

IN THE SUPREME COURT OF THE UNITED KINGDOM Case ID: UKSC/2025/0143
ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)
BETWEEN:

MERRYCK LOWE

Appellant

and

THE GOVERNORS OF SUTTON'S HOSPITAL IN CHARTERHOUSE

Respondent

STATEMENT OF FACTS AND ISSUES

The issues

1. The issues are as follows.

- (1) Were the courts below wrong to conclude that the Respondent had satisfied MHB/244
section 213(5) of the Housing Act 2004 (the "Housing Act") in circumstances
where:
- (a) it had provided the Appellant with a document purporting to set out the
information prescribed by article 2(1)(g)(vi) of the Housing (Tenancy MHB/234
Deposits) (Prescribed Information) Order 2007 (the "Order"), but
referring to a clause 6 (which the tenancy agreement does not contain)
in a tenancy agreement which was not attached; but
- (b) it had also provided the Appellant (8 months earlier) with a written
tenancy agreement which explained the circumstances in which
deductions might be made from the deposit?
- (2) Were the courts below wrong to conclude that the Respondent had satisfied MHB/244
section 213(5) of the Housing Act in circumstances where:
- (a) the Respondent provided the Appellant with a document purporting to
give the information prescribed by article 2 of the Order, without signing
the confirmatory certificate required by article 2(1)(g)(vii), but under MHB/234
cover of a signed covering letter; and

(b) where that unsigned confirmatory certificate has been given at the same time as the prescribed information?

The facts

2. The Respondent was at the relevant times the Appellant's residential landlord. The Respondent first granted the Appellant a tenancy of a residential flat in Charterhouse Square – Flat 2, Preachers Court, Charterhouse, London EC1M 6AU – on 24 January 2010 (backdated to 4 January 2010). The Appellant paid a deposit of £3,300. MHB/187

3. The amount of the initial rent meant that the tenancy could not be an assured shorthold tenancy under the Housing Act 1988. However, the specified upper limit on the rent payable under an assured shorthold tenancy was increased on 1 October 2010 so that the Appellant's tenancy became an assured shorthold tenancy overnight by operation of law. On 7 September 2010, in anticipation of that change, the Respondent's agent protected the deposit with an authorised tenancy deposit scheme. MHB/187

4. The Appellant's tenancy agreement contained provisions relating to the deposit at clauses 5.3 and 5.20. Clause 5.3 was a covenant by the tenant: MHB/193

To pay to the Landlord on the signing of this agreement the deposit as specified in the Schedule to be held by the Landlord until the expiration of the Tenancy as security towards the Tenant's liability for:

- a) any outstanding rates taxes outgoings*
- b) dilapidations*
- c) rent owed to the Landlord*
- d) any sum expended by the Landlord in remedying any breach covenant by the Tenant.*

5. Clause 5.20 was as follows. MHB/197

5.20.1 To give the Landlord vacant possession and return the keys of the Premises at the end of the tenancy and remove all furniture belonging to the Tenant and his personal possessions and rubbish and leave the Premises and the Landlord's fixtures and fitting in good lettable and tenantable condition and repair and to pay to the Landlord the cost of repairing or replacing any damaged or missing parts of the Premises or any of the Landlord's fixtures or fittings.

5.20.2 Any of the Tenant's belongings, or property, or personal effects, or foodstuffs or furnishings and equipment left behind at the premise will be considered to be

abandoned and the Landlord or his agent may remove, store or dispose of any such items as he sees fit. The Tenant will remain liable for the fair costs of arranging such removal storage or disposal and such costs may be deducted from the deposit and any surplus costs after such deduction will remain the liability of the Tenant

...

5.20.4 If the Tenant vacates the Premises at the Tenant's own request before the last day of the fixed term, the Tenant shall remain liable to pay to the Landlord the full unpaid balance of the rent receivable by the Landlord had this agreement run to the full term and any deposit shall be retained by the Landlord and may be applied by him in partial satisfaction of any such unpaid balance for the rent due.

6. Those terms made no mention of any requirement for the written consent of both parties to be obtained before deduction could be made.

MHB/199

7. On 28 September 2010, the Respondent's agents, Daniel Watney, sent the Appellant a letter, in anticipation of the tenancy becoming an assured shorthold tenancy on 1 October 2010, with various enclosures including a prescribed information document. The letter stated relevantly as follows.

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.

Yours sincerely

STEPHEN BIRTWISTLE

8. The trial judge (HHJ Luba KC, sitting in the County Court at Central London (the “**Trial Judge**”)) found as a fact that the covering letter was signed. One of the documents enclosed with that letter was the document purporting to give the information required by article 2 of the Order (the “**Prescribed Information Document**”). It was in a standard form, with the relevant information added in. It included the following.

A15 The deposit will be released following the procedures set out in Clause 6 of the Tenancy Agreement attached.

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

....

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 Tenant confirms he has been given the opportunity to examine this information. The Tenant confirms by signing this document that to the knowledge of the Tenant the information above is accurate to the best of his knowledge and belief.

Signed by the Tenant

Signed by the Landlord/Agent

9. It was common ground that the Prescribed Information Document itself was not signed by the landlord or by its agent (or by the Appellant) and that no tenancy agreement was attached to it. The Appellant's tenancy agreement in fact did not contain any clause 6.

10. The fixed term of the Appellant's first tenancy expired in January 2011 and he became a statutory periodic assured shorthold tenant. Thereafter, various further assured shorthold tenancies arose by operation of statute or were granted to the Appellant (as set out in the attached Chronology), culminating in a statutory periodic assured shorthold tenancy which (the Trial Judge found) arose on 1 August 2015.

11. On 10 June 2021 the Appellant issued a claim for penalty payments totalling £120,888 under section 214 of the Housing Act. It was common ground between the parties that there were eight assured shorthold tenancies. The Appellant contended that there had been 10 tenancies (including one arising in October 2015), and that an 'additional payment' was also a deposit and that the amount of the penalty payment should be three times the value of each deposit. He claimed that the Respondent had failed to comply with the requirements of section 213(6) of the Housing Act. His Particulars of Claim pleaded two failures: (1) that the Tenancy Deposit Scheme Booklet had not been provided in breach of article 2(b), (e) and (f) of the Order, and (2) that the certificate was unsigned in breach of article 2(g)(vii). At trial, he further contended that the Respondent had failed to comply with article 2(1)(g)(vi) of the Order.

MHB/234

The procedural history

12. The Appellant's claim came on for trial over two days on 22 and 28 September 2022, with judgment handed down on 28 October 2022. The Trial Judge dismissed the claim. He found that the 'additional payment' was not a deposit and that no tenancy had been concluded in October 2015. He further found that the claims relating to all tenancies bar the last (on 1 August 2015) were time barred under section 9 Limitation Act 1980.

13. The Trial Judge's decision on the issues raised by the grounds of appeal was summarised by Adam Johnson J at paragraph 13 of his judgment on the first appeal as follows.

- i) *It did not matter that the Prescribed Information Document referred mistakenly to Clause 6 of a different tenancy agreement, which Mr Lowe was not sent, because it must have been obvious to him that this was a mistake, and he would have known to look instead at clause 5.3 of this own tenancy agreement. So on a proper view of the Prescribed Information Document, construed from the point of view of reasonable person in the position of Mr Lowe, the prescribed information was supplied. Alternatively, even if that was wrong, it did not matter because the statutory language gives some flexibility: it is enough if the information supplied is "substantially to the same effect" as that required (see Housing Act 2004, s. 213(6)(a)), and that was so here (see HHJ Luba KC's Judgment at [135]-[137]).*
- ii) *Neither did it matter that the certification language in the Prescribed Information Document was not itself signed by the landlord, because the covering letter was signed by the landlord's agent on its behalf, and that was sufficient to comply with the statutory requirement. Again, alternatively, any deficiency was addressed by the language of the statute which validates performance if it is "substantially to the same effect" as that required, and here sending a certificate under cover of a signed letter was "substantially to the same effect" as sending a signed certificate (Judgment of HHJ Luba KC at [128]-[130]). The Trial Judge also held that the article 2(1)(g)(vi) point could properly be entertained although it had not been pleaded, because it had been fully argued and the Respondent could deal with it. He proceeded to determine it (in the Respondent's favour).*

14. On 13 July 2023, the Appellant was granted permission to appeal by Mellor J on 10 grounds. Of those, grounds 1-3 overlapped to form the "**Information Ground**" below, and grounds 4-6 overlapped to form the "**Confirmation Ground**" below. Other grounds, including as to limitation, were also advanced.

15. The appeal came before Adam Johnson J, was heard over a single day on 21 February 2024, and judgment was handed down on 21 March 2024 ([2024] EWHC 646 (Ch);

[2024] H.L.R. 29; [2024] L. & T.R. 17; [2025] 1 P. & C.R. DG5). The appeal was dismissed.

16. On the Information Ground, Adam Johnson J held that the Trial Judge had been correct to decide that the Prescribed Information Document, properly construed, gave the Appellant the information he needed. He disagreed with the Trial Judge that the Respondent could rely upon the information being “*substantially to the same effect*”, but held that that did not matter since the information had been given. Adam Johnson J applied the reasoning in *Mannai Investments v Eagle Star* [1997] AC 749 and *Pease v Carter* [2020] 1 WLR 1459. He held that a reasonable person in the position of the Appellant would have appreciated that the Prescribed Information Document contained an error, that the same reasonable person would have understood the meaning the document was intended to convey, namely that the relevant information was to be found by reference to the corresponding deposit provisions in the Appellant’s tenancy agreement (which was not attached), and that the Prescribed Information Document so construed satisfied the requirement. He also held that the Trial Judge was wrong to rely on section 213(6)(a) (i.e. that the material given was ‘substantially to the same effect’) in relation to article 2(1)(g)(vi), because that provision was concerned with form whereas article 2(1)(g)(vi) was concerned with the provision of information.

