Neutral Citation Number: [2017] EWCA Civ 430

Case No: C3/2015/3523

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)
Martin Rodger QC, Deputy President
[2015] UKUT 0301 (LC)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/06/2017

Before :

LADY JUSTICE GLOSTER
Vice President of the Court of Appeal, Civil Division
LADY JUSTICE MACUR
and
LADY JUSTICE KING

- -

Between :

UKI (Kingsway) Limited	**Appellant**
- and -	
Westminster City Council	**Respondent**

- -
- -

Daniel Kolinsky Esq QC (instructed by **Ms Sally Lloyd, In-house Solicitor, River Island Clothing Co. Limited**) for the **appellant**
Sebastian Kokelaar Esq (instructed by **the Director of Law, Tri-Borough Shared Legal Services**) for the **respondent**

Hearing dates : 24 January 2017

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Approved Judgment

Lady Justice Gloster:

Introduction

1. This appeal concerns the formal validity and service of a completion notice under Schedule 4A of the Local Government Finance Act 1988 ("the 1998 Act") delivered by the respondent, Westminster City Council ("the respondent" or "the billing authority"), on 5 March 2012 in respect of premises on the 3rd-6th floors of a building at 1 Kingsway, London WC2 ("the premises"). The completion notice purported to bring the premises into the 2010 rating list with effect from 1 June 2012.

2. The appeal raises a point of practical importance regarding the serving of completion notices and as to the general approach to the construction of statutory schemes which require notification to be given but do not provide a prescriptive and exhaustive code as to how to do so.

Factual background

3. The factual background is set out in the judgment of the Upper Tribunal (Lands Chamber) ("the UT") [2015] UKUT 0301 (LC) RA/29/2014 at [4] – [16] and is agreed. It may be summarised as follows.

4. The appellant, UKI (Kingsway) Limited ("the appellant"), owns the freehold of the building at 1 Kingsway ("the building"). In January 2009, it began a redevelopment of the building behind the original facade. On completion the redeveloped building included 130,000 sq ft of office space.

5. In anticipation of the completion of the building, discussions took place between Jones Lang Lasalle ("JLL"), the rating agents acting on behalf of the appellant, and the respondent, acting in its capacity as the billing authority, relating to the service of a completion notice to fix the date on which the building, including the premises, would be brought into the 2010 rating list. The parties did not agree on the appropriate date and, on 23 February 2012, the respondent informed JLL that it intended to serve a completion notice in respect of the premises specifying a completion date of 1 June 2012. The respondent asked JLL to confirm the identity of the owner of the building but JLL declined to do so without first obtaining instructions from its client, which were not forthcoming.

6. The building was managed by Eco FM ("Eco") under a contract with the appellant. Neither Eco, nor its employees, had any authority to accept service of legal documents on behalf of the appellant. The appellant did not carry on business at the building and had no presence there.

7. On 5 March 2012, the respondent delivered a completion notice by hand to the building, specifying 1 June 2012 as the completion date. The notice was given to a receptionist employed by Eco. The completion notice was addressed to the "Owner, 1 Kingsway, London WC2B 6AN". It did not identify the owner by name.

8. By 12 March 2012 at the latest, the receptionist had scanned and emailed a copy of the completion notice to the appellant (whether directly or via other persons is unknown). The original hard copy completion notice has been lost.

9. On 29 March 2012 JLL, purportedly "on behalf of Eco", lodged an appeal against the completion notice contending that:

    i) the premises were not capable of being completed by the date shown in the notice;

    ii) the notice was invalid as it did not comply with the statutory requirements for such a notice; and/or

    iii) because Eco was not the owner of the premises, but merely the facilities management company, the service of the completion notice was invalid.

10. When, on 7 May 2013, the premises were brought into the list with a rateable value of £2,750,000 with effect from 5 March 2012 (subsequently corrected to 1 June 2012), JLL submitted a proposal dated 14 June 2013 on behalf of the appellant that the entry be deleted from the list on the grounds, inter alia, that:

    i) the premises at the date of entry in the list were unoccupied and incapable of beneficial occupation; and

    ii) that the completion notice was invalid.

    The proposal was not accepted by the respondent and was transmitted to the Valuation Tribunal ("the VTE") for determination on appeal.

11. The appeals against the completion notice and against the inclusion of the premises in the list were subsequently consolidated and heard, in the first instance, by the President of the VTE, Professor Graham Zellick QC, on 10 March 2014. By that stage the relevant issues for his determination were:

    i) whether a completion notice was *invalid* because it failed to state the name of the intended recipient (where it was not suggested that that name could not be ascertained by reasonable enquiry); and

    ii) whether the completion notice dated 5 March 2012 had been *validly served* on the appellant.

Relevant statutory provisions

12. Before proceeding further, it is convenient to set out the relevant statutory scheme under the 1988 Act.

13. For non-domestic rates to be payable (in respect of occupied hereditaments under section 43 of the 1988 Act or unoccupied hereditaments under section 45 of the 1988 Act) the property in question must be entered into the rating list (under section 42 of the 1988 Act).

