

Notices: JPLA/JPBA Midlands

Sam Madge-Wyld

tanfieldchambers.co.uk



Overview

Errors in
contractual notices

How can a notice be
given

Errors in statutory
notices

Who can serve or
receive notices

Errors in contractual notices

Errors in contractual notices

- What does the contract require?
 - Blue or pink paper?
- What information must the notice include to be effective?
- Of the information included, what does it mean to the reasonable recipient?
- Does the notice contain all of the information (as understood by the reasonable recipient) required by the contract?

Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] A.C. 749

Who is the notice addressed to?

- Unless required by the contract, the notice need not name the recipient.
- If the name is given, must be addressed to the correct person.
- A minor-spelling error is probably OK (provided the error does not mean the name given is someone else).

OG Thomas Amaethyddiaeth CYF v Turner [2022] EWCA Civ 1446; [2023] L. & T. R. 9.

Is the information given correct?

- Does it matter?
- If contains incorrect information, what would a reasonable person, in the circumstances of the parties, have understood?
- Is it sufficiently clear and unambiguous to leave a reasonable recipient in no reasonable doubt as to how and when it is intended to operate?
- Obvious typographical errors unlikely to invalidate the notice (e.g. date or description of property) if no “reasonable doubt” what was intