

Possession Notices – a caselaw update



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What we will cover

- Principles governing “saving” errors in statutory notices
- Application of those principles in recent cases
- A few practical points



Section 8/21 notices – a brief reminder

- Both in prescribed form (section 21 – Form 6A, section 8 – Form 3; Schedule 1 to the Assured Tenancies and Agricultural Occupancies (Forms)(England) Regulations 2015, as amended)
- Or form “substantially to the same effect” (reg 2)
- Material dates specified in legislation – for example:
 - Section 8 – date before which proceedings may not be issued/after which proceedings must not be issued (s.8(3))
 - Section 21 – minimum 2 months’ notice (s.21(1)(b)/s.21(4))
- Court may dispense with service of s.8 notice where just and equitable to do so (s8(1)/(5)). No equivalent power for s.21.



Saving errors – the *Mannai* test



Mannai – a brief reminder

- Mannai Investment Co Ltd v Eagle Star Assurance Co Ltd [1997] AC 749
- Exercise of contractual break clause in commercial lease
- “Reasonable recipient” test
- But has been applied to statutory notices, including s.8



Recent re-statement of *Mannai*

- Pease v Carter [2020] EWCA Civ 175, Arnold LJ at [39]

(i) A statutory notice is to be interpreted in accordance with *Mannai v Eagle*, 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.

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.



An “obvious typo”?

- Pease v Carter
- S.8 notice served on 7 November 2018, stated that proceedings would not begin until after 26 November 2017
- CA considered whether Mannai applied to s.8 notices – and found that it did
- Notice was valid:
 - S.8 did not require a date to be specified with particular contractual significance – simply requires 2 weeks’ notice of proceedings
 - Reasonable recipient would have understood the date as 26 November 2018
 - Notices were “substantially the same effect” – requirement applies to wording and information inserted into prescribed form



The limits of *Mannai*

- There can be no doubt about the intention of the notice. Underhill LJ in *Pease v Carter* ([57]):
"[...] there must be no reasonable doubt as to what the notice was intended to say: that is the formula endorsed by Lord Steyn in Mannai, at page 768G."
- There is a difference between formalities and requirements to impart information. Lord Hoffman in *Mannai* (p.776A):
"If the clause had said that the notice had to be on blue paper, it would have been no good serving a notice on pink paper, however clear it might have been that the tenant wanted to terminate the lease."



Application to notice to quit

- O G Thomas Amaethyddiath v Turner & Ors [2022] EWCA Civ 1446
- Notice to quit addressed to former tenant at his home address – but tenancy had been assigned to company a few days prior (no requirement to notify)
- Mannai saved the notice at first instance and on appeal to High Court
- Reluctant disagreement from CA
 - Lewison LJ at [17]: *"It is, I think, clear from **Mannai** that if a notice fails to satisfy the substantive conditions upon which its validity turns, the question of how it is to be interpreted does not arise"*.
 - Notice was not "given" to the current tenant: *"If a notice is addressed to A (by his correct name) and sent to A's proper address, it cannot be treated as a notice given to B"* (at [45])
- Notice must correctly identify the tenant (addressing to "the tenant" would suffice)



Form 3 – Signature block

7. Name and address of landlord, licensor or landlord's agent:
(To be completed in full by the landlord, licensor, or, in the case of joint landlords / licensors, at least one of the joint landlords / licensors, or by someone authorised to give notice on the landlord's / licensor's behalf.)

Signed

Name

Address

Telephone number

Signed

Name

Address

Telephone number

Capacity (please tick): landlord / licensor
joint landlord(s) / licensor(s)
landlord's / licensor's agent

Date

6 Name and address of landlord/licensor*.

To be signed and dated by the landlord or licensor or the landlord's or licensor's agent (someone acting for the landlord or licensor). If there are joint landlords each landlord or the agent must sign unless one signs on behalf of the rest with their agreement.

Signed Date

Please specify whether: landlord / licensor / joint landlords / landlord's agent

Name(s) (Block Capitals)

Address

Telephone: Daytime Evening



Notice signed on behalf of landlord

- Northwood (Solihull) Ltd v Cooke [2022] EWCA Civ 40
- Corporate landlord, s.8 notice given by property manager employed by landlord
- T argued that signature had to comply with s.44 Companies Act 2006
- CA held the notice was valid:
 - No requirement in s.8 for signature
 - Prescribed form explicitly allows for signature by agent
 - Question of agency and authority
- Notice can be signed on behalf of a corporate landlord without complying with s.44 Companies Act 2006



My notice is potentially invalid, what now?





- Serve further notice without prejudice to validity of the first
- Proceed to hearing?
- Discontinue?



Thank you

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