14. Section 46A and schedule 4A of the 1988 Act, inserted into the 1988 Act by the Local Government and Housing Act 1989, contain a mechanism for bringing a new building, which has not yet been occupied, into the 2010 rating list. They provide for the service of a completion notice which conclusively deems the building to be complete (whatever its actual state) for the purpose (a) of entry into the rating list and (b) the determination of the rateable value.

15. There are two kinds of completion notices under schedule 4A: (a) notices served in respect of buildings considered to be complete and (b) notices where the building is not yet complete but is expected to be completed within 3 months.

16. Section 46A provides:

> "**Unoccupied hereditaments: new buildings.**
>
> 46A. (1) Schedule 4A below (which makes provision with respect to the determination of a day as the completion day in relation to a new building) shall have effect.
>
> (2) Where—
>
> (a) a completion notice is served under Schedule 4A below, and
>
> (b) the building to which the notice relates is not completed on or before the relevant day, then for the purposes of section 42 above and Schedule 6 below the building shall be deemed to be completed on that day.
>
> (3) For the purposes of subsection (2) above the relevant day in relation to a completion notice is—
>
> (a) where an appeal against the notice is brought under paragraph 4 of Schedule 4A below, the day stated in the notice, and
>
> (b) where no appeal against the notice is brought under that paragraph, the day determined under that Schedule as the completion day in relation to the building to which the notice relates.
>
> (4) Where—
>
> (a) a day is determined under Schedule 4A below as the completion day in relation to a new building, and
>
> (b) the building is not occupied on that day, it shall be deemed for the purposes of section 45 above to become unoccupied on that day.
>
> (5) Where—

> (a) a day is determined under Schedule 4A below as the completion day in relation to a new building, and
>
> (b) the building is one produced by the structural alteration of an existing building, the hereditament which comprised the existing building shall be deemed for the purposes of section 45 above to have ceased to exist, and to have been omitted from the list, on that day.
>
> (6) In this section—
>
> (a) "building" includes part of a building, and
>
> (b) references to a new building include references to a building produced by the structural alteration of an existing building where the existing building is comprised in a hereditament which, by the alteration, becomes, or becomes part of, a different hereditament or different hereditaments."

17. The statutory mechanism for fixing a completion date therefore conclusively establishes a deemed basis for imposing tax (which, as in the present case, involves making counterfactual assumptions against the interests of the ratepayer and in favour of the taxing authority) for the purpose of entering the property into the rating list (a pre-requisite for charging rates) and valuing the property (valued as a completed building ready for occupation, whether or not it in fact is so ready).

18. The relevant provisions relating to service are the following:

> "**Schedule 4A**
>
> 1.(1) If it comes to the notice of a billing authority that the work remaining to be done on a new building in its area is such that the building can reasonably be expected to be completed within 3 months, the authority shall serve a notice under this paragraph on the owner of the building as soon as is reasonably practicable unless the valuation officer otherwise directs in writing.
>
> (2) If it comes to the notice of a billing authority that a new building in its area has been completed, the authority may serve a notice under this paragraph on the owner of the building unless the valuation officer otherwise directs in writing.
>
> (3) A billing authority may withdraw a notice under this paragraph by serving on the owner of the building to which the notice relates a subsequent notice under this paragraph.
>
> (4) Where an appeal under paragraph 4 below has been brought against a notice under this paragraph, the power conferred by sub-paragraph (3) above shall only be exercisable with the

consent in writing of the owner of the building to which the notice relates.

(5) The power conferred by sub-paragraph (3) above shall cease to be exercisable in relation to a notice under this paragraph once a day has been determined under this Schedule as the completion day in relation to the building to which the notice relates.

(6) In this Schedule "completion notice" means a notice under this paragraph.

2.(1) A completion notice shall specify the building to which it relates and state the day which the authority proposes as the completion day in relation to the building.

(2) Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is not completed, the authority shall propose as the completion day such day, not later than 3 months from and including the day on which the notice is served, as the authority considers is a day by which the building can reasonably be expected to be completed.

(3) Where at the time a completion notice is served it appears to the authority that the building to which the notice relates is completed, the authority shall propose as the completion day the day on which the notice is served.

3.(1) If the person on whom a completion notice is served agrees in writing with the authority by whom the notice is served that a day specified by the agreement shall be the completion day in relation to the building, that day shall be the completion day in relation to it.

(2) Where such an agreement as is mentioned in sub-paragraph (1) above is made, the completion notice relating to the building shall be deemed to have been withdrawn.

4. (1) A person on whom a completion notice is served may appeal to a valuation tribunal against the notice on the ground that the building to which the notice relates has not been or, as the case may be, cannot reasonably be expected to be completed by the day stated in the notice.

(2) Where a person appeals against a completion notice and the appeal is not withdrawn or dismissed, the completion day shall be such day as the tribunal shall determine.

