appellant's case has narrowed from that advanced originally in his Grounds of Appeal ("**the Grounds**"). The Grounds contended that the reasonable recipient approach (termed 'the Mannai Principle'⁴) could not apply to a statutory

² HA 2004, s 213(6)(a).

³ Explanatory Memorandum to the 2007 Order ("**EM**"), ¶7.5.

⁴ Deriving from the decision in *Mannai Investments v Eagle Star* [1997] AC 749. MHB/422

requirement to give information⁵. The Appellant now accepts, as he did in the Court of Appeal⁶ that it “*may be available to correct obvious factual mistakes in the Prescribed Information Document*”⁷. The remaining contention is that this established principle of construction cannot “*supply information which the landlord did not give*”. The contention appears to be that the courts below asked what the document was intended to convey rather than what it actually conveyed. In fact, the courts below asked precisely what the document, objectively construed, conveyed: this was a reference to the deposit clause of the Appellant’s tenancy agreement. Nothing more had to be ‘supplied’.

MHB/12
MHB/117
MHB/37
MHB/31

(e) As the Respondent’s Notice of Objection asserts, the decisions below can also be upheld on the simple basis that the required information had already been “given” to the Appellant within the tenancy agreement itself. On either basis, there was provision of the required information in a form ‘substantially to the same effect’, as permitted under section 213(6)(a) HA 2004. The statute simply requires that the information is given, it does not prescribe how it is to be given.

MHB/244

(f) On Issue 2 in the SFA (termed ‘the Confirmation Ground’ by the Appellant), it is common ground that the requirement of signature is a matter of form to which section 213(6)(a) applies, and that a certificate may be read with its covering letter⁸. That covering letter was signed. Read together, the documents were substantially to the same effect as a signed certificate.

MHB/41,43
MHB/120-121

(g) The Appellant’s contention that sub-paragraph (bb) of article 2(1)(g)(vii) requires the tenant’s opportunity to sign to precede the landlord’s confirmation (see Grounds ¶¶21-3 and SFI ¶22(b)(1)), is now “*not maintained*”⁹. The residual argument

MHB/44

⁵ Grounds ¶¶13–15; SFI ¶22(a)(1).

⁶ Court of Appeal Judgment [2025] EWCA Civ 857, [2025] 1 WLR 5483 at [47]; further references to it below have the prefix “CA”.

⁷ AWC ¶¶33, 49; *see also* AWC ¶¶46–48.

⁸ AWC ¶¶60, 63; CA at [60], [64].

⁹ AWC ¶67: “*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.*”

appears to be that wording of the covering letter did not, properly construed, give confirmation that the opportunity had been given. It did: the PID contained the confirmation, and the Letter specifically asked the Appellant to sign and return it. Read together, they confirmed that the opportunity was given, because it was being given.

THE FACTUAL BACKGROUND

4. The material background is summarised within the SFI at ¶¶2-21. For current purposes, the Respondent highlights the following aspects of it:
 - (a) The underlying claim concerns events in 2010, albeit considered through the prism of the statutory scheme as it existed in 2015, as further explained below.
 - (b) A written tenancy was granted on 24 January 2010 (“**the Tenancy Agreement**”). The Appellant paid a £3,300 deposit at the time of the initial grant (“**the Deposit**”). Clause 5.3 of the Tenancy Agreement, under the heading “Deposit”, obliged the Appellant to pay the deposit “*to be held by the Landlord until the expiration of the Tenancy as security towards the Tenant’s liability for*” outstanding rates, taxes, and outgoing, dilapidations, rent owed to the landlord, and any sum expended by the landlord in remedying a breach of covenant¹⁰.

MHB/187
MHB/193
 - (c) As the Court of Appeal recorded, HHJ Luba KC (“**the Trial Judge**”) found that the Appellant had a copy of the Tenancy Agreement, which he had countersigned¹¹. Each page of that Tenancy Agreement, including the page containing the clause headed ‘Deposit,’ was also initialed by the Appellant.

MHB/193
 - (d) At the time of grant, because of the level of rent, the tenancy was purely contractual. It only became an assured shorthold tenancy by a change in the law taking effect

¹⁰ CA [4]; SFI ¶4; High Court Judgment at [2024] EWHC 646 (Ch), [2024] HLR 29 at [18]; further references to it below have the prefix “HC”. MHB/100, 7, 166,

¹¹ CA [36], [57]; Trial Judgment reported at [2022] EW Misc (CC) at [8] (further references to below have the prefix “CC”); SFI ¶1(1)(b). MHB/112, 120, 129, 6,

on 1 October 2010. In anticipation of that change in status, as found by the Trial Judge, the Respondent's agent ("**the Agent**") (1) protected the Deposit with an authorised scheme on 7 September 2010¹², and (2) on 28 September 2010, sent the Letter to the Appellant informing him of this, and enclosing (inter alia) the PID.

MHB/199

(e) The Letter ended¹³:

"The most obvious and immediate consequence of the increase is that all tenancy deposits will be protected under the tenancy deposit scheme. As is the current arrangement your deposit will be retained by Daniel Watney throughout the period of your tenancy, but will be registered with The Dispute Service.

Please find enclosed your certificate of registration with The Dispute Service confirming your deposit has been protected. I also enclose an explanation leaflet 'What is the Tenancy Deposit Scheme?' and additionally the 'Prescribed Information' as required under the legislation.

We require you to sign the 'Prescribed Information' and to return one copy to us and retain one copy for your records."

(f) The PID enclosed was a template document completed in typescript with the Appellant's name and contact details¹⁴. Under the heading "*At the end of the tenancy*" it stated¹⁵: "*A16 Deductions may be made from the Deposit according to Clause 6 of the Tenancy Agreement attached. No deductions can be made from the Deposit without written consent from both parties to the Tenancy Agreement.*"

MHB/202

¹² In this regard, following the guidance given by DCLG at paragraph 4.6 of its Explanatory Note to the Assured Tenancies (Amendment) (England) Order 2010 [SI 2010/908], though that guidance is at odds with the wording of section 213(1) HA 2004. See also CC [90]–[91], [101], [177(g)] (the Agent "*going the extra mile*"). MHB/143-145 157

¹³ CC, Appendix; HC, Annex 2; CA [4]. MHB/159, 186, 100

¹⁴ CC [95]. MHB/143

¹⁵ HC [16]; CA [4]. MHB/166, 100

(g) No issue was raised in this regard for *over a decade*: the underlying claim was issued in June 2021. This concatenation of facts is *unlikely to arise again* for simple reason of limitation (now settled to be 6 years pursuant to section 8 Limitation Act 1980 by the High Court decision below¹⁶).

MHB/177

(h) The claim sought **£120,888** on the basis of consecutive penalties said to arise from alleged initial breach(es) in 2010 for an asserted 10 consecutive tenancies between these parties at the same premises since (being agreed fixed terms, interspersed by statutory periodic tenancies). That claim included a pleaded breach of article 2(1)(g)(vii) of the 2007 Order by a failure to sign the Certificate within the PID, which now underpins ‘the Confirmation Ground’. It did not contain any pleaded breach of article 2(1)(g)(vi). Nor did it assert that sub-paragraph (bb) of article 2(1)(g)(vii) required the tenant’s opportunity to sign to precede the landlord’s certificate¹⁷ (this issue was not the subject of the first appeal, and was first framed in that way in the Court of Appeal; it appears no longer to be maintained¹⁸).

MHB/147

MHB/106

(i) The claim gave rise to an agreed list of ten issues for trial before the Trial Judge, an experienced Circuit Judge with an established background in this field. One (whether the requirements of the legislation applied to the original 2010 tenancy) was abandoned by the Appellant’s skeleton argument on the eve of trial. That skeleton argument did, however, introduce another argument: that article 2(1)(g)(vi) of the 2007 Order was breached as the Respondent had not given the Appellant “*the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy*”; this now underpins ‘the Information Ground’. The Trial Judge permitted this issue to be advanced. It, and the remaining 9 issues, were all resolved against the Appellant after a full trial over 3 days, including judgment¹⁹. The Appellant was described as “*a most*

MHB/127-160

MHB/127

¹⁶ HC [61].

¹⁷ CC [117]–[121]; CA [14]–[15].

¹⁸ CA [68]; SFI ¶21(b); AWC ¶67. MHB/121 - 122, 44, 12

¹⁹ In the trial judgment reported at [2022] EW Misc (CC).

- unsatisfactory witness*” (CC [70]) who was “*not being candid with the court*” (CC [72]). MHB/139
- (j) The Appellant did not, and could not tenably, appeal the Trial Judge’s factual findings as to his disputed receipt of the signed Letter with enclosures (CC [112]) MHB/146 and the number of tenancies actually arising (CC [165]), which reduced the total number of relevant tenancies to 8. Nor was there any appeal against the Trial Judge’s finding that the maximum level of penalty, had he found against the Respondent, would have been 1 x the Deposit, due to the absence of culpability of the Respondent, and prejudice to Appellant (CC [178]). Nonetheless, the appeal raised no fewer than 10 grounds, including an appeal against the Trial Judge’s decision on limitation. That appeal was dismissed by Adam Johnson J, after full argument over a day²⁰ . MHB/154 MHB/157 MHB/10 MHB/165, 167, 171
- (k) The grounds pursued by the Appellant in the Court of Appeal were termed the Information and Confirmation Grounds respectively. Each was dismissed, Asplin LJ (with whom Andrews and Nicola Davies LJJs agreed²¹) concluding: MHB/173
- (1) Information Ground: Interpreting the PID in line with Mannai, the reasonable recipient would have understood the mistaken reference to clause 6 of the tenancy agreement, to be to clause 5.3. So construed, the PID satisfied the statutory requirements. As such, it was not necessary to consider whether it was also ‘substantially to the same effect’ (CA [52-59]). MHB/119
- (2) Confirmation Ground: The PID could and should be construed with its covering Letter. So construed, the information contained in the PID was sufficiently authenticated (CA [64-70]). MHB/121
- (l) C’s limitation argument advanced twice below is no longer pursued. The effect of this is that if the appeal succeeds, the putative claim subsists only in relation to one

²⁰ SFI ¶14–15; HC [13]–[14], [20]–[24], [35] (art 2(1)(g)(vi)); HC [42]–[52] (art 2(1)(g)(vii)).

²¹ [2025] EWCA Civ 857, [2025] 1 WLR 5483. MHB/99

tenancy²², with a maximum value of £3,300 (being a penalty of 1 x the Deposit under section 214(4)) HA 2004.

MHB/154

(m) Although the grounds advanced here are given the same titles as below by the Appellant, their scope is slightly different (as explained above).

THE CORRECT APPROACH

5. This appeal concerns asserted non-compliance with statutory requirements. The Respondent submits that the correct approach²³ to such assertions requires a consideration of the following issues:

- (1) what the relevant statutory provisions require (i.e. statutory interpretation);
- (2) what each document in question means (i.e. construing the document);
- (3) an evaluation of whether the document, so construed, fulfils the statutory requirements; and
- (4) in the event that it does not, a consideration of the effect of this:
 - (i) is the document, nonetheless, in a form ‘substantially to the same effect’ such that the statutory purpose is fulfilled; or
 - (ii) if not, and if applicable, is the consequence of a failure to comply invalidity or otherwise (i.e. whether the *R v Soneji* [2006] 1 AC 340 line of authorities is relevant).

6. The Respondent makes three points in this regard at the outset:

- (a) It is readily accepted that the order of these considerations varies within the authorities, and that some of them may be elided within any analysis. However, each is relevant.

²² Being the statutory periodic tenancy found to have arisen on 1 August 2015 (CC [165]). This has avoided any consideration of the issue of whether multiple (and cumulative) penalties may be recovered for successive tenancies under which the same deposit continues to be held therefore does not arise.