17. Adam Johnson J rejected the submission of the Respondent, raised in a Respondent’s Notice, that the Trial Judge had been wrong to consider this point, since it had not been pleaded considering the Trial Judge was entitled to take the course he did as a matter of case management.

18. On the Confirmation Ground, Adam Johnson J held that the Trial Judge had been correct to find that the Respondent had given a confirmation that the information provided under article 2(1)(g) was accurate to the best of its knowledge and belief in a “*form substantially to the same effect*”, and so satisfied section 213(6) of the Housing Act. That was because, though the confirmatory certificate on the *pro forma* document was unsigned, the covering letter sent by the Respondent’s agent was signed and the Respondent was in effect confirming that someone had turned their mind to the matter of supplying the information, which was the purpose of the statutory requirement of article 2(1)(g)(vii)(aa).

19. Adam Johnson J was also satisfied that article 2(1)(g)(vii)(bb) was satisfied, since by sending the covering letter and Prescribed Information Document, the Respondent was giving the Appellant the opportunity to sign which the statute required and that was sufficient for the purposes of the statutory requirement. He treated the course proposed by the covering letter as intended to give the tenant the opportunity to sign, and then the landlord then in turn to sign in the light of the tenant's confirmation. MHB/235

20. The Appellant was given permission for a second appeal by the order of Arnold LJ on 23 May 2024. He advanced two grounds: (i) that Adam Johnson J was wrong to find that article 2(1)(g)(vi) was satisfied by the reference to a non-existent clause in the Appellant's tenancy agreement; and, (ii) that Adam Johnson J was wrong to find that article 2(1)(g)(vii) was satisfied

21. The Court of Appeal (Asplin, Andrews and Nicola Davies LJJ) heard the appeal over a day on 19 June 2025. It handed down judgment on 10 July 2025, dismissing the appeal ([2025] EWCA Civ 857; [2025] 1 W.L.R. 5483; [2026] 1 P. & C.R. 11; [2026] L. & T.R. 7). On both grounds, the Court of Appeal upheld the decision of Adam Johnson J:

(a) The Prescribed Information Document could be interpreted as a reasonable recipient reading it in context would have understood it. In that context it a reasonable recipient would have appreciated that the reference to clause 6 was an error, and seen the circumstances in which deductions might be made from the deposit set out in clause 5.3 of the tenancy agreement. Although it was possible for this information to be provided in a manner 'substantially to the same effect', that issue did not arise (paragraphs 50-59).

(b) The unsigned certificate could be construed together with its signed covering letter. Read in that way the information provided was authenticated in a manner substantially to the same effect as required in the prescribed form (paragraphs 64-5). The Sub-article (bb) point (the tenant being given an opportunity to confirm the information) was neither pleaded at Trial, nor a ground of appeal before High Court. In any event, Adam Johnson J was correct that it was sufficient that the tenant had been given that opportunity by the Prescribed Information Document being sent to him (paragraphs 67-70).

22. Permission to appeal to this court was sought upon two grounds, each with two sub-sets, on 8 August 2025:

(a) The decision on the Information Ground was wrong as (1) it was an impermissible extension of the *Mannai* principle from statutory notices to information, and (2) in any event the statutory purpose of the requirement was not met.

(b) The decision on the Confirmation Ground was wrong as (1) the Prescribed Information Document did not comply with article 2(1)(g)(vii)(bb), which required it be given only after the tenant had been given an opportunity to confirm the information, and (2) the landlord had failed to confirm the accuracy of the information provided.

23. Permission to appeal to the Supreme Court was granted on 19 December 2025 (Lord Hodge, Lord Sales and Lady Rose).

MHB/204

24. The Respondent's Notice of Objection was filed on 14 January 2026 and contended that:

(a) The Information Ground decision was an orthodox application of the *Mannai* principle. It had not been previously argued below that the *Mannai* principle could not be applied. Moreover, the requisite information had been given to the tenant within his tenancy agreement, and so the statutory purpose fulfilled.

(b) The sub-article (bb) issue was not pleaded at trial, nor raised before the High Court. In any event, the substance of the requirement was met by the Prescribed Information Document. It was settled law that said document could be construed together with its covering letter, and so construed, satisfied the requirement that the accuracy of the information provided was confirmed.