5. Where a completion notice is not withdrawn and no appeal under paragraph 4 above is brought against the notice or any

> appeal under that paragraph is dismissed or withdrawn, the day stated in the notice shall be the completion day in relation to the building.
>
> …….
>
> 8. Without prejudice to any other mode of service, a completion notice may be served on a person—
>
> (a) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address;
>
> (b) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at their registered or principal office or sending it in a prepaid registered letter or by the recorded delivery service addressed to the secretary or clerk of the company or body at that office; or
>
> (c)where the name or address of that person cannot be ascertained after reasonable inquiry, by addressing it to him by the description of "owner" of the building (describing it) to which the notice relates and by affixing it to some conspicuous part of the building.
>
> 10. (1) ……
>
> (2) In this Schedule—
>
> "completion notice" has the meaning given by paragraph 1(6) above;
>
> "owner", in relation to a building, means the person entitled to possession of the building;
>
> references to the valuation officer, in relation to a billing authority, are references to the valuation officer for the authority."

19. Because of the short periods of time under schedule 4A (i.e. the date for deemed completion must be less than 3 month away, in accordance with schedule 4A paragraph 2(2)), appeal rights have to be exercised by a building owner "within 28 days after the date on which the appellant received the completion notice"; see regulation 19 of the Non-Domestic Rating (Alteration of the List and Appeals) (England) Regulations (2009) (No 2268).

20. Section 233 of the Local Government Act 1972 ("the 1972 Act") applies "in relation to any notice…..required or authorised by or under any enactment to be given effect to or served on any person by or on behalf of a local authority". It sets out various methods of service. Section 233(10) provides:

> "Except as aforesaid and subject to any provision of any enactment or instrument excluding the foregoing provisions of this section, the methods of giving or serving documents which are available under those provisions are in addition to the methods which are available under any other enactment or any instrument made under any enactment".

21. Section 8 of the Electronic Communication Act 2000 empowers Ministers to make regulations to modify primary and secondary legislation for the purpose of authorising or facilitating the use of electronic communications. In the area of non-domestic rates (and council tax) specific regulations have been made introducing the use of electronic billing in certain circumstances (where taxpayers consent) and the provision of certain prescribed information by electronic means (provided it is available by request in hard copy form). The relevant regulations facilitating use of electronic means for serving demand notices in the prescribed circumstances are expressed to be "without prejudice to section 233 of the Local Government Act 1972……" (see regulations 4 and 7 of SI 2003/2604).

22. We were informed (and it was common ground) that there are no provisions in any of the regulations which extend the use of electronic communications to the service of completion notices.

The decision of the VTE

23. The President delivered his judgment on 15 April 2014. On the first issue, departing from the view he had expressed in earlier decisions, he held that there was no requirement that a completion notice served under Schedule 4A should be addressed to the owner of the building by name; see [21] and [22]. On the second issue, however, the President held that the absence of the owner's name on the completion notice or the envelope in which it was delivered was fatal to effective service. He did so in reliance on paragraph 8(c) of Schedule 4A, which, in his view set out the "only situation in which the billing authority is absolved from the obligation to state the owner's name"; see [31]. At [32] to [35] the President expressed concerns about the difficulties that might arise in practice if good service was held to have been effected in the present case. The President further held that what he regarded as defective service was not cured by the fact that the notice had, in fact, found its way into the hands of the intended recipient in electronic form; see [38] to [50].

24. The President of the VTE's decision was made in respect of the proposal to alter the rating list. He did not make any decision in respect of the appeal under the statutory mechanism because (as he recorded at [51-2]) there was a dispute about whether the validity of a completion notice could be challenged by that method.

25. As a result of his decision, the premises were removed from the 2010 rating list.

The decision of the Upper Tribunal

26. The respondent appealed to the Upper Tribunal (Lands Chamber) ("the UT"). On 28 July 2015, the Deputy President of the UT (Martin Rodger QC) reversed the VTE's decision that the completion notice had not been validly served.

27. In relation to the first issue set out in paragraph 11 above (validity of the completion notice), the Deputy President rejected the appellant's challenge to the VTE's decision that the completion notice was not invalid by reason of the fact that it was not addressed to the appellant by name; see [24] to [37]. There was no appeal to this court against this aspect of the Deputy President's decision.

28. In the course of dealing with the appellant's challenge to the VTE's conclusion that the completion notice was valid, the Deputy President, at [35], said the following about the service provisions contained in paragraph 8 of Schedule 4A:

> "The modes of service described in paragraph 8 are not mandatory but are permissive and any other method of service which brings the completion notice into the hands of the owner will be sufficient. That is clear from the opening words of the paragraph ("Without prejudice to any other mode of service …"). Paragraph 8 performs a similar function to section 23(1) of the Landlord and Tenant Act 1927, which was explained by the Court of Appeal in *Galinski v McHugh* [1989] 1 EGLR 109 (a case relied on by Mr Kokelaar). If good service of a completion notice is admitted, the mode of service which was adopted will be irrelevant, but if there is a dispute over service paragraph 8 performs an important function. If any one of the three modes of service identified in paragraph 8 is adopted, the giver of the notice will be able to rely on the notice without the need to prove that it came to the attention of the intended recipient. The risk of non-receipt passes to the intended recipient on proof that a permitted mode of service has been employed. If none of those permitted modes of service is adopted, the risk of non-receipt will remain with the giver of the notice, and if service of the notice is disputed it will be for the giver to prove. The making of reasonable enquiries is a necessary precondition to reliance on sub-paragraph 8(c) to prove service of a completion notice addressed only to "the owner", but the sub-paragraph does not introduce a further requirement as to the form of the notice itself and does not prohibit the service of a notice addressed only to "the owner".