²³ See, for example, *Akbars Restaurant v Home Secretary* [2026] UKSC 26 at [32-33], *Northwood Solihull v Fearn* [2022] EWCA Civ 40 at [38-9], *Pease v Carter* [2020] EWCA Civ 175 at [39], *Speedwell Estates v Dalziel* [2001] EWCA Civ 1277 at [22] and *Burman v Mount Cook* [2001] EWCA Civ 1712 at [11]. MHB/270, 470, 513, 543, 311,

(b) It is further accepted that, as the Appellant asserts at AWC ¶14, the *Soneji* jurisprudence is *not* relevant here. This is as the consequence(s) of a failure to comply with the relevant requirements *is* expressly specified within HA 2004 (and now also outside it): *Avon Freeholds v Cresta Court E RTM Company* [2026] UKSC 31 at [46]. Accordingly, here, the considerations end at that outlined at paragraph 5(4)(i) above. The obiter discussion of the *Soneji* jurisprudence in a similar context in *Northwood Solihull v Fearn* [2022] EWCA Civ 40 at [61-68] may be seen as a digression. It did not form any part of the reasoning of the High Court and Court of Appeal below in this matter.

MHB/24

MHB/474

(c) Finally, it is submitted that, each of the decisions below dealt properly with each of these considerations.

7. The Respondent now makes some general submissions on the considerations outlined above, before drawing those together with particular focus upon the two grounds of appeal, as now advanced in the AWC.

STATUTORY INTERPRETATION GENERALLY

8. The correct approach to statutory interpretation is settled (and not in dispute – AWC ¶11): *R v SSHD Ex Parte O*²⁴, as recently cited with approval in *Akbars Restaurant v Home Secretary*²⁵. As per Lord Hodge in *O*: “Statutory 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.” When interpreting legislation, the courts, “are seeking to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision.”²⁶

MHB/23

MHB/270

²⁴ [2022] UKSC 3 at [29-31].

²⁵ [2026] UKSC 26 at [33].

²⁶ As per Lords Sales and Stephens in *Darwall v Dartmoor National Park Authority* [2025] UKSC 20 at [15]

9. Bennion, Bailey and Norbury on Statutory Interpretation (9th Edition) (“**Bennion**”) at 10.1 summarises the general approach as follows:

MHB/642

- (1) Statutory interpretation involves identifying the legal meaning of the words used in a statute for the purpose of applying them to particular facts.*
- (2) The legal meaning is arrived at by drawing inferences as to the intention of the legislature expressed in the legislative text.*
- (3) This involves analysing the statutory text, read in context and in the light of its purpose and all other relevant principles of statutory interpretation, and reasoning from them as to the legislature’s intended meaning.*

10. The relevant common law principles and presumptions are outlined below as they become relevant to the consideration of the relevant parts of the statutory scheme.

THE STATUTORY SCHEME

The 2004 Act

11. Section 212(1) HA 2004 requires arrangements to be made for securing that tenancy deposit schemes are available. Section 212(2) defines such a scheme by reference to its purpose: it is a scheme “*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*”²⁷.

MHB/242

12. Section 213 HA 2004 imposes two duties upon a landlord who receives a tenancy deposit. The first is to comply with the initial requirements of an authorised scheme within a fixed period, originally 14 and now 30 days²⁸. The second is contained in subsections (5) and (6). By subsection (5) the landlord “*must give the tenant and any relevant person such information relating to—*” three subjects, “*as may be prescribed*”: (a) the authorised scheme applying to the deposit; (b) the landlord’s compliance with its initial requirements; and (c) the operation of Chapter 4 HA 2004 in relation to the

MHB/244

MHB/257

²⁷ HA 2004, s 212(2)(a), as in force at the material time. For the definition of “*tenancy deposit*”, see s 212(8).

²⁸ HA 2004, s 213(3), as amended by the Localism Act 2011, s 184(2).

deposit. By subsection (6), that information “*must be given*” to the tenant “*(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*”²⁹.

MHB/244

MHB/257

13. Sections 214 and 215 HA 2004 provide the sanctions:

MHB/246

(1) By section 214, the tenant may apply to the county court on the ground that section 213(3) or (6) “*has not been complied with*”. If the court is so satisfied, it “*must*” (in addition to ordering the repayment or protection of the deposit) order the landlord to pay the applicant a sum of not less than the amount of the deposit and not more than three times that amount³⁰. The court has no power to reduce the penalty below the amount of the deposit, however innocent or trivial the default. The minimum penalty is mandatory.

MHB/249

(2) By section 215(2), as in force at the material times, no notice under section 21(1)(b) or (4)(a) of the Housing Act 1988 (“**HA 1988**”) could be given until “*such time as section 213(6)(a) is complied with*”, unless (as from 6 April 2012) the deposit had been returned or an application under section 214 had been disposed of³¹.

The 2007 Order

14. The 2007 Order prescribes the information. It contains no scheduled form, nor does it prescribe a method for giving the information. As Etherton LJ (as he then was) observed in *Ayannuga v Swindells*, “*The order does not prescribe a form as such, but [...] the effect of the order is to prescribe what information has to be given in compliance with s.213 of the 2004 Act*”³². Article 2(1) falls into two parts:

MHB/281

²⁹ HA 2004, s 213(5), (6). The period in s 213(6)(b) was also 14 days until 6 April 2012: Localism Act 2011, s 184(2). MHB/244, 257

³⁰ HA 2004, s 214(1), (2), (4), as amended by the Localism Act 2011, s 184(4), (6), (9). MHB/257

³¹ HA 2004, s 215(2), (2A), (5) (subsection (2A) having been inserted by the Localism Act 2011, s 184(13), with effect from 6 April 2012). MHB/257

³² *Ayannuga v Swindells* [2012] EWCA Civ 1789, [2013] HLR 9 at [8] per Etherton LJ, citing *Vision Enterprises Ltd v Tiensia* [2010] EWCA Civ 1224, [2012] 1 WLR 94 at [7] per Rimer LJ. MHB/617

- (a) Sub-paragraphs (a) to (f) prescribe generic information about the scheme and its procedures, including “*any information contained in a leaflet supplied by the scheme administrator to the landlord*”³³. This information was to be produced by the scheme and passed on by the landlord³⁴.

- (b) Sub-paragraph (g) prescribes seven items of “*information in connection with the tenancy in respect of which the deposit has been paid*”. Items (i) to (v) are the amount of the deposit, the address of the property, and the contact details of the landlord, the tenant, and any relevant person. Items (vi) and (vii) are:
- “(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.*”

- (c) Articles 2(3) to (5), inserted by section 30 of the Deregulation Act 2015 and treated as having had effect since 6 April 2007,³⁵ provide that, where the initial requirements of the scheme were complied with by a person acting on the landlord’s behalf (“*the initial agent*”), the references to the landlord in article 2(1)(g)(vii) are to be read as references to either the landlord or the initial agent.³⁶ The Agent, having protected the deposit, was the initial agent, and a certificate signed on its behalf would have satisfied article 2(1)(g)(vii).

³³ 2007 Order, art 2(1)(b).

³⁴ Regulatory Impact Assessment annexed to the Explanatory Memorandum to the 2007 Order, ¶39.

³⁵ 2007 Order, art. 3, inserted by the Deregulation Act 2015, s 30(3).

³⁶ 2007 Order, art 2(3)(a); *Northwood Solihull Ltd v Fearn* [2022] EWCA Civ 40, [2022] 1 WLR 1661 at [52]–[53] per Lewison LJ. MHB/472

(d) Items (vi) and (vii) differ in character from the rest of article 2(1). They *do not fall squarely within any of the three subjects described in section 213(5)*: they concern the parties' own bargain, and the landlord's attestation of what he has written. They are *ancillary* to the core of the information which section 213(5) describes, and are loosely framed: item (vi) identifies its subject-matter only "*by reference to the terms of the tenancy*", and item (vii) introduces a requirement of form in the 2007 Order by way of a parenthesis.³⁷ Delegated legislation "*may in some cases be drafted with less precision than public general Acts*", and is to be construed accordingly³⁸. As stated in AG of Turks & Caicos Islands v Misick [2020] UKPC 30 at [41]: "*...the weight to be attached to the grammatical meaning, though still significant, is reduced if the Regulations bear the hallmark of imprecise drafting.*"

MHB/475

MHB/647

Legislative History

15. Parliament has returned to these provisions three times, on each occasion leaving the material words of section 213(5) and (6)(a) HA 2004, and of article 2(1)(g) of the 2007 Order, unchanged whilst adjusting their consequences:

(1) The Localism Act 2011³⁹ extended the periods for compliance from 14 to 30 days and replaced the fixed penalty of three times the deposit with a variable penalty of between one and three times the deposit. Notably, it also reversed the effect of the decision in Vision Enterprises Ltd v Tiensia, in which late compliance was held to be a complete defence to a claim under section 214⁴⁰. Indeed, at first instance in Ayannuga compliance during the hearing was held to be sufficient. Since 6 April 2012, the ground of application has been that section 213(3) or (6) "*has not been complied with*": this means that a landlord who has not given the information within 30 days is liable to the penalty, and has no

MHB/626

³⁷ Northwood at [66] per Lewison LJ.

³⁸ Bennion at 11.3(4).

³⁹ Localism Act 2011, s 184(2), (4), (9), in force on 6 April 2012; HA 2004, s 214(4) (as enacted). MHB/257

⁴⁰ Tiensia at [40] per Rimer LJ. See also at [44]–[45].

MHB/23

MHB/281,
286

opportunity to remedy any oversight⁴¹. The statements in *Suurpere v Nice* and *Ayannuga* on the importance of the prescribed information, upon which the Appellant place great reliance⁴², were made under the earlier regime, in which a landlord *who had given no information at all* could avoid the penalty by supplying it before judgment⁴³. This appeal, by contrast, arises under a wholly different regime.

- (2) The Deregulation Act 2015⁴⁴ amended the 2007 Order with retrospective effect so as to allow an agent's details to be given in place of the landlord's, "*as the government intended*"⁴⁵. It also inserted (inter alia) section 215B into HA 2004, under which requirements complied with in relation to a tenancy are treated as complied with on its renewal or replacement. That provision responded to the effect of the decision in *Superstrike Limited v Rodrigues*, in which the Court of Appeal held that, when a statutory periodic tenancy arises on the expiry of a fixed term, the deposit is treated as paid and received afresh in respect of the new tenancy, so that section 213 applies to it again⁴⁶. The practical effect of 215B is to 'roll over' the landlord's prior compliance with section 213(5) and 213(6)(a) into any successor tenancy. However, if, as in the Appellant's case, a single slip may found a claim, this would mean it would found a claim to a fresh penalty on each successive tenancy, as illustrated by the underlying claim for £120,888. It may be noted that, prior to the caps of 5 or 6 weeks' rent introduced by the Tenant Fees Act 2019, the level of deposits was potentially unlimited. The statutory scheme as at 2015 therefore created the possibility of liability for a sequence of large statutory penalties arising, on the Appellant's case, from two trivial and historic slips.

MHB/568

⁴¹ HA 2004, s 214(1)(a), (2)(a), as substituted by the Localism Act 2011, s 184(4), (6); Explanatory Notes to the Localism Act 2011, ¶405. As enacted, s 214(1)(a) referred to s.213(6)(a) and not to s 213(3) or (6)(b). MHB/246, 257

⁴² AWC ¶10.

⁴³ *Suurpere v Nice* [2011] EWHC 2003 (QB), [2012] 1 WLR 1224 at [42], [45] per Cox J; *Ayannuga* at [7], [34] per Etherton LJ.

⁴⁴ Deregulation Act 2015, ss 30, 32, in force on 26 March 2015.

⁴⁵ Explanatory Notes to the Deregulation Act 2015, ¶¶154, 167–168.

⁴⁶ *Superstrike Ltd v Rodrigues* [2013] EWCA Civ 669, [2013] 1 WLR 3848 at [36]–[39] per Lloyd LJ.

(3) The Renters' Rights Act 2025⁴⁷ extended the scheme from shorthold tenancies to assured tenancies generally, with effect from 1 May 2026 (other than in social housing), and substituted a new section 215. By the new section 215(3), the court may now make an order for possession in relation to an assured tenancy (other than on Ground 7A or Ground 14), "*only if the requirements of section 213(5) and (6)(a) have been complied with*", unless the deposit has been returned or an application under section 214 has been disposed of.

16. The construction of article 2(1)(g) therefore now matters not only to liability for the statutory penalty and an inability to rely upon 'no fault' eviction under section 21 HA 1988, but also to the recovery of possession of any dwelling let under a private assured tenancy. Subject to the exceptions just mentioned, a landlord who has taken a deposit *cannot obtain possession*, on almost any ground, unless and until those requirements have been complied with. Legislation which interferes with property rights, as this clearly does, "*will be construed as interfering with those rights no more than the statutory language and purpose require*"⁴⁸.