Tom Morris
Counsel for the Appellant

Shomik Datta
Counsel for the Respondent

4 June 2026

CHRONOLOGY

Date	Event	Appendix
24 January 2010	Respondent granted the Appellant a tenancy of Flat 2, Preachers Court, Charterhouse, London EC1M 6AU, in connection with which a deposit of £3,300 is paid by the Appellant, together with rent in advance, for occupancy from 4 January 2010.	MHB/187-198
11 January 2010	The trial judge found (paragraph 61 of the Judgment) that the Appellant was not granted possession until 11 January 2010. The tenancy agreement (clause 4.1) records that the Appellant sought, but was unable to take, possession of the Flat on 9 January 2010. The Appellant did not then take up possession until 17 January 2010. The delay in granting access gave rise to an overpayment in rent termed 'the Additional Payment'.	MHB/138 MHB/192
7 September 2010	Respondent's agents protected the Appellant's deposit with an authorised tenancy deposit scheme.	
28 September 2010	The Trial Judge found that the Respondent's agents, Daniel Watney send the Appellant a signed letter enclosing an unsigned Prescribed Information Document.	MHB/146
1 October 2010	The Appellant's tenancy becomes an assured shorthold tenancy by operation of law.	
4 January 2011	A statutory periodic tenancy arises under section 5 HA 1988 as the Appellant remains in occupation.	
17 June 2011	The parties execute counterpart memoranda confirming an extension of the tenancy to 30 June 2012 at a rent of £2600pcm, including provision for termination by 2 months' written notice.	MHB/205
1 July 2012	A further statutory periodic tenancy arises.	
24 January 2013	The parties execute counterpart memoranda confirming an extension of the tenancy to 30 November 2013.	MHB/206
1 December 2013	A further statutory periodic tenancy arises.	

31 July 2014	The parties execute counterpart memoranda confirming an extension of the tenancy to 31 July 2015.	MHB/207
1 August 2015	A further (and final) statutory periodic tenancy arises.	
20 October 2015	The Respondent's agent sends new draft lease paperwork to the Appellant for signature (which appears to have included a draft prescribed information form – that document was electronically signed by the Respondent's agent). The Appellant contended at trial that the prescribed information form was not provided until January 2016, contained errors, was incomplete and that there was no Deposit Protection Certificate or scheme booklet provided with it. No findings were made in relation to these points.	
22 March 2016	The Appellant responded with a list of issues with the proposed new lease. His annotated draft appears to record, <i>inter alia</i> , that the deposit was previously protected.	
8 April 2019	The Appellant requests a copy of the Tenancy Deposit Scheme certificate.	
9 April 2019	The Respondent's agent sends to the Appellant a copy of the Tenancy Deposit Scheme certificate.	
	County court proceedings	
10 June 2021	Appellant issues a claim under section 214 of the Housing Act 2004.	
20 September 2022	The parties exchange skeleton arguments. The Appellant asserts a case based on article 2(1)(g)(vi) (the Information Ground) for the first time.	
22 and 28 September 2022	Trial of the Claimant's claim before HHJ Luba KC in the County Court at Central London.	
28 October 2022	Judgment of HHJ Luba KC handed down, dismissing claim, and refuses an oral application for PTA.	MHB/127-160
	High Court proceedings	
18 November 2022	Appellant's Notice advancing 10 grounds of appeal filed.	
13 July 2023	Appellant granted permission to appeal by Mellor J.	

3 August 2023	Respondent's Notice challenges the decision of the Trial Judge to entertain the sub-article (vi) issue (the " Pleading Issue ").	
21 February 2024	Appeal heard by Adam Johnson J.	
21 March 2024	Judgment of Adam Johnson J dismissing appeal and finding against the Respondent on the Pleading Issue.	MHB/125-126
	Court of Appeal proceedings	
11 April 2024	Appellant's Notice filed advancing two grounds of appeal.	
23 May 2024	Appellant granted permission for a second appeal by Arnold LJ.	
14 June 2024	Respondent's Notice reasserts the sub-article (vi) Pleading Issue.	
19 June 2025	Second appeal heard by Court of Appeal (Nicola Davies, Asplin and Andrews LJJ).	
10 July 2025	Court of Appeal hands down judgment dismissing second appeal and finding against the Respondent on the Pleading Issue.	
	Supreme Court proceedings	
8 August 2025	Appellant applies for permission to appeal to Supreme Court.	
19 December 2025	Supreme Court (Lords Hodge and Sales and Lady Rose) grants permission to appeal	MHB/204
1 June 2026	Statement of facts and issues.	MHB/6-17
8 September 2026	Appellant's written case.	MHB/18-47
22 September 2026	Respondent's written case.	MHB/48-97
6 October 2026	Hearing Bundle.	
3 November 2026	Hearing (1 day).	