29. The service point was dealt with at [38] to [50] of the Deputy President's judgment. He began his discussion by quoting the dictum of Peter Gibson LJ in *Tadema Holdings Ltd v Ferguson* (2000) 32 HLR 866 at 873 that:

> ""Serve" is an ordinary English word connoting the delivery of a document to a particular person".

30. At [39] the Deputy President noted that the completion notice in the present case had served its statutory purpose, i.e. to inform the appellant of the respondent's belief that the premises could reasonably be expected to be completed on 1 June 2012 so that, if the appellant disagreed (as it did), it could exercise its right of appeal under paragraph 4 of Schedule 4A (as it did).

31. At [41] the Deputy President expressed his disagreement with the reason given by the VTE why the completion notice had nevertheless not been validly served, namely that the name and address of the owner had to appear "somewhere" if service was to be effective unless paragraph 8(c) of Schedule 4A applied. The Deputy President noted again that paragraph 8 did no more than permit service by a particular method in specified circumstances and concluded:

> "whether that mode of service was effective or ineffective did not depend on the content of the document itself, but on whether it was delivered in such a way as to come into the hands of the intended recipient".

32. At [43] to [46] of his decision the Deputy President discussed the policy considerations that the VTE to construe the word "serve" in Schedule 4A restrictively (namely the need for "regularity, clarity and certainty"). Whilst accepting that those considerations were relevant, he found it more difficult to accept that:

> "…in a case where the vital information has successfully been imparted to the person who needs to receive it, and that person has acted on it by exercising the right of appeal, the need for discipline and regularity in the exercise of the statutory power should be sufficiently powerful considerations to require that the recipient's liability be determined on the basis that the information had never been received." (See [46].)

33. At [47], after emphasising again the permissive nature of paragraph 8 of Schedule 4A, the Deputy President, went on to say:

> "If the mode of service selected by the billing authority achieves its objective I find it very difficult to see why the public interest or the interests of justice to which the President referred should render service legally effective in some cases but ineffective in others. In my judgment a document which arrives in the hands of the intended recipient by an unorthodox route has still been served and I do not agree with the President that the dicta of Sir Robert Megarry V.-C. in Townsend Carriers v Pfizer (1977) 33 P. & C.R. 361 on which Mr Kokelaar relied is not in point. It was there argued that a requirement to "give" a contractual notice was satisfied only if the notice was given by the landlord, but that was not accepted and the possibility of indirect delivery was approved: "If the notice emanates from the giver and reaches the ultimate recipient, I do not think it matters if it has passed through more hands that one in transit". The person to whom the notice was given in that case was found to be the general agent of the landlord, and its associated company, so both the language and context were different. It is true that this case is concerned with "service" by a billing authority, not the giving of a notice by a party to a private contract. Nevertheless, in the absence of

> some specific restriction on modes of service in the statutory scheme, I do not accept that a different approach is required."

34. Nor did he consider that it was fatal that the notice was delivered to the appellant in electronic form. He took the view that, in circumstances where there was no dispute that the electronic copy had been received, there was "no justification for distinguishing between notices in different forms" ([49]).

35. Thus the Deputy President held that good service of the completion notice had taken place when the electronic copy of the document arrived in the hands of the appellant (on a date not later than 12 March 2012), notwithstanding that the transmission was via a person not authorised to accept service on the appellant's behalf and that the latter had never received the original of the notice. Accordingly, he allowed the respondent's appeal.

36. The appellant appeals to this Court with the permission of Kitchin LJ granted on the papers on 18 December 2015, the Deputy President himself having refused permission on 2 October 2015.

Common ground

37. It was common ground on the appeal before us:

i) that the actual state of the premises at the relevant time was such that, in accordance with the decision in *Porter (VO) v Gladman* [2011] RA 337 (at [66]), but for the deeming effect of a completion notice, the premises could not have been entered in the rating list;

ii) that none of the specific modes of service set out in paragraph 8 of schedule 4A of the 1988 Act or section 233 of the 1972 Act (nor in any other statutory provision) could be relied upon by the respondent billing authority, as it had not adopted any of those methods of service; and

iii) that the name and address of the appellant as owner of the building could have been ascertained by the respondent as a result of reasonable inquiry, notwithstanding the fact that the appellant had instructed JLL not to divulge its name; it followed, therefore, that neither the method of service referred to under paragraph 8(c) of the 1988 Act or that referred to under subsection 233(7) of the 1972 Act would have been available to the respondent.