The Purpose of the Scheme

17. The purpose of the relevant statutory scheme is set out explicitly in section 212(2)(a) HA 2004. It is twofold: "*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...*"⁴⁹.

18. It is not in dispute that the Deposit was protected with a tenancy deposit scheme ("TDS") from 7 September 2010 (being before the scheme even applied to the tenancy). The provision of information in that regard could, therefore, only tenably relate to the second specified purpose: facilitating resolution of disputes relating to deposits. As Adam Johnson J observed, they "*are intended to promote this latter*

⁴⁷ Renters' Rights Act 2025, s 26; Renters' Rights Act 2025 (Commencement No 2 and Transitional and Saving Provisions) Regulations 2026, SI 2026/421, reg 2. MHB/211

⁴⁸ Bennion, ¶27.6.

⁴⁹ See also paragraph 7.1 of the Explanatory Memorandum to the 2007 Order ("EM"), and as held in *Vision Enterprises v Tiensia* [2010] EWCA Civ 1224 at [40] and [45]; *Superstrike v Rodrigues* [2013] EWCA Civ 669 at [14]; and in *Ayanugga v Swindells* [2012] EWCA Civ 1789 at [36].

MHB/562, 626-628, 286

purpose, for example by requiring transparency as to the landlord's rights to make use of the deposit and the tenant's right to demand its return"⁵⁰. It is against that purpose that compliance with sub-articles (vi) and (vii) falls to be judged. MHB/162

- MHB/210
- MHB/650, 664, 670, 678
19. The 2007 Order was laid before Parliament with an Explanatory Memorandum (the "EM"), to which was annexed a Regulatory Impact Assessment (the "RIA"). Those documents, and the consultation which preceded the 2007 Order, are admissible to identify the mischief at which the requirements were aimed and their purpose, albeit secondary to the words of the legislation⁵¹. The Court of Appeal referred to them, while placing limited weight upon them⁵². They show that: MHB/214
- (1) The 'advantage' of providing tenancy specific information generally was described as follows⁵³: "*it ensures that all tenants are placed in exactly the same position at the start of their tenancy.*" MHB/218, 222, 230
- (2) The purpose of what became article 2(1)(g)(vi) was that the landlord should "*set out in clear terms the basic purpose of the deposit*", so as to "*clear up misunderstandings and lead to fewer disputes as both parties will have the same understanding of what the deposit is for*"⁵⁴. MHB/220, 222
- (3) The purpose of what became article 2(1)(g)(vii) was explained as follows: "*It can only be made a requirement for the landlord to provide his signature. However, it would also make sense for the landlord to be required to ask the tenant to sign the information, to verify those aspects they have provided (such as an alternative address). This would help to ensure that this document is a true and accurate record of the deposit-taking process.*"⁵⁵ MHB/221

⁵⁰ HC [6].

⁵¹ *R (O) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255 at [30] per Lord Hodge DPSC; Bennion, ¶¶12.5, 24.1, 24.9, 24.13, 24.23.

⁵² CA [10], [38].

⁵³ RIA ¶30, repeated at ¶58 and ¶88.

⁵⁴ RIA, ¶46. See also RIA, ¶59.

⁵⁵ RIA, ¶48.

(4) The landlord was to have “*the option of providing the prescribed information within the written tenancy agreement, rather than on a prescribed/separate form if he so wished*”, with “*the added benefit for both tenants and landlords of reducing duplication*”⁵⁶. The Government’s conclusion after consultation had been: “*As long as the required information is provided, landlords should be able to decide how best to present that information.*”⁵⁷

CONSTRUING THE REQUIREMENTS OF THE 2007 ORDER

20. In construing these requirements, three matters of context are of particular importance:

(1) The scheme is concerned with the *substance* of what the tenant is told. The 2007 Order prescribes *information*, not words. With the exception of the parenthesis in article 2(1)(g)(vii), it prescribes nothing about how that information is to be given⁵⁸. Section 213(6)(a) HA 2004 permits the information to be given in a form “*substantially to the same effect*” as any prescribed form. That indicates the nature of Parliament’s concern, whether or not those words apply directly to article 2(1)(g)(vi) (as to which, see paragraph 42 below).

(2) The consequences of a failure to comply are penal. The court is obliged to award a sum at least equal to the deposit, however trivial the default, and the landlord cannot obtain an order for possession until the default is made good, the deposit is returned, or an application under section 214 has been determined or withdrawn. Section 214 is, as Rimer LJ put it, “*manifestly penal in intent*”⁵⁹. It is a principle of legal policy that “*a person should not be penalised except under clear law*”, and the presumption applies to any detriment, “*whether criminal or civil*”⁶⁰. In *Akbars*, this Court held that the interpretation of a provision which forms part of a penal regime “*has to proceed against the background that the*

⁵⁶ RIA, ¶¶51, 61.

⁵⁷ Department for Communities and Local Government, *Tenancy Deposit Protection: Secondary Legislation – Summary of responses to consultation* (June 2006) (the “**Summary of Responses**”), ¶40.

⁵⁸ *Northwood* at [9], [66] per Lewison LJ.

⁵⁹ *Tiensia* at [40] per Rimer LJ.

⁶⁰ Bennion, §26.4; see also *TW Logistics Ltd v Essex CC* [2021] UKSC 4, [2021] AC 1050 at [84] per Lord Sales and Lord Burrows JJSC.

*regime is penal in nature*⁶¹. Here, in contrast with *Akbars*, the person exposed to the penalty is the person upon whom the requirement is imposed.

- (3) The provisions have to be operated, within a short time limit, by private landlords and their agents in respect of every residential letting in England under which a deposit is taken. A construction which is unworkable, or which produces consequences out of all proportion to the default, is unlikely to have been intended.

21. In addition, the courts have repeatedly cautioned against construing statutory requirements to give notices or information as *traps*:

- (1) In *Stidolph v American School in London Educational Trust*, which concerned an unsigned notice in a prescribed form sent under cover of a signed letter, Lord Denning MR said: “*The requirement of a notice should not be turned into a trap for the landlord.*”⁶²

MHB/555

- (2) In *Al Properties (Sunderland) v Tudor Studios RTM Company*, this Court said of the statutory procedural requirements there in issue that they “*have not been included to create traps for the unwary*”⁶³.

- (3) Of the present scheme, Rimer LJ said in *Tiensia*: “*the objective of the legislation is not the punishment of landlords but the achieving of proper protection of tenants’ deposits. The legislation should not be interpreted in a sense that implicitly encourages the ambushing of landlords by tenants [...]. It should be interpreted in a way that avoids litigation.*”⁶⁴ The Localism Act 2011 reversed the effect of the decision in *Tiensia* and replaced the fixed (three times) penalty with a range (paragraph 16(1) above). That range does not meet the present point, and the Appellant’s reliance upon it (AWC ¶56) is misplaced: the minimum award is *mandatory* however trivial the default. In addition: (a) at the

MHB/627

MHB/40

⁶¹ *Akbars* at [34] per Lord Sales DPSC. See also at [54]–[56].

⁶² *Stidolph v American School in London Educational Trust Ltd* (1969) 20 P & CR 802 (CA) at 805 per Lord Denning MR.

⁶³ *Al Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27, [2025] AC 1075 at [98] per Lord Briggs and Lord Sales JJSC.

⁶⁴ *Tiensia* at [44] per Rimer LJ.

relevant time, deposits were uncapped, (b) liability could not be avoided by correcting the slip once the 30 day period has expired, (c) those penalties could be cumulative over successive tenancies, and (d) the bar on possession (previously on section 21 claims) admits of no gradation.

- (4) In Northwood Solihull Ltd v Fearn, the Court of Appeal applied this approach to article 2(1)(g)(vii) itself. An error in the certificate was one which “*the reasonable recipient of the certificate would have ignored*”⁶⁵, and a certificate which “*gave the tenants all the information it was required to do*”, and which was signed by a person authorised to sign it, “*fulfilled all the statutory purposes it was required to fulfil*” and was valid under section 213(6)(a)⁶⁶.

MHB/472

MHB/473

22. Those statements do not seek to licence or excuse non-compliance. The Respondent does not dispute the need for the prescribed information⁶⁷, and a landlord who gives no information, or information which a reasonable tenant could not understand, remains liable. The question here, as below, is whether the information was given.

MHB/285

CONSTRUING THE RELEVANT DOCUMENTS

23. The principles governing the interpretation of (contractual) documents are also settled to the point of being trite: Arnold v Britton⁶⁸ and Wood v Capita Insurance Services⁶⁹. These principles were summarised recently by Lord Burrows in Providence Building Services v Hexagon Housing Association as follows⁷⁰: “*The modern approach in English law to contractual interpretation is to ascertain the meaning of the words used by applying an objective and contextual approach.*”

24. Mannai Investments v Eagle Star [1997] 1 AC 749 brought that ‘*objective and contextual*’ approach to bear upon the interpretation of a contractual break notice. The

MHB/422

⁶⁵ Northwood at [49] per Lewison LJ.

⁶⁶ Northwood at [54]–[55] per Lewison LJ.

⁶⁷ Ayannuga at [30] per Etherton LJ (albeit in relation to information about the TDS which the tenant did not otherwise have), endorsing Suurpere at [41] per Cox J.

⁶⁸ [2015] UKSC 36 at [15-23].

⁶⁹ [2017] UKSC 24 at [10-13].

⁷⁰ [2026] UKSC 1 at [21].

objective interpretation of what the notice meant included its context; that context included a knowledge of the terms of the lease to which the notice related. Armed with that knowledge, the reasonable recipient of the break notice in question would have understood that the landlord wished to determine the lease in accordance with the contractual power to do so, and so understood that the reference to terminating it on ‘12 January 1995’ actually meant ‘13 January 1995’.

25. The modern approach to the interpretation of documents given in purported compliance with a statutory requirement was summarised by Arnold LJ in *Pease v Carter* in four propositions, which are set out below. In the Court of Appeal, it was common ground that the *Mannai* approach to interpretation, as summarised in the first three of those propositions, applies to the provision of information with which article 2(1)(g)(vi) is concerned, although its scope and its application to the facts were disputed⁷¹. The Appellant now accepts that those principles “*may be relevant to the exercise of discerning what the communication objectively conveyed to the reasonable recipient*” and “*may be available to correct obvious factual mistakes in the Prescribed Information Document*”⁷². The fourth proposition was accepted in relation to article 2(1)(g)(vii)⁷³. Arnold LJ said⁷⁴:

- “(i) *A statutory notice is to be interpreted in accordance with Mannai v Eagle [1997] AC 749, that is to say, as it would be understood by a reasonable recipient reading it in context.*
- (ii) *If a reasonable recipient would appreciate that the notice contained an error, for example as to date, and would appreciate what meaning the notice was intended to convey, then that is how the notice is to be interpreted.*
- (iii) *It remains necessary to consider whether, so interpreted, the notice complies with the relevant statutory requirements. This involves considering the purpose of those requirements.*

⁷¹ CA [42], [47], [50].

⁷² AWC ¶¶33, 49.

⁷³ CA [60].

⁷⁴ *Pease* at [39] per Arnold LJ.

MHB/115,
117, 118

MHB/120

MHB/513

- (iv) *Even if a notice, properly interpreted, does not precisely comply with the statutory requirements, it may be possible to conclude that it is ‘substantially to the same effect’ as a prescribed form if it nevertheless fulfils the statutory purpose. This is so even if the error relates to information inserted into or omitted from the form, and not to wording used instead of the prescribed language.”*

26. Five further points are established in the authorities:

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|---|--|---|
| <p>MHB/637</p> <p>MHB/507, 515</p> <p>MHB/685</p> | <p>(1) <i>First</i>, the reasonable recipient is a person in the position of the actual recipient, who “<i>would have had in the forefront of his mind the terms of the leases</i>”⁷⁵. As Lord Hoffmann observed, there is “<i>no question of the parties not being privy to the same background—both of them will have the lease</i>”⁷⁶.</p> <p>(2) <i>Secondly</i>, documents served together are to be read together. A covering letter may be taken into account in determining how a statutory notice would be understood⁷⁷, and a statutory notice may be comprised in more than one document⁷⁸.</p> <p>(3) <i>Thirdly</i>, the <u>Mannai</u> approach is not an indulgence for defective documents. It is the ordinary approach to interpretation, “<i>to ascertain the meaning of the words used by applying an objective and contextual approach</i>”⁷⁹, applied to a unilateral communication, usually arising within a contractual context. The standard to be applied, “<i>is that of the reasonable man exercising his common sense in the context and in the circumstances of the particular case</i>”, and “<i>the</i></p> | <p>MHB/441</p> <p>MHB/452</p> <p>MHB/398</p> <p>MHB/686</p> |
|---|--|---|

⁷⁵ Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] AC 749 (HL) at p768 per Lord Steyn.

⁷⁶ Mannai at p779 per Lord Hoffmann.

⁷⁷ York v Casey (1999) 31 HLR 209 (CA) at pp214–216 per Peter Gibson LJ; Pease at [20], [45] per Arnold LJ. See also T Weekes, *Property Notices: Validity and Service* (3rd edition) (“Weekes”), ¶2.22.

⁷⁸ Islington LBC v Dyer [2017] EWCA Civ 150, [2017] PTSR 731 at [15]–[18] per Patten LJ; Thompson v Roberts [2012] EWHC 2160 (QB) at [28] per Beatson J; Weekes, ¶3.12.

⁷⁹ Providence Building Services Ltd v Hexagon Housing Association Ltd [2026] UKSC 1, [2026] 1 WLR 538 at [21] per Lord Burrows JSC.

evident intention of a notice should not in matters of this kind be rejected in preference for a technical precision”⁸⁰. The test is objective. MHB/455

(4) *Fourthly*, the approach is not confined to slips which are obvious on the face of the document. As Hale LJ said in *Fernandez v McDonald*, “the obviousness or otherwise of an error is simply a factor in deciding what the reasonable recipient would understand by the notice. The more obvious it is that a slip has been made, the less likely is the reasonable recipient to be in any doubt as to what was meant”.⁸¹ The Court of Appeal so held in this case.⁸²

MHB/350

MHB/510

MHB/117,
118

(5) *Fifthly*, where, as here, a statute expressly permits a form “substantially to the same effect”, strict compliance is not required. The question is whether the document “performs all the essential functions” of the prescribed form, so that none of its essential purposes is “thwarted or even significantly blunted”⁸³; a document which “as a whole fulfils all the essential purposes of the prescribed form” suffices, “despite the use of apparently mandatory language”⁸⁴. Whether that is so is “a question of fact and degree in each case”, and “not decision on a point of law which is binding on later courts”⁸⁵. In the context of the 2007 Order, the question is “whether the substance of the information has been supplied”⁸⁶.

MHB/581

MHB/524

MHB/285

27. With these general submissions in mind, specific submissions are now made upon the grounds of appeal advanced.

⁸⁰ *Mannai* at p782 per Lord Clyde.

⁸¹ *Fernandez v McDonald* [2003] EWCA Civ 1219, [2004] 1 WLR 1027 at [20] per Hale LJ; *Pease* at [32] per Arnold LJ.

⁸² CA [48], [50].

⁸³ *Chiltern Railway Co Ltd v Patel* [2008] EWCA Civ 178, [2008] Bus LR 1295 at [12]–[13] per Lord Neuberger of Abbotsbury.

⁸⁴ *TFS Stores Ltd v Designer Retail Outlet Centres (Mansfield) General Partner Ltd* [2021] EWCA Civ 688, [2021] Bus LR 1407 at [39] per Males LJ; HC [29].

⁸⁵ *Ravenseft Properties Ltd v Hall* [2001] EWCA Civ 2034, [2002] HLR 33 at [11] per Mummery LJ.

⁸⁶ *Avannuga* at [29] per Etherton LJ, [35] per Lewison LJ.

ISSUE 1: ‘THE INFORMATION GROUND’

What Article 2(1)(g)(vi) Requires

28. Article 2(1)(g)(vi) prescribes, as an item of “*information in connection with the tenancy*”, “*the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy*”. The Respondent makes seven submissions as what this requirement means:

(1) What must be conveyed is “*the circumstances*” in which the deposit may be retained. Those circumstances are fixed by the terms of the tenancy and by nothing else. The words “*by reference to the terms of the tenancy*” identify where the circumstances are to be found, and permit the landlord to convey them by referring the tenant to those terms. The provision “*looks outwards to the tenancy agreement*”⁸⁷ and may be satisfied by a reference to the relevant clause alone⁸⁸. The Appellant now accepts that it is satisfied if, “*properly construed, the Prescribed Information Document gave the Appellant the information prescribed by reference to the terms of his tenancy agreement*”⁸⁹.

(2) The provision refers to “*the terms of the tenancy*”, not to a tenancy agreement, still less to the number of a clause. The scheme applies to tenancies granted orally⁹⁰, as well as in writing. A landlord under an oral tenancy has no clause to which he can point. Even following the recent (2026) change in law requiring a written statement of specified terms, the only term concerning the deposit which must be stated in writing is “*the amount of any tenancy deposit*”⁹¹. There is no suggestion that any existing or future oral assured tenancies require a written statement of the circumstances in which deductions might be made from the specified deposit. The Appellant’s submission that “*the landlord must tell the*

⁸⁷ CA [57].

⁸⁸ CA [38], [55].

⁸⁹ AWC ¶¶34, 51.

⁹⁰ Law of Property Act 1925, s 54(2).

⁹¹ HA 1988, s.16D (inserted by the Renters’ Rights Act 2025, s 12); in force from 1 May 2026: SI 2026/421, reg 2); Assured Tenancies (Private Rented Sector) (Written Statement of Terms Etc. and Information Sheet) (England) Regulations 2026, SI 2026/324, reg 2 and Schedule, para 9.

MHB/33

tenant which clause in their tenancy agreement governs deposit retention”, and that the draftsman “*was clear that the tenant must separately and effectively be given the information*” ignores the position of oral tenancies⁹², and adds words which are not within the statute⁹³. The word “*separately*” appears nowhere in the 2007 Order, and the RIA contemplates the opposite (see paragraph 20(4) above).

MHB/218, 220

- (3) The purpose of the information appears from the RIA (see paragraph 20(2) above): the landlord is to “*set out in clear terms the basic purpose of the deposit*”, so that “*both parties will have the same understanding of what the deposit is for*” and “*all tenants are placed in exactly the same position at the start of their tenancy*”⁹⁴. That is a purpose concerned with a shared understanding of the substance of the purpose of the deposit, not an exhaustive catalogue of all circumstances. The Appellant contends that the purpose is to “*avoid the need for them to search through their tenancy agreement to find it*”⁹⁵. Nothing in the legislative text supports that; in fact to the contrary – the information must be by reference to the terms of the tenancy. Nor does this submission produce the result for which the Appellant contends: on his own case a correct clause number, *and nothing more*, would have complied⁹⁶, and the tenant would then have had to open his agreement, find that clause, and read it. The only difference is that the Appellant had to identify the clause by its heading, “*Deposit*”, and not by its number.

MHB/33, 35

MHB/33

MHB/33

- (4) The Government intended the landlord to have “*the option of providing the prescribed information within the written tenancy agreement*” (see paragraph 20(4) above), as the Appellant accepts⁹⁷. Where that option is taken, the deposit clause is itself the information, and the tenant must read his agreement to receive it. The Appellant’s submission that Parliament’s intention was to avoid the need

⁹² It is unclear if this is what RIA ¶30 was referring to by the intention to ensure that ‘all tenants were in the same position at the start of their tenancy’

⁹³ Grounds ¶17; AWC ¶¶39–41.

⁹⁴ RIA, ¶¶30, 46.

⁹⁵ Grounds ¶11; AWC ¶¶40, 45.

⁹⁶ AWC ¶39.

⁹⁷ AWC ¶40; CA [10], [38]. MHB/105, 112

MHB/218

for the tenant to consider the terms of his tenancy is inherently implausible, and cannot be justified by reference to the legislation, or the EM and RIA published with it.

(5) This is a *loosely framed* requirement, which does not come squarely within any category of information identified to be mandatory within section 213(5). It should not be construed to create traps, or such as to lead to doubtful penalisation.

(6) Sub-paragraphs (c) to (f) of article 2(1), with which Avannuga was concerned, prescribe information about the procedures of the scheme, which the tenant will not have unless the landlord gives it to him; hence, in that case, it was “*no answer*” that the tenant could have made her own enquiries⁹⁸. This situation is wholly different. The subject-matter of article 2(1)(g)(vi) is the terms of a tenancy to which the tenant is himself already a party. The information can neither vary the tenancy, nor founds any relevant species of estoppel. The circumstances in question are, and remain, those fixed by the terms of the tenancy.

(7) The Appellant’s own answer to the question “*what does the legislation require?*” is that the tenant must 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*”⁹⁹. To that, the Respondent agrees: that is precisely the requirement which each of the appellate courts below applied¹⁰⁰. The criticism that Adam Johnson J treated the purpose as “*simply for tenants to be told that their tenancy agreement sets out the parties’ rights*”¹⁰¹ misreads HC [24], which held that “*the tenant was told, you can find those rights spelled out in the provision in your tenancy agreement which deals with the treatment of your deposit. And so he could, in cl. 5.3, headed ‘Deposit’.*” That is a finding that

⁹⁸ Avannuga at [27] per Etherton LJ.

⁹⁹ AWC ¶42.

¹⁰⁰ HC [23(iii)]; CA [54]–[55].

¹⁰¹ AWC ¶¶34(i) and 42.

the document directed the Appellant to the specific provision which dealt with the deposit, not a holding that a bare direction to “*your tenancy*” would suffice.

29. Given the expressed purpose of the legislation, the imprecision of the drafting of the relevant provision, and the creation of a potential strict liability penalty, it is submitted that the requirement should be interpreted in a manner that satisfies common sense in light of the expressed purpose. The substance of what is required is that the tenant is given information which explains the purpose of the deposit by setting out circumstances in which deductions may be made from it. The requirement of that information being by reference to the terms of the tenancy indicates that its requirements will be met by a reference to one or more terms of any such tenancy agreement, if it exists. There is no suggestion in the wording of the provision that the reference must be exhaustive.

What Information was Given (What did the PID mean)?

30. The PID falls to be read as it would have been understood by a reasonable recipient in the position of the Appellant. He was the tenant under the Tenancy Agreement, had paid the Deposit under it, and had a countersigned copy of it, and initialed each page¹⁰².
Such a person:

(1) Would have understood “*the Tenancy Agreement*” to be the agreement under which he occupied the flat, and had paid the Deposit (which here, had been entered into 8 months earlier¹⁰³). The Letter told him that his existing tenancy would “*become an assured shorthold tenancy overnight*”; no new agreement was proposed or referred to; and the word “*attached*”, with the absence of an attachment, could not have left him in doubt as to which agreement was meant. The suggestion of “*some other document containing a clause 6*”¹⁰⁴ has no tenable basis in the documents.

¹⁰² CC [8]; CA [36], [57]; SFI ¶1(1)(b). MHB/129 112 120 6

¹⁰³ SFI ¶1(1)(b).

¹⁰⁴ AWC ¶58.

(2) Would have seen at once that his Tenancy Agreement contained no clause 6, and therefore understood that the reference to “*Clause 6*” must have been a mistake.

(3) Would have clearly understood what *was* being referred to: the clause of the Tenancy Agreement which dealt with the Deposit. There was only one clause headed “*Deposit*”, being clause 5.3, which stated the matters for which the Deposit was held as security.

MHB/119

(4) Would not have been misled by the final sentence of A16, as the Court of Appeal held¹⁰⁵. That sentence formed no part of the reference to the terms of the tenancy, and could not have suggested that some provision other than the deposit clause of his own agreement was meant. It had no effect upon the terms relating to the Deposit within the Tenancy Agreement.,¹⁰⁶ The steps which a reasonable recipient “*would have had to*” take¹⁰⁷ describe nothing more than the reading of a document with the terms of the tenancy in mind.