Submissions of the parties

The appellant's submissions

38. The appellant raised three grounds of appeal which were developed in argument by Mr Daniel Kolinsky QC, who appeared on behalf of the appellant. These were that the UT had been wrong:

i) to decide that valid service had taken place when none of the modes of services contained in paragraph 8 of Schedule 4A, s.233 of the Local

Government Act 1972 or any other enactment had been used by the respondent;

ii) to extend the notion of indirect giving of notice derived from the obiter dictum of Sir Robert Megarry V-C in *Townsend Carriers* to the service of a completion notice by a billing authority;

iii) in any event, to determine that eventual receipt of a scanned copy via an unauthorized agent amounted to effective service.

39. In support of these grounds of appeal, Mr Kolinsky submitted that, properly construed, the requirement on the billing authority was to serve the completion notice on the owner. The Deputy President had been wrong to construe this requirement as permitting indirect service because:-

i) As a matter of construction a requirement to "serve on" the owner was different from the contractual obligation to "give notice" - the point at issue in *Townsend*. The Deputy President was wrong to extend the logic of Sir Robert Megarry's approach to indirect service of notices between private parties under the common law to this specific statutory context. That was particularly so in a context where the notice facilitated tax being imposed on a deemed basis against the interests of the ratepayer. There was an obvious need for the statutory mechanism to operate in a clear and certain way.

ii) Permitting "indirect service" was inconsistent with the language of section 233(10) of the 1972 Act which contemplated additional methods of service being identified in statutory provisions and not by recourse to common law principles relating to service of contractual notices between individuals in a private law context.

iii) Moreover, the Deputy President's expansive approach to indirect service in this statutory context was wrong in a number of other respects:-

a) In *Fagan v Knowsley MBC* (1985) 50 P&CR 363 at 366 the Court of Appeal distinguished *Townsend* as inapplicable in the context of the statutory code for service at issue in that (compulsory purchase) case. While Mr Kolinsky did not claim that the statutory provisions in the present case were directly analogous to *Fagan*, he submitted that it was nonetheless wrong simply to characterise the applicable statutory provisions in the present case as permissive. Paragraph 8 of schedule 4A contemplated other provisions as to service but this was plainly meant to refer to section 233 of the 1972 Act. Section 233 was clear that other statutory means of service could be used but if the words "any other enactment or any instrument made under any enactment" had meaning (rather than being otiose), it was inconsistent with them to find that the common law concept of indirect service is also permissible.

b) The Deputy President's analysis sat uncomfortably with the judgment of the Court of Appeal in *Enfield London Borough*

> *Council v Devonish* (1997) 29 H.L.R. 691 at 698 to the effect that the provisions of section 233 could not help a local authority in respect of (common law) notices to quit in its capacity as landlord because the provisions of section 233 were not intended to apply in such circumstances.

40. Mr Kolinsky further submitted that the analysis that ultimate receipt (no matter how indirect or whether in electronic form or otherwise) was decisive, was inconsistent with:-

    i) the restrictive approach to authorising electronic communication in the specific regulations made within the rating statutory scheme, which did not extend to completion notices at all, and, where they did apply (i.e.to demand notices), required the taxpayer to have consented to the use of electronic means of communication;

    ii) the decision of Gross J in *Lantic Sugar Limited v Baffin Investment Limited* [2009] EWHC 3325 at [40] (in the context of arbitration proceedings) that:

    > "If a claimant is required to serve X and mistakenly purports to serve Y, the mere fact that Y informs X of the purported service so that X knows of it, cannot convert Y's receipt of the documents into good service upon X";

    iii) the basis on which the argument proceeded *in R (Gloucester County Council) v Keyway (Gloucester) Ltd* [2003] EWHC 3012 (Admin) where the issue was whether the stop notice under the relevant planning Act had been served in a manner authorised by section 233 of the Local Government Act 1972; if it were correct that any indirect service was sufficient, the case would not have proceeded on the basis that it did;

    iv) the established rule that, if solicitors for a party lacked authority to receive notices, purported service upon them was ineffective to amount to service on the party, a principle well established since *Saffron Walden Second Benefit Building Society v Rayner* (1880) 14 (Ch) 406 at 409-10)); that principle had been recently applied in *Glen International Ltd v Triplerose Ltd* [2007] EWCA Civ 388 at [20-24].

41. In short, Mr Kolinsky submitted, the Deputy President's merger of the common law principles for giving notice in a contractual context, with the specific statutory provisions relating to the service of notices where local authorities exercise statutory powers through the service of notices, was an unjustified extension of the law. The policy context in the present case supported a less permissive approach to service and a greater emphasis on certainty.

42. Accordingly, Mr Kolinsky submitted that the Deputy President's conclusion that the completion notice had been served so as effectively to fix a completion date under schedule 4A of the 1988 Act was wrong and the appeal should be allowed.

The respondent's submissions

43. Mr Sebastian Kokelaar, who appeared on behalf of the respondent, submitted that the decision of the Deputy President should be upheld for the reasons which the latter gave. In particular, Mr Kokelaar submitted as follows:

i) The respondent's case was that service had been validly effected once a copy of the notice had actually been received by the respondent in, or attached to, the email sent by the Eco receptionist. It had never been the respondent's case that service had been effected as at the date of physical receipt of the notice by the Eco receptionist. There was no proper basis for giving the word "serve" in paragraph 1(1) of Schedule 4A to the 1988 Act anything other than its ordinary meaning, i.e. to deliver a document to a particular person. It was for the respondent to select the method of delivery, paragraph 8 of Schedule 4A being permissive only. The method adopted by the respondent resulted in the completion notice being delivered to the appellant and achieving its statutory purpose. Neither the fact that it passed through the hands of an unauthorised agent, nor the fact that it was ultimately received in electronic form, should be treated as fatal.

ii) The Deputy President was plainly right to characterise paragraph 8 of Schedule 4A as permissive. The opening words ("without prejudice to any other mode of service…") made that clear. Paragraph 8 existed for the benefit of the billing authority. Like section 23(1) of the Landlord and Tenant Act 1927 (which was considered by this Court in *Galinski v McHugh* [1989] 1 EGLR 109), it was an example of a type of provision which enabled the giver of a notice to shift the risk of non-receipt to the recipient by adopting one of the specified methods of service. Where (as here) there was no dispute that the completion notice came to the attention of the recipient, it was not necessary for the billing authority to rely on paragraph 8.

iii) The appellant's contention that the method of service adopted by the respondent "needed to have a statutory foundation" foundered on the opening words of paragraph 8. Those words were clear and unambiguous. They refer to "any other mode of service". Parliament would not have expressed itself in that way if it had intended that the modes of service available to a billing authority should be confined to those expressly permitted by section 233 of the 1972 Act or some other statute.

iv) It would have been open to Parliament to include a mandatory and complete code for the service of completion notices in Schedule 4A (as it did for example in section 30 of the Compulsory Purchase Act 1965: see *Fagan v Knowsley MBC*). Indeed, it might be argued that general policy considerations of the kind that weighed heavily with the President of the VTE would have made the inclusion of such a code desirable. However, those considerations could not be invoked to supply what was not there in the words of the statute.

v) Nor, as the Deputy President rightly observed at [46], were such considerations sufficiently powerful to compel one to conclude that, in cases such as the present where the vital information had successfully been imparted to the person who needed to receive it, and that person had acted on it by in effect exercising the right of appeal (although the appeal had been purportedly lodged on behalf of Eco), Parliament nevertheless intended that the recipient's liability for non-domestic rates should be determined on the counter-factual basis that the information had never been received.

vi) Because the completion notice had in fact been delivered to the appellant, it clearly had had every opportunity to exercise its right of appeal under paragraph 4. Thus the Deputy President of the UT had been right to conclude at [41] that the question whether good service of a completion notice had been effected depended on whether it had been delivered in such a way as to come into the hands of the intended recipient (unless, of course, the billing authority availed itself of one of the methods set out in paragraph 8).

vii) The fact that the completion notice had passed through the hands of an agent, who was unauthorised to accept service, did not render service ineffective. The receptionist was clearly "authorised" at the least to pass on to the appellant correspondence received at the building. The Deputy President had thus been right to adopt the approach of Sir Robert Megarry V-C in *Townsend*. Given that Schedule 4A did not restrict the modes of service which might be adopted by the billing authority, there was no justification for doing otherwise. Indeed, there were important similarities between a break notice and a completion notice.

viii) Nor was it a valid objection to say that the completion notice was delivered to the appellant in electronic form only. The scanned document which the appellant received was identical in every respect to the hard copy that was left with the receptionist. That was sufficient: see the observations of Woolf LJ (as he then was) in *Hastie & Jenkerson v McMahon* [1990] 1 WLR 1575 at 1579F and *R v Ondhia (Chandriacant Vallabhji)* [1998] 2 Cr App R 150 in which the Criminal Division of this Court held that a fax was not just a copy of the original, but was itself a duplicate for the purposes of the Forgery and Counterfeiting Act 1981.

ix) The fact that the words "any other mode of service" were used in paragraph 8 gave rise to the presumption that Parliament did not intend to rule out electronic modes of service. Such modes of service would have been available in 1989 (e.g. service by facsimile).

x) There was no reason why effective service in the present case should have turned on whether the receptionist passed on the notice in hard copy or electronic form. The ultimate result was exactly the same: see the observations of Sir Andrew Morritt V-C in *PNC Telecom plc v Thomas & Anor* [2002] EWHC 2848 (Ch), [2003] BCC 202 at [22].