MHB/40

31. That is an orthodox application of principle. Indeed it is an application of the law as it stood long before Mannai (and as it continues to stand now):

(1) In Doe d Cox v Roe, a notice to quit named “*the Waterman’s Arms*”; the tenant occupied the Bricklayer’s Arms, and there was no Waterman’s Arms in the parish. The notice was good: there could be “*no dispute, nor doubt of the identity of the premises*”¹⁰⁸. In Mannai, Lord Hoffmann explained that “[*t*]he meaning was objectively clear to a reasonable recipient, even though the landlord had used the wrong name”.¹⁰⁹ The present case is analogous.

MHB/448

(2) The same result follows from the maxim *falsa demonstratio non nocet cum de corpore constat* (i.e. a false description does not vitiate when what is meant is clear), which has been applied to statutory notices naming the wrong Act or

¹⁰⁵ CA [56], where the reference to “A15” is evidently to A16.

¹⁰⁶ If anything, the sentence reflected, in lay terms, the practical operation of the scheme under which a landlord cannot simply help himself to a disputed deposit: Explanatory Memorandum, ¶4.1; RIA, ¶36. MHB/210, 219

¹⁰⁷ AWC ¶58.

¹⁰⁸ Doe d Cox v Roe (1802) 4 Esp 185 at 185–186, 170 ER 685 at 685–686 per Lord Ellenborough.

¹⁰⁹ Mannai at p775 per Lord Hoffmann.

MHB/365

section and to a document referring by the wrong number to a clause of another¹¹⁰. So far as the description in the PID was wrong, it applied to nothing; so far as it was correct, it could apply to one clause only – that headed ‘Deposit’.

MHB/350

(3) As Hale LJ said in *Fernandez v McDonald*, “[t]he more obvious it is that a slip has been made, the less likely is the reasonable recipient to be in any doubt as to what was meant”¹¹¹. A reference to a clause which does not exist is an obvious slip.

(4) This approach was confirmed, and easily applied recently by the Court of Appeal in *Hamer v Levy* [2026] EWCA Civ 662 to correct a similar error in reference to identify the clause in which the deposit was defined within the tenancy agreement.

MHB/120

32. So read, the PID informed the Appellant that the circumstances in which his Deposit might be retained were those set out in clause 5.3 of the Tenancy Agreement. That was information as to those circumstances, given by reference to the terms of the tenancy. Clause 5.3 provided the framework for the treatment of the Deposit, and the examples or illustrations in clause 5.20 fell within it¹¹². Article 2(1)(g)(vi) was therefore satisfied.

The Appellant’s Case to the Contrary

33. The Appellant’s case has narrowed since it was originally framed. The Grounds contended that there is “an important conceptual distinction between a notice, and information required to be given by statute”, and that the reasonable recipient approach could not be applied to the latter¹¹³. That contention was not advanced below: in the Court of Appeal it “was accepted that that approach applies equally to the provision of information with which article 2(1)(g)(vi) is concerned”, the Appellant’s skeleton

¹¹⁰ *Morrell v Fisher* (1849) 4 Ex 591 at 604, 154 ER 1350 at 1355; *Finbow v Air Ministry* [1963] 1 WLR 697 (QB) at 709; *Green v Westleigh Properties Ltd* [2008] EWHC 1474 (QB) at [64]; c.f. *The Merak* [1965] P 223 (CA) at 250 per Sellers LJ (dissenting) and *Caresse Navigation Ltd v Office National de l’Electricité* [2014] EWCA Civ 1366, [2015] QB 366 at [37]–[39] per Beatson LJ (with whom Lord Dyson MR and Sir Robin Jacob agreed).

¹¹¹ *Fernandez* at [20] per Hale LJ.

¹¹² CA [58].

¹¹³ Grounds ¶¶13–15.

MHB/117	argument stating that “ <i>the Mannai principles can operate to correct obvious factual mistakes in the prescribed information</i> ” ¹¹⁴ . The AWC returns to that position: the <u>Mannai</u> principles “ <i>may be relevant to the exercise of discerning what the communication objectively conveyed to the reasonable recipient</i> ” and “ <i>may be available to correct obvious factual mistakes in the Prescribed Information Document</i> ” ¹¹⁵ . No new point is made plain under Practice Direction 5 ¹¹⁶ . What remains, therefore, is the contention that the courts below asked what the Respondent intended to convey rather than what it actually conveyed, and that the approach “ <i>cannot supply information which the landlord did not give</i> ” ¹¹⁷ . That contention fails, for the following reasons:	
MHB/31, 37		MHB/31, 35 - 36
	(a) The two-stage approach for which the Appellant contends is the approach which the courts below applied. As <u>Trafford MBC v Total Fitness (UK) Ltd</u> put it, summarising <u>Speedwell Estates Ltd v Dalziel</u> , the court first considers “ <i>what, on its true construction, the notice says</i> ”, and then matches its contents “ <i>against the relevant requirements</i> ” ¹¹⁸ . Those are precisely the steps which Adam Johnson J identified in the Trial Judge’s reasoning and which the Court of Appeal endorsed ¹¹⁹ .	
MHB/543		
MHB/608		MHB/168
MHB/311	The complaint about the words “ <i>intended to convey</i> ” ¹²⁰ is misconceived. They are	MHB/35
MHB/482	the words of Arnold LJ’s second proposition in <u>Pease v Carter</u> , which the Appellant adopts ¹²¹ . They denote the objective meaning of the document, not the subjective	
MHB/513, 517	intention of its author: the law no longer confuses “ <i>the meaning of words with the</i>	
MHB/30		

¹¹⁴ CA [47]; Appellant’s skeleton argument in the Court of Appeal dated 12 July 2024, ¶53; Notice of Objection, ¶1.

¹¹⁵ AWC ¶¶33, 49.

¹¹⁶ Practice Direction 5, ¶5.10.

¹¹⁷ AWC ¶¶33, 46–48.

¹¹⁸ Speedwell Estates Ltd v Dalziel [2001] EWCA Civ 1277, [2002] HLR 43 at [22] per Rimer J; Trafford MBC v Total Fitness (UK) Ltd [2002] EWCA Civ 1513, [2003] 2 P & CR 2 at [49] per Jonathan Parker LJ; Burman v Mount Cook Land Ltd [2001] EWCA Civ 1712, [2002] Ch 256 at [11]; OG Thomas Amaethyddiaeth Cyf v Turner [2022] EWCA Civ 1446, [2023] 2 P & CR 15 at [17].

¹¹⁹ HC [23(i)]–[23(iii)]; CA [52]–[59].

¹²⁰ AWC ¶¶46–48.

¹²¹ Pease at [39(ii)], [57]; AWC ¶29.

question of what meaning the use of the words was intended to convey”.¹²² What the PID objectively conveyed is what it actually conveyed. MHB/452

(b) The dispute arises at the first stage, not the second. Trafford itself makes the distinction: at the first stage, “the stage of seeing what, on its true construction, the notice [...] says”, Carradine and Mannai “are [...] of direct relevance”¹²³. At that stage the terms of the tenancy are the essential background: the reasonable recipient “must be taken to know the terms of the lease”¹²⁴. Speedwell applied that principle, curing the inaccurate identification of the leases in box 3 because the landlords “must in my view be taken to be familiar with the leases to which they were respectively subject”¹²⁵. Both Speedwell and Burman accept that a document complies if, “upon a true construction of the notice”, it contains the required statement or information¹²⁶. MHB/609 MHB/441 MHB/544 MHB/320

(c) The distinction drawn in Mannai is not between notices and information (there is no principled basis to draw such a distinction). It is, as Lewison LJ explained in OG Thomas, between “formal requirements on the one hand, and requirements to impart information on the other”.¹²⁷ A condition which relates “solely to the meaning which the notice had to communicate” is judged “by applying the ordinary techniques for interpreting communications”¹²⁸. Article 2(1)(g)(vi) is such a condition. It prescribes no form of words, no clause number, and no other formal attribute. The submission that the question “does turn on” blue paper and pink paper¹²⁹ confuses the information a document must convey with how it must be presented. The Appellant seeks to elevate a requirement for information to a one of strict form. OG Thomas is not on point: there a notice addressed to a former tenant had not been given to the tenant at all, and “[t]here was no verbal error: there was

¹²² Mannai at p779 per Lord Hoffmann; Hamer v Levy [2026] EWCA Civ 662 at [70] per Baker LJ. MHB/386

¹²³ Trafford at [50]; the notice was upheld: at [54]–[55].

¹²⁴ Mannai at p768 per Lord Steyn, 780 per Lord Hoffmann; Carradine Properties Ltd v Aslam [1976] 1 WLR 442 (Ch) at 444 per Goulding J.

¹²⁵ Speedwell at [32] per Rimer J.

¹²⁶ Speedwell at [25]; Burman (n 118) at [29] per Chadwick LJ, where the quoted words appear.

¹²⁷ OG Thomas at [15] per Lewison LJ.

¹²⁸ Mannai at p776 per Lord Hoffmann.

¹²⁹ AWC ¶48; Grounds ¶17; c.f. CA [51].

MHB/492
MHB/118

a *factual one*.”¹³⁰ Here the PID was given to the right person and contained a ‘verbal error’ in the communication of its message. Once it is properly construed as referring to clause 5.3, its content meets the requirement¹³¹.

MHB/482
MHB/513

(d) The authorities on which the Appellant relies do not support a rule that mistaken content invalidates a document whatever the reasonable recipient would have understood by it. They fall into two groups:

(1) *Speedwell* (boxes 6 to 8), *Burman*, *Torridge DC v Jones*, *Manel v Memon*, *Mountain v Hastings*, *Kahlon v Isherwood*, *Ayannuga*, *Suurpere*, and *Akbars* were all cases of omission: the document said nothing on the point which it was required to address¹³². It is in that context that the recipient’s knowledge was “no answer” and construction could not “fill gaps”. The proposition that the approach “cannot supply information which the landlord did not give” is both correct and irrelevant. The Respondent gave information. The dispute is whether what it conveyed was sufficient.

(2) Only two of the Appellant’s authorities invalidated a document for erroneous content: *Panayi v Roberts* and *Morrow v Nadeem*. In each the error was found not to be obvious, and so the position upon an obvious mistake was reserved. Mann LJ held that the wrong month “would be a perplexity rather than an evident error”, and the passage which the Appellant quotes opens with the words “I wish to give no encouragement to arguments which are based on what were described to us as ‘slips of the pen’”; Nicholls LJ (as he then was) expressly reserved the “exceptional case” in which “any reasonable tenant would have known that that was a mistake and known clearly what was intended”¹³³. Every case in which the document was held to convey a clear meaning upheld it: *Trafford*, *Pease*, *Andrews v Brewer*, *York v Casey*,

MHB/498
MHB/549
MHB/320
MHB/590
MHB/418-419
MHB/407
MHB/286
MHB/272

¹³⁰ *OG Thomas* at [56]–[57] per Lewison LJ; CA [51].

¹³¹ *OG Thomas* at [17] per Lewison LJ; *Pease* at [39(iii)] per Arnold LJ.

¹³² *Speedwell* at [42], [49], [56]; *Burman* at [29], [32]; *Torridge DC v Jones* (1986) 18 HLR 107 (CA) at 111, 114; *Manel v Memon* (2001) 33 HLR 24 (CA) at [22]; *Mountain v Hastings* (1993) 25 HLR 427 (CA) at 435; *Kahlon v Isherwood* [2011] EWCA Civ 602, [2011] HLR 38 at [22]; *Ayannuga* (n 32) at [32], [40]; *Suurpere* at [50]–[52]; *Akbars* at [40], [55].

¹³³ *Panayi v Roberts* (1993) 25 HLR 421 (CA) at 425 per Mann LJ; *Morrow v Nadeem* [1986] 1 WLR 1381 (CA) at 1387 per Nicholls LJ, 1391 per Neill LJ, 1392 per Slade LJ.

MHB/513-514

Northwood, and box 3 in *Speedwell*; so too *Price v Mann*, where a statutory notice citing the wrong section was held good because its recipient “*could not possibly be under any illusion as to what it was intended to be*”¹³⁴. *Kahlon* draws the same line: the *Mannai* approach “*may operate to correct obvious factual mistakes in the notice*”, but cannot fill gaps¹³⁵. A wrong clause number is a mistake of the former kind, as the Appellant necessarily accepts¹³⁶. MHB/407

MHB/31, 37

- (3) A central premise of the Appellant’s case is that the tenant should not have to read his tenancy agreement in order to understand what he has been told¹³⁷. That is contrary to the highest authority in *Mannai*, in which the terms of the lease were the essential background¹³⁸. It would operate to revive the rule which the House of Lords rejected, under which a notice was construed “*without regard to the terms of the lease (or anything else) as background*”, upon “*an artificial assumption that the reasonable recipient does not know*” what he in fact knows¹³⁹. Under the *Carradine* test, which the Appellant adopts¹⁴⁰, “*the reasonable tenant must be taken to know the terms of the lease*”¹⁴¹. Such a tenant could not have been misled by a reference to a clause which did not exist. Nor can the premise be reconciled with the text: a document which is required to give information by reference to the terms of the tenancy cannot sensibly be read with those terms excluded from consideration. MHB/35, 39

MHB/441,
452

MHB/450

MHB/25

MHB/453

- (4) Finally, every notice is a means of giving information. The approach has been applied to a certificate under article 2(1)(g)(vii) itself; to a section 8 notice “*informing the tenant*” of specified matters; to a pay less notice which must “*specify*” the sum due and its basis; and to a statutory counter-notice naming the

¹³⁴ *Trafford* at [54]–[55]; *Pease* at [44]–[45], [53]; *Andrews v Brewer* (1998) 30 HLR 203 (CA) at 209–210; *York* at pp214–216; *Northwood* (n 36) at [49]; *Speedwell* at [32]; *Price v Mann* [1942] 1 All ER 453 (CA), approved in *Mannai* at 771–772 per Lord Steyn.

¹³⁵ *Kahlon* at [23] per Patten LJ, citing *York* as a case of “*inaccurate particulars*” cured by construction.

¹³⁶ AWC ¶¶33, 49.

¹³⁷ Grounds ¶15; AWC ¶¶45, 54.

¹³⁸ *Mannai* at p768 per Lord Steyn, pp779–780 per Lord Hoffmann.

¹³⁹ *Mannai* at pp777–778 per Lord Hoffmann; *c.f.* Grounds ¶14.

¹⁴⁰ Grounds ¶¶13, 16; AWC ¶17.

¹⁴¹ *Mannai* at 780 per Lord Hoffmann, approving *Carradine* at 444.

wrong company, where “*the meaning intended to be conveyed would be understood by a reasonable recipient*”¹⁴².

The Appellant’s Remaining Arguments

34. The Appellant relies upon Ayannuga and Kahlon¹⁴³. Both were cases of wholesale omission:

(1) In Ayannuga there was an “*entire omission*” of four prescribed items and a “*complete failure to engage*” with them¹⁴⁴. In that context, Lewison LJ said that “[e]ven if the tenant knows the information the failure to provide it will still not validate an invalid notice”¹⁴⁵.

MHB/286

(2) In Kahlon an essential part of the prescribed form was missing, and there was “*nothing in the Tomlin schedule which even remotely corresponds to it*”¹⁴⁶. Patten LJ drew the distinction for which the Respondent contends.

MHB/407

(3) The observation that it is ‘no answer’ that the tenant already knew the information is directed to cases in which the required information was not given to the tenant at all. Here the Respondent gave the information, and the tenant’s knowledge of his own agreement is relevant only to how he would have understood it. Where a requirement calls for something to be identified, a description suffices “*if the reasonable recipient, circumstanced as the actual parties were, could be left in no doubt*” what was referred to¹⁴⁷. So in Dudley MBC v Bailey a notice which overstated the arrears of rent was upheld (“[e]rror

MHB/338

¹⁴² Northwood (n 36) at [49]; Housing Act 1988, s 8(3); Pease at [47]; Grove Developments Ltd v S&T (UK) Ltd [2018] EWCA Civ 2448, [2019] Bus LR 1847 at [55], [58]; St Stephens Mansions RTM Co Ltd v Fairhold NW Ltd [2014] UKUT 541 (LC) at [38], [44], [52].

¹⁴³ Grounds ¶¶3, 17, 20; AWC ¶¶28, 49–51. MHB/29, 37-38

¹⁴⁴ Ayannuga at [32] per Etherton LJ, [40] per Lewison LJ.

¹⁴⁵ Ayannuga at [39] per Lewison LJ.

¹⁴⁶ Kahlon at [21]–[23] per Patten LJ.

¹⁴⁷ Dodika Ltd v United Luck Group Holdings Ltd [2021] EWCA Civ 638 at [31], [33]–[34] per Nugee LJ.

in the particulars does not [...] invalidate the notice”), whereas in *Torridge*, by contrast, “*no particulars whatever were given*”¹⁴⁸.

35. The Appellant contended in the Grounds that “[a] landlord who refers to a non-existent clause should be in no better position than one who refers to no clause at all”¹⁴⁹. That is a non-sequitur. A landlord who says nothing, conveys nothing. A landlord who refers his tenant to the clause of the tenancy agreement which deals with the deposit, and misnumbers it, adequately conveys everything that the correct number would have conveyed. MHB/38

36. The Appellant then contends that “the reasonable tenant contemplated by Parliament” is one “who is neither willing nor able to locate for themselves the relevant provisions by reading their tenancy agreement, or to take advice”¹⁵⁰. There is no tenable basis for that contention: MHB/37

(1) The test is objective. The reasonable recipient is a person in the position of the actual recipient, credited with the background which both parties share: in *Mannai* the lease, of which there was “no question of the parties not being privy”; in *Carradine* the reasonable tenant “knowing the terms of the lease”¹⁵¹. A tenant who will not read the agreement he has signed is the very “artificial assumption” which *Mannai* rejected. MHB/452

(2) The authorities cited do not support the Appellant. Harman LJ’s “tenderness for the tenant” in *Bolton’s (House Furnishers) Ltd v Oppenheim* was his reason for upholding a notice which omitted statutory words: the tenant “has only to look at note 4 on the back, and there he will find” them¹⁵². Barry J in *Barclays Bank Ltd v Ascott* held that the construction of such a notice “should be a liberal one”, the question being whether it “gives the real substance of the information MHB/303

¹⁴⁸ *Dudley MBC v Bailey* (1990) 22 HLR 424 (CA) at 431–432 per Ralph Gibson LJ, referring to *Torridge*.

¹⁴⁹ Grounds ¶20; *c.f.* AWC ¶51.

¹⁵⁰ AWC ¶54; see also AWC ¶¶50–55.

¹⁵¹ *Mannai* at p779 per Lord Hoffmann; *Carradine* at p444.

¹⁵² *Bolton’s (House Furnishers) Ltd v Oppenheim* [1959] 1 WLR 913 (CA) at 920 per Harman LJ; AWC ¶52. MHB/38

MHB/293, 295

MHB/30, 38

required"; the sentence which the Appellant quotes concerned a notice which stated no ground of opposition at all¹⁵³. Each applied a substance test.

- (3) The artificial construct proves nothing. On the Appellant's own case a bare reference to the correct clause number would comply, from which the tenant who is "*neither willing nor able*" to read his agreement would gain nothing. It is irreconcilable with the option of giving the information within the tenancy agreement itself, which presupposes a tenant who reads it.
- (4) The presumption against surplusage favours the Respondent¹⁵⁴. Its construction gives effect to every word: "*the circumstances*" must be conveyed, and may be conveyed "*by reference to the terms of the tenancy*". It is the Appellant's construction which seek to adds words, requiring the circumstances to be identified "*separately*" and by clause number. It is the Appellant, not the Respondent, that asks the Court to "*rewrite the legislation*"¹⁵⁵.

MHB/660

MHB/39

37. The Appellant's submissions on the scheme of the legislation¹⁵⁶ do not assist him:

MHB/167

MHB/106

- (1) The Respondent does not ask the Court to "*balance*" compliance against prejudice. The sentence criticised is Adam Johnson J's description of the case law¹⁵⁷; the Court of Appeal applied *Pease v Carter*, not a balancing test¹⁵⁸.

MHB/118

- (2) The range of the penalty does not accommodate the Appellant's construction. The minimum award is mandatory whatever the default, and once the period for compliance has passed liability under section 214 cannot be avoided by correcting the slip. Since 1 May 2026, the same construction determines whether a landlord can obtain possession on almost any ground. That a landlord

¹⁵³ *Barclays Bank Ltd v Ascott* [1961] 1 WLR 717 (QB) at p722, 724 per Barry J; AWC ¶¶30, 51.

¹⁵⁴ Bennion ¶21.2; AWC ¶54.

¹⁵⁵ *R (Buckinghamshire County Council) v Secretary of State for Transport* [2014] UKSC 3, [2014] 1 WLR 324 at [171] per Lord Neuberger PSC and Lord Mance JSC; AWC §55. MHB/275, 39

¹⁵⁶ AWC ¶¶56–57. MHB/40

¹⁵⁷ HC [21]; CA [22].

¹⁵⁸ CA [50]–[59].

can “*remedy their breach*” for that purpose is no answer to a strict liability financial penalty incurred on the thirty-first day.

- (3) Panayi was decided before Mannai, concerned a mistake found not to be obvious, and disclaimed any encouragement to arguments founded upon slips of the pen. The Court of Appeal has since applied Mannai to section 20 notices¹⁵⁹. The submission that strict accuracy is “*easy for busy county court judges to apply*” was rejected in Pease: “*district judges should have no real difficulty in applying Mannai v Eagle*.”¹⁶⁰ It would defy common sense and the presumption against doubtful penalisation, and not fulfil any part of the expressed statutory purpose to penalise a landlord who has protected the deposit, told the tenant that it is protected, and given him the information, simply because a clause was misnumbered in a way that could not have misled him.

MHB/515

38. Akbars does not assist the Appellant. The penalty notice there did not say which of three mutually exclusive statutory grounds was relied upon; it did not convey the required information at all¹⁶¹. The statute contained no equivalent of section 213(6)(a); strictness therefore protected the person penalised, who was “*entitled to know why the penal power of the state has been invoked against them*”; and the Secretary of State was able to “*issue a new penalty notice which does comply with the statutory requirement*”¹⁶². The landlord here cannot remedy the situation. Here strictness would expose the person upon whom the requirement is imposed to a financial penalty (and possibly multiple penalties) for an error which could not have misled a reasonable recipient.

MHB/270,
273

MHB/270,
276-277

39. Finally, in Hamer v Levy¹⁶³ the prescribed information was contained in clause 6 of the tenancy agreement, clause 6.7 of which stated that “[t]he deposit value is as per clause 1.8.1” when the deposit was fixed by clause 1.7.1, and the certificate was unsigned.

MHB/372,
373, 385

¹⁵⁹ York at 214–216; Ravenseft at [12]–[13], [27], as explained in Pease at [25]–[29]. MHB/637, 509

¹⁶⁰ Pease at [47] per Arnold LJ; AWC ¶57.

¹⁶¹ Akbars at [32], [40] per Lord Sales DPSC.

¹⁶² Akbars at [34], [54]–[56] per Lord Sales DPSC. See also Glasgow City Council v Upper Tribunal for Scotland [2025] CSIH 2, 2025 SC 245 at [55]–[58].

¹⁶³ Hamer (n 122) at [14], [17], [65] per Baker LJ.

MHB/383,
386

The Court of Appeal, applying *Pease* and the decision below in this case, held that a “reasonable recipient”, having read the whole agreement, “would appreciate that section 6, clause 6.7, identifying the amount of the deposit, contained an error and would understand that it intended to refer to clause 1.7.1” and that the information had been given in a form substantially to the same effect notwithstanding the unsigned certificate¹⁶⁴. The Appellant’s criticism is that Baker LJ asked whether the information given was “substantially to the same effect” as that required, rather than whether it had been given “in the prescribed form or in a form substantially to the same effect”¹⁶⁵. MHB/45 That is a distinction without a difference: the question posed at [66] is the question which section 213(6)(a) itself poses.