xi) The appellant's reliance on certain regulations made pursuant to section 8 of the Electronic Communications Act 2000 was misconceived. It could not be inferred from the fact that the appropriate Minister had exercised this power in certain areas that the use of electronic communications had to be prohibited in others. Delegated legislation made under a different Act a decade or more later could not be said be said to be a reliable guide to the interpretation of the provisions of Schedule 4A of the 1988 Act.

xii) None of the additional authorities relied upon by the appellant in this court (but which were not cited before the Deputy President), namely *Fagan v Knowsley MBC*, *Enfield LBC v Devonish*, *Lantic Sugar Ltd v Baffin Investments* Ltd, *R (Gloucester CC) v Kenway (Gloucester)* Ltd and *Glen International Ltd v Triplerose Ltd*, were of any assistance in the determination of the relevant issue.

xiii) Accordingly, the Court should dismiss the appeal.

Discussion and determination

44. In my judgment this appeal should be allowed. The basic reason for that conclusion is, in my view, simple. The relevant statutory requirements of section 46 A and paragraph 1 of Schedule 4A of the 1988 Act for present purposes are: (a) that "*the billing authority*" (b) "*shall serve*" the required completion notice (c) "*on the owner of the building*". For the billing authority merely to leave the notice with a third party, not authorised to accept service of the notice on the owner's behalf, or, indeed, to effect service on the authority's behalf, in the hope, or with the intention, that the notice will somehow be brought to the attention of the owner, and where a copy of the notice or its contents are in fact subsequently communicated to the owner by the third party, does not, on any natural or normal usage of the words "serve" and "on", constitute "service" on "the owner" "by the authority". In other words, the concept of "service on the owner by the authority" in paragraph 1 of Schedule 4A of the 1988 Act cannot be construed as including effectively all methods of communication or transmission, which ultimately result in the information in the notice (or the notice itself) being brought to the attention of, or delivered to, the owner, in circumstances where the information in the document, or the document itself, has been communicated to the owner by a third party who is not authorised either to accept, or effect, service. The issue is one which for its determination depends on the construction of the relevant statutory provisions in the context of the scheme of the 1988 Act relating to the rating of new buildings . In my judgment there is nothing in those provisions, construed in that context, which would justify construing "service" so broadly as to characterise the events of the present case as constituting service by the authority on the building owner.

45. My analysis and the reasons which support my conclusion as stated above are as follows.

46. First, I should make it clear that, in reaching my conclusion, I am not attempting to lay down any prescriptive formula as to what will, and what will not, constitute service for the purposes of Schedule 4A in every conceivable circumstance. Thus, I do not accept the appellant's contention (which was one of Mr Kolinsky's

arguments supporting the appellant's first ground in its notice of appeal) that the introductory words in paragraph 8 of Schedule 4 A "Without prejudice to any other mode of service" should be construed as limiting "any other mode of service" to "any other *statutorily* identified mode of service" - for example under section 233 of the 1972 Act or sections 1139 and 1143-1148 and Schedules 4 and 5 of the Companies Act 2006. I see no reason to construe the relevant words as requiring the methods of service adopted to have an exclusively statutory foundation. As Mr Kokelaar submitted, paragraph 8 of Schedule 4A is clearly permissive. It does not provide a complete, or exclusive, let alone mandatory, code for service. The opening words ("without prejudice to *any other* mode of service…") make that clear. Paragraph 8 exists for the benefit of the billing authority. Like section 23(1) of the Landlord and Tenant Act 1927 (which was considered by this Court in *Galinski v McHugh* supra), it is an example of a type of provision which enables the giver of a notice to shift the risk of non-receipt to the recipient by adopting one of the specified methods of service.

47. For example, a billing authority and a building owner might have mutually agreed that service of all notices and documents should be effected in a particular way. Such a method would clearly be encapsulated within the words "any other mode of service", notwithstanding that it was not based on any statutory provision for service. Similarly, in any particular case, an authorised agent of a building owner and the authority might have agreed that service of any completion notice should be given to the agent rather than to the owner itself. In such a case it will be for the court to decide whether, as a matter of fact in the circumstances, there had indeed been service by the authority on the building owner.

48. However, as I have already said, in my judgment the fact that paragraph 8 of Schedule 4A envisages non-statutory methods of service does not lead to the result that any type of indirect transmission of information which results in a copy of the completion notice or its contents being brought to the attention of the building owner is sufficient to constitute service for the purposes of the 1988 Act.

49. As Mr Kolinsky submitted, the context of the 1988 Act is that it is a taxing statute which imposes rating liability on a property owner on an assumed basis. The timetable for a taxpayer to raise an appeal against the completion notice is strict and is based upon the date upon which it received the completion notice. In those circumstances there are obvious policy considerations which point to a need for certainty and precision as to the date of service. Those factors strongly militate against the notion that a billing authority can simply purport to "serve" notices by leaving them at subject buildings with a person not authorised to accept service on behalf of the building owner, without compliance with either the provisions of paragraph 8 of Schedule 4A or those contained in section 233(7) - even in circumstances where the building owner ultimately happens to receive notice of the completion notice by an indirect route.