Respondent’s Additional Grounds

40. If, contrary to the foregoing, the PID did not on its true construction satisfy article 2(1)(g)(vi), the Respondent contends, in accordance with its Notice of Objection, that the decision below should be affirmed on either of two further grounds¹⁶⁶. MHB/13

41. The first is that the information was given to the Appellant by the Respondent within the Tenancy Agreement itself:

MHB/176

(1) Neither HA 2004 nor the 2007 Order requires the information to be contained in a single document, and section 213(6)(b) fixes the latest, not the earliest, time at which it may be given¹⁶⁷. Clause 5.3 was a statement by the Respondent to the Appellant, in a document which both had signed, of the circumstances in which the deposit might be retained, and the PID directed his attention to it. That is the agreed premise of Issue 1¹⁶⁸. MHB/6

(2) The giving of information within the tenancy agreement is a means of compliance which the Government expressly contemplated (RIA ¶51). In *Ayanmuga* the Court MHB/221

¹⁶⁴ *Hamer* (n 122) at [58]–[63], [69]–[71], [73].

¹⁶⁵ AWC ¶69.

¹⁶⁶ Notice of Objection, ¶2; see also ¶3; *c.f.* SFI ¶24(a).

¹⁶⁷ HC [59]; and see ¶27(b) above.

¹⁶⁸ SFI ¶1(1)(b).

	of Appeal endorsed this by specifically examined the tenancy agreement to see whether it contained the prescribed information ¹⁶⁹ . In <i>Hamer</i> a letter referring the tenant back to the prescribed information in the tenancy agreement sufficed, “ <i>notwithstanding the fact that the agreement had been signed before the deposit was paid</i> ” ¹⁷⁰ . The Court of Appeal observed that this option was not open to the Respondent, because the scheme did not apply when the Tenancy Agreement was made ¹⁷¹ . That is so as regards the prescribed information as a whole; but item (vi) concerns the terms of the tenancy, which had been given to the Appellant in writing and this did not change when the scheme began to apply.	MHB/284
MHB/372, 386		
MHB/105, 112		
	42. The second is that the information was in any event given “ <i>in a form substantially to the same effect</i> ”. The Trial Judge so held ¹⁷² . Adam Johnson J held that section 213(6)(a) has no application to article 2(1)(g)(vi), which “ <i>is not concerned with form</i> ”, while applying the same test of substance ¹⁷³ . The Court of Appeal left the point open ¹⁷⁴ and the Appellant argues to the same effect ¹⁷⁵ . It is submitted that the Trial Judge was right:	MHB/150 MHB/119 MHB/12 MHB/8
MHB/167, 170		
MHB/11		
	(1) The penalty under section 214 is, and has always been, attached to non-compliance with section 213(6), not section 213(5). As enacted, section 214(1)(a) made it a ground of application that the initial requirements of an authorised scheme had not been met, “ <i>or section 213(6)(a) has not, been complied with in relation to the deposit</i> ”, and section 215(2) barred a section 21 notice “ <i>until such time as section 213(6)(a) is complied with</i> ” ¹⁷⁶ . Parliament thus treated section 213(6)(a) as the operative requirement, as the Court of Appeal recognised in <i>Tiensia</i> ¹⁷⁷ . It is a composite requirement, qualified as a	MHB/246, 249
MHB/625, 626		
	¹⁶⁹ <i>Ayannuga</i> at [26] per Etherton LJ. ¹⁷⁰ <i>Hamer</i> at [14], [68] per Baker LJ. ¹⁷¹ CA [10], [38]. ¹⁷² CC [136]–[137]. ¹⁷³ HC [20], [32]–[35]; SFI ¶16. ¹⁷⁴ CA [52] (which appears to endorse it was possible), [59]; SFI ¶21(a). ¹⁷⁵ AWC ¶8. ¹⁷⁶ HA 2004, s.214(1)(a), (2)(a), and s.215(2) (as enacted). ¹⁷⁷ <i>Tiensia</i> at [37], [39] per Rimer LJ.	

whole by the saving words, which draws no distinction between one item of “[t]he information required by subsection (5)” or another.

- (2) The 2007 Order prescribes no form distinct from the information¹⁷⁸. Section 213(6)(a), enacted before the 2007 Order, cannot sensibly have been intended to apply only to the parenthesis in article 2(1)(g)(vii). For an instrument which prescribes information and nothing else, a “*form substantially to the same effect*” can only mean a presentation of the information which conveys its substance. This is as the Court of Appeal proceeded in Ayannuga: “*We must compare the form or information prescribed on the one hand and the information in fact supplied on the other.*”¹⁷⁹ That accords with Arnold LJ’s fourth proposition in Pease, which applies “*even if the error relates to information inserted into or omitted from the form*”¹⁸⁰, and with Hamer¹⁸¹.

MHB/617

MHB/281

MHB/281,285,
286

MHB/514

MHB/385,
386

43. If Adam Johnson J was right that the saving words do not apply, the result is the same. On that footing the 2007 Order requires only, as Adam Johnson J put it, that the information be given “*in whatever form and however expressed*”¹⁸², and the question remains whether its substance was supplied. The Appellant’s contrary case would apply a stricter standard to the items for which no form is prescribed than to the one item for which a form is prescribed.

MHB/170

44. On either basis the question is one of ‘fact and degree’ following Ravenseft. Adam Johnson J and the Court of Appeal each held that the substance of the required information had been supplied and the statutory purpose fulfilled¹⁸³. Those are concurrent evaluative conclusions of an experienced trial judge and two appellate courts, and there is no principled basis to disturb them.

MHB/171

MHB/119,
120

¹⁷⁸ Tiensia at [7] per Rimer LJ; Ayannuga at [8] per Etherton LJ.

¹⁷⁹ Ayannuga at [9], [29] per Etherton LJ, [35] per Lewison LJ.

¹⁸⁰ Pease at [39(iv)] per Arnold LJ.

¹⁸¹ Hamer at [66], [71], [73].

¹⁸² HC [32].

¹⁸³ HC [35]; CA [56], [59].

ISSUE 2: ‘THE CONFIRMATION GROUND’

The requirement in Article 2(1)(g)(vii)

- MHB/234 45. Article 2(1)(g)(vii) prescribes, as the last item of “*information in connection with the tenancy*”, a requirement for confirmation of two matters. The words “(*in the form of a certificate signed by the landlord*)” are, as Lewison LJ observed in *Northwood*, “*the only part of the 2007 Order which can plausibly [be] read as prescribing a ‘form’ as opposed to ‘information’*. Even then it does not prescribe any particular phraseology.”¹⁸⁴ The requirement of signature “*is not to be found in the primary legislation*. It is introduced into the 2007 Order as a parenthesis and without any explicit mandatory language.”¹⁸⁵ MHB/475
- MHB/464
46. Three matters are now common ground: MHB/109, 120
- (1) The requirement that the certificate be signed is a matter of form to which section 213(6)(a) applies, so that the confirmations may be given “*in a form substantially to the same effect*” as a signed certificate¹⁸⁶. MHB/43
- MHB/121
- (2) A certificate may be construed together with the letter under cover of which it is sent¹⁸⁷. MHB/173
- MHB/43-44
- (3) The contention that sub-paragraph (bb) requires the tenant’s opportunity to sign to precede the landlord’s confirmation “*is not maintained*” (paragraph 51 below).
47. The question is therefore whether the Letter and the PID, read together, were substantially to the same effect as a certificate signed by or on behalf of the landlord. The Appellant now describes the confirmations as “*central*” to “*a process in which the information is collated, checked and its accuracy confirmed*”, in which the landlord invites the tenant to confirm the information “*before providing their own confirmation*”.¹⁸⁸ That contention finds no support in the text or the materials:
- MHB/41-42

¹⁸⁴ *Northwood* at [9] per Lewison LJ.

¹⁸⁵ *Northwood* at [66] per Lewison LJ.

¹⁸⁶ CA [27], [60]; HC [42]; AWC ¶63.

¹⁸⁷ CA [62], [64]. AWC ¶¶63–66 proceed on the same footing.

¹⁸⁸ AWC §§60–62.

(1) The provision requires “*confirmation (in the form of a certificate signed by the landlord)*” of two matters. It prescribes one certificate, not a sequence of steps. The sequence described at AWC ¶61 is the sequencing contention which AWC ¶67 abandons.

MHB/42,
44

(2) The RIA explains the two signatures in three sentences (paragraph 19(b) above): the tenant was to be asked to sign “*to verify those aspects they have provided (such as an alternative address)*”, so that the document would be “*a true and accurate record of the deposit-taking process*”. The requirements were not to place “*any undue burdens on landlords or letting agents*”.¹⁸⁹ The information might be given within the tenancy agreement (paragraph 19(d) above), in which case both confirmations may be given on one occasion.

MHB/221

(3) The certificate alters nothing. The circumstances in which the deposit may be retained remain fixed by the terms of the tenancy; a confirmation of the landlord’s belief in the accuracy of what he has said about them neither varies the contract nor founds an estoppel. Nor does the 2007 Order attach any consequence to an inaccurate certificate beyond that which attaches to inaccuracy of the information itself, as the Appellant accepts¹⁹⁰.

MHB/34

Were the documents substantially to the same effect as a signed certificate?

48. The Trial Judge (as one of two alternative grounds), Adam Johnson J, and the Court of Appeal each held that they were.¹⁹¹ They were all correct:

(1) The PI Document set out the landlord’s confirmation. It stated that “*The Landlord confirms that the information, provided to the Agent and the Tenant is accurate to the best of his knowledge and belief and that the Tenant had the opportunity to examine the information.*” The 2007 Order prescribes no particular phraseology (paragraph 45 above), and Adam Johnson J described

MHB/203

¹⁸⁹ RIA, ¶¶48–49.

¹⁹⁰ AWC ¶41.

¹⁹¹ CC [128]–[130]; HC [43]–[51]; CA [63]–[65]. MHB/148-149, 173-175, 121

those words as “*the wording of an appropriate certificate*”¹⁹². What was missing MHB/163
was a signature in the space beneath them.

MHB/389-391

- (2) The function of a signature is to authenticate: “*the essential requirement of signing is the affixing in some way [...] one’s name or ‘signature’ so as personally to authenticate the document*”.¹⁹³ The question posed by Stidolph, as Lewison LJ explained in Northwood, is “*whether the documents, taken together, contained the right information and were ‘sufficiently authenticated’*”¹⁹⁴.

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MHB/148

MHB/107

- (3) The Letter was signed by Mr Birtwistle on behalf of the Agent, whose signature was capable of satisfying article 2(1)(g)(vii) (paragraph 14(c) above). It identified the enclosure as “*the ‘Prescribed Information’ as required under the legislation*”, required the Appellant to sign and return one copy, and told him to “*retain one copy for your records*”. The Agent thereby clearly put forward the PID, including the confirmation which it contained, as the Respondent’s document¹⁹⁵. The Appellant’s description of the Letter as “*simply*” saying that the prescribed information was enclosed¹⁹⁶ omits the sentence which followed.

MHB/43

MHB/43

- (4) The Appellant now contends that a reasonable recipient, noting the order of the two signature spaces and the request to sign and return the document, would have understood that the landlord “*had consciously decided not yet to give the requisite confirmation, and that it would follow*”, so that, “*unsigned, the words certified nothing*”¹⁹⁷. That is not a rational objective reading of the documents. A landlord who identifies an enclosure, over his agent’s signature, as the prescribed information “*required under the legislation*”, and tells the tenant to keep a copy for his records, does not thereby convey that he has decided not to comply, or is unsure of the content of the document enclosed. The observations

¹⁹² HC [7].

¹⁹³ Goodman v J Eban Ltd [1954] 1 QB 550 (CA) at p557 per Sir Raymond Evershed MR; Hudson v Hathway [2022] EWCA Civ 1648, [2023] KB 345 at [55], [63] per Lewison LJ.

¹⁹⁴ Northwood at [41]–[42] per Lewison LJ.

¹⁹⁵ CC [129]; CA [18].

¹⁹⁶ AWC ¶¶2(2), 64.

¹⁹⁷ AWC ¶¶65–66.

of the Trial Judge and Adam Johnson J on which AWC ¶65 relies¹⁹⁸ were not findings about what the documents conveyed. Adam Johnson J's finding, adopted by the Court of Appeal, was that the documents, read together, conveyed that the landlord believed that it had done what was required and was content to confirm as much by way of a certificate¹⁹⁹. That is compliance with the substance of the requirement.