50. I reject Mr Kokelaar's submission that the Deputy President of the UT was correct to rely on the *obiter dictum* of Sir Robert Megarry VC in *Townsend supra* to support his conclusion that there had been service in the present case. Sir Robert Megarry's statement at 366 was:

> "I do not think that a requirement to "give" notice is one that excludes the indirect giving of notice. The question is whether the notice has been given, not whether it has been given directly. If the notice emanates from the giver and reaches the ultimate recipient, I do not think that it matters if it has passed through more hands than one in transit."

But the situation which Sir Robert Megarry was considering was the service of the notice as between agents for the landlord and tenant respectively, in a private law context, where each had respectively "consigned the whole conduct and management of the reversion on the tenancy, and of the tenancy itself, to agents on their behalf". It was hardly surprising that, in those circumstances, a notice served by a de facto agent of the tenant on a de facto agent of the landlord was held to be good service. But this dictum does not to my mind justify any wider construction of the concept of "service" under paragraph 8 of Schedule 4A so as to permit service to have taken place in circumstances where there was no authorised receipt by the Eco receptionist on behalf of the appellant and no authority on her part, on behalf of the respondent, to "serve" a notice on the appellant. In such circumstances the fact that, ultimately, the appellant building owner became aware of the contents of the completion notice, cannot in my judgment constitute valid service for the purpose of Schedule 4A.

51. It is clear from subsequent cases that Sir Robert Megarry's dictum has not been generally applied to justify an expansion of the concept of service to embrace all situations where ultimately the person on whom the relevant notice or document ought to be served has come to know of the contents of the notice, irrespective of whether he or his authorised agent have actually been served. Thus, for example, in *Fagan v Knowsley Metropolitan Borough Council supra* this court rejected the application of the dictum in circumstances where what was relevant was the mandatory statutory code for service under section 30 of the Compulsory Purchase Act 1965. The fact that the service provisions were mandatory in that case does not detract from the appellant's submission that what has to be considered in each case is what are the necessary requirements for service under the relevant statutory scheme.

52. Likewise, a number of cases have emphasised the well-established principle that service on a solicitor who does not have authority to accept service of the particular notice on behalf of his client is not valid service on that party. Examples referred to by Mr Kolinsky include *Saffron Walden Second Benefit Building Society v Rayner supra* and *Glen International Ltd v Triplerose Ltd* supra at [20-24]. The latter case makes clear that *Townsend* can be distinguished as being "a decision on the particular facts" (see [22]) rather than laying down any generally applicable principle. In *Glen International*, the Court of Appeal did not go on to consider whether the solicitors had passed a copy of the notice to their client. But it is implicit in that judgment that onward transmission would not have rendered ineffective service effective.

53. That principle would be wholly eroded if the respondent's argument were correct. Similarly the statement of Gross J in *Lantic Sugar Limited supra* relied upon by Mr Kolinsky that:

> "If a claimant is required to serve X and mistakenly purports to serve Y, the mere fact that Y informs X of the purported service so that X knows of it, cannot convert Y's receipt of the documents into good service upon X"

is clearly apposite. I cannot agree with the comments made by the Deputy President when refusing permission to appeal (namely that the case simply concerned the date of service in circumstances where the date was critical). *Lantic Sugar Limited* is relevant not because there were time limits in play which made the date of service matter but because the analysis of whether service was effective was inconsistent with the expansive concept of indirect service relied upon by the respondent in the present case. Nor do I accept Mr Kokelaar's submission that a distinction can be drawn between that case and the present case on the grounds that the completion notice was in fact electronically transmitted to the appellant by the receptionist.

54. I would also be minded to accept the appellant's argument that, in circumstances where detailed regulations have been made governing the use of electronic communications in other areas of non—domestic rating law, where usage appears to be predicated on the agreement of both the billing authority and the building owner to that method, it would be surprising, to say the least, that electronic communication of a completion notice to a building owner by an unauthorised third party would be sufficient to amount to valid service. However, apart from being told that The Council Tax and Non—Domestic Rating (Electronic Communications) (England) Order 2003 did not apply to completion notices served pursuant to section 46A of the 1988 Act and paragraph 8 of Schedule 4A, we did not receive detailed submissions on the statutory regime nor were arguments addressed in relation to the relevant provisions of the company communication provisions as contained in the Companies Act 2006; see sections 1143 to 1148 and schedules 4 and 5 ibid. In those circumstances, I prefer not to express any concluded view as to whether the mere fact that a scanned copy of the completion notice was transmitted electronically to the appellant by the receptionist would of itself render what might have otherwise been valid service ineffective.

Disposition

55. For the above reasons I would allow the appeal. In my judgment the President of the VTE was correct to hold that the completion notice had not been properly served and that, accordingly, it was not effective to determine a completion date of 1 June 2012 under the 1988 Act.

Lady Justice Macur:

56. I agree.

Lady Justice King:

57. I also agree.