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MHB/173
MHB/174
MHB/121

(5) The authorities squarely support this conclusion:

- (1) In *Stidolph*, an unsigned notice under section 25 of the Landlord and Tenant Act 1954, required to be in the prescribed form or in a form “*substantially to the like effect*”, was sent in duplicate under cover of a signed solicitors’ letter which said that they “*enclose a notice to quit in duplicate in respect of the above property and shall be pleased if you will return the copy thereof duly acknowledged [...]*”.²⁰⁰ The Court of Appeal held that the contents of the envelope, taken together, were a valid notice: “*Any defect in the prescribed form can be made good by the covering letter or the stamped, addressed envelope. They can and should be read together. So long as the envelope contains the information which the Act requires, and is sufficiently authenticated, the notice is a good notice.*”²⁰¹ The covering letter there, as here, identified the enclosure and asked for a copy back; it did not repeat its contents. There is no logical reason to treat a document which only conveys information, and alters no right under the tenancy, less benevolently than a notice which brings a tenancy to an end.
- (2) In *Hamer*, decided after the decision below, the landlord had sent the tenant a document headed “*Prescribed Information*”, carrying an unsigned certificate, under cover of an email asking her to “*sign in*

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¹⁹⁸ CC [128]; HC [44].

¹⁹⁹ HC [47]–[48]; CA [65].

²⁰⁰ *Stidolph* (n 62) at 804 per Lord Denning MR.

²⁰¹ *Stidolph* (n 62) at 804–805 per Lord Denning MR, 807 per Edmund Davies LJ, and 807 per Cross LJ. See also *City of London Corp v Devlin* (1997) 29 HLR 58 (CA) at 61 per Auld LJ.

acknowledgement”, and never signed a certificate²⁰². The Court of Appeal (Baker and Lewis LJ), applying the reasoning of Asplin LJ at CA [65], held that the information had been given, by a later letter referring the tenant to the prescribed information in her tenancy agreement, in a form substantially to the same effect as the prescribed form “*notwithstanding the absence of a signed certificate*”, because “*the statutory purpose has, in substance, been achieved*”²⁰³.

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384, 385

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(6) Finally, the purpose of the requirement, a “*true and accurate record of the deposit-taking process*”, was achieved. The Respondent, through the Agent, committed itself in writing, over a signature, to the PID as the information which the legislation required it to give. As Adam Johnson J put it, the signature on the Letter “*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*”²⁰⁴. The complaint that the Letter did not show the landlord “*assuming responsibility for the accuracy of the information*”²⁰⁵ substitutes the Appellant’s test for the words of the provision, which require a confirmation of belief.

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MHB/111

MHB/43

49. Whether what was given is substantially to the same effect as what was prescribed is a question of fact and degree, the resolution of which, as Mummery LJ said in Ravenseft, “*is not decision on a point of law which is binding on later courts*”²⁰⁶. Three courts, the first an experienced trial judge, answered it in the Respondent’s favour. On a challenge to an evaluative decision of that kind an appellate court “*does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the judge’s treatment of the question to be decided*”²⁰⁷. None is identified in the AWC.

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²⁰² *Hamer* (n 122) at [17], [63], [65] per Baker LJ.

²⁰³ *Hamer* (n 122) at [66], [73] per Baker LJ.

²⁰⁴ HC [51]; CA [30].

²⁰⁵ AWC §65.

²⁰⁶ *Ravenseft* (n 85) at [11] per Mummery LJ.

²⁰⁷ *Re Sprintroom Ltd* [2019] EWCA Civ 932, [2019] BCC 1031 at [76]–[78] (McCombe, Leggatt, and Rose LJ).

Sub-paragraph (aa)

50. The Appellant contends that the Letter “*did not give that specific confirmation or assurance*” which sub-paragraph (aa) requires, because 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*”²⁰⁸. That argument does not bear close scrutiny:

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- (a) It treats the Letter as if it stood in isolation. It is common ground that the Letter and the PID are to be read together. Read together, they contained an express confirmation of accuracy, in the language of article 2(1)(g)(vii)(aa), and a signature. No form of words is prescribed, and the Letter was not required to repeat what its enclosure said. The covering letter in *Stidolph* did not. It is not necessary, as C contends at AWC ¶64, for express confirmatory words to appear in the Letter if, objectively construed, it is clear that this is the meaning and effect of the documents taken in tandem. Strict compliance of this nature would make no sense where Parliament has explicitly provided in section 213(6) that substantial compliance suffices; and not set out any consequence for an inaccurate or incorrect certification within the statutory scheme. Nor, in those circumstances, do the provisions require that the writer “assumed responsibility for the accuracy of the information (as C asserts at ¶65 of his written case). This forms no part of the provision, nor does it further any part of the expressed purpose of the statute.
- (b) The Appellant’s own case below was that the position might have been different had the signed Letter itself stated that the Respondent certified the accuracy of the information²⁰⁹. A requirement that information be given “*in the prescribed form or in a form substantially to the same effect*” cannot turn upon which of two sheets of paper, sent together and read together, carries the signature.

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²⁰⁸ AWC ¶64; Grounds ¶¶25–26.

²⁰⁹ CA [62].

MHB/175 (c) The argument advanced orally below, that the certificate was deficient
 MHB/121 because the information was inaccurate²¹⁰, is not repeated in the AWC. Sub-
 paragraph (aa) requires confirmation of accuracy “*to the best of [the
 landlord’s] knowledge and belief*”: a confirmation of belief, not a warranty.
 If the second sentence of A16 was inaccurate, that is a matter for sub-
 paragraph (aa), not for article 2(1)(g)(vi).

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Sub-paragraph (bb)

MHB/13 51. Below, and in the Grounds, the Appellant contended that the words “*he has given the*
 MHB/121 *tenant the opportunity to sign*” mean that the tenant must be given that opportunity
before the landlord gives his certificate, so that the prescribed information must be given
 in two stages²¹¹. He now says: “*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
 MHB/44 *by signed certificate (or in a form substantially to the same effect) that the opportunity*
 MHB/147 *has been given.*”²¹² The contention was first framed in that way in the Court of
 MHB/121 Appeal²¹³. Its abandonment is correct.

52. What remains is the contention that, although the Letter “*offered the Appellant the*
opportunity to sign the Prescribed Information Document”, it was not, properly
 construed, a letter which “*adopted a confirmation that he had been given an opportunity*
 MHB/44 *to sign it*”²¹⁴. That contention also fails:

(1) The confirmation was in the PID. It stated that “*the Tenant had the opportunity*
to examine the information”, immediately above the tenant’s own confirmation
 that “*he has been given the opportunity to examine this information*” and a space
 for his signature. The PID was thus itself the document which the tenant was
 given the opportunity to sign by way of confirmation of its accuracy, and it said

²¹⁰ HC [52]; CA [66].

²¹¹ Grounds §§21–23; SFI ¶22(b)(1); CA [67].

²¹² AWC ¶67.

²¹³ CC [117]–[124]; CA [68]; SFI §21(b); Notice of Objection, ¶5.

²¹⁴ AWC ¶67: “*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.*”

so. The Letter did not merely “offer” that opportunity: it “require[d]” the Appellant to sign the document and return one copy, over the Agent’s signature. Read together, and objectively, the documents confirmed that the opportunity had been given, the documents together gave him the opportunity it described. No tenant reading that statement, with the document in his hands and a request to sign it, could have understood it to be untrue or provisional.

MHB/199

(2) The distinction between offering an opportunity and adopting a confirmation that it has been given is, in effect, the abandoned sequencing contention in another guise. If the Appellant no longer contends that the opportunity must precede the confirmation²¹⁵, a signed letter which gives the opportunity and encloses the written confirmation that it has been given satisfies sub-paragraph (bb). The retained contention only works if the landlord must instead give confirmation by a separate act after the opportunity, that defies all common sense. It construes the requirement to create a trap, rather than to fulfil its purpose.

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53. In any event, the contention that sub-paragraph (bb) requires the opportunity to precede the confirmation was wrong. The perfect tense is apt to the Respondent’s construction. The certificate speaks when it is given to the tenant; at that moment he has the document in his hands, and with it the opportunity to sign it. The certificate is itself part of “*the information provided by the landlord under this article*”, so that the 2007 Order contemplates one document carrying the information, the landlord’s confirmation, and a place for the tenant’s signature, as the RIA’s summary table describes²¹⁶. The 2007 Order prescribes no interval between the opportunity and the certificate, and no obligation to await, to record, or to act upon the tenant’s response²¹⁷. To introduce that interval creates only uncertainty. The purpose of sub-paragraph (bb) is fully served by an opportunity which accompanies the information, and the Appellant’s construction

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²¹⁵ AWC ¶67: “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.”

²¹⁶ RIA, ¶48 and the table following ¶62. See also RIA, ¶23. MHB/217

²¹⁷ The Department’s statement in its response to consultation that “a landlord must indicate that a signature was requested but declined” (Summary of Responses, ¶37) was not carried into the 2007 Order.

cannot be reconciled with the option of giving the information within the tenancy agreement.

MHB/122

54. The Appellant's construction would require every landlord who takes a deposit to send the information to the tenant and then, separately, a certified version, all within the statutory period. That would be a "*disproportionate counter-mischief*"²¹⁸ and, as the Court of Appeal observed, would have "*the potential to increase disputes rather than to avoid them*"²¹⁹.

55. On the facts, the Appellant was given the opportunity to sign. The PID contained a confirmation for his signature and a space in which to sign, and the Letter required him to sign one copy and return it. He did not do so²²⁰. If, contrary to the above, subparagraph (bb) did require something more, the documents were substantially to the same effect as a certificate complying with it.

SUMMARY

56. The Appellant's asserted construction of the statutory requirements would convert provisions intended to safeguard deposits and to reduce disputes into a minefield of traps, penalties, and obstacles to the recovery of possession, based upon errors which could not have misled a reasonable recipient. It would run contrary to the wording of the legislation and its expressed purpose: far from reducing disputes, it would encourage technical and unmeritorious claims.

57. The Court is asked to dismiss the appeal, with costs, as:

(1) HA 2004 and the 2007 Order are concerned with the substance of what the tenant is told: the 2007 Order prescribes information and not words, and section 213(6)(a) of the 2004 Act permits the information to be given in a form substantially to the same effect.

²¹⁸ *PACCAR* at [43] per Lord Sales JSC, citing Bennion, ¶13.1.

²¹⁹ CA [69].

²²⁰ CC [121], [123], [128]; HC [44]–[48]; CA [17], [70]. MHB/147-148, 173-174, 107, 122

- (2) Article 2(1)(g)(vi) requires the tenant to be informed of the circumstances in which the deposit may be retained by reference to the terms of the tenancy, and does not require the landlord to identify the number of a clause or to set the information out separately.
- (3) The PID, read as a reasonable recipient in the position of the Appellant would have read it, with the terms of his tenancy in mind, informed him that those circumstances were set out in the clause of the Tenancy Agreement which dealt with the deposit, namely clause 5.3, which was headed 'Deposit'. This satisfied the requirement in article 2(1)(g)(vi).
- (4) The reasonable recipient approach, which the Appellant now accepts applies to the prescribed information, does not supply information which was not given but construes the meaning that the document conveyed. The authorities on which he relies concern omissions, or errors which were not obvious. The reference to "*Clause 6*" was an obvious error, not a failure to satisfy a formal condition.
- (5) Alternatively, the information was given to the Appellant by the Respondent within the Tenancy Agreement, and was in any event given in a form substantially to the same effect.
- (6) The PID set out the landlord's confirmation that the information was accurate to the best of his knowledge and belief and that the tenant had had the opportunity to examine it, with a space for the tenant's signature, and was put forward as the prescribed information required by the legislation under cover of the Letter, signed by the Agent, so that the documents read together were substantially to the same effect as a signed certificate.
- (7) The contention that article 2(1)(g)(vii)(bb) requires the tenant's opportunity to sign to precede the landlord's confirmation is no longer maintained, and was in any event wrong; and the residual contention fails, because the documents, read together, confirmed that the opportunity had been given by the act which gave it.

(8) Whether documents are substantially to the same effect as what is prescribed is a question of fact and degree, on which three courts reached the same conclusion. The Appellant has not identified any identified error of principle in their approach.

(9) The order of the Court of Appeal was right for the reasons which it gave and for the additional reasons set out above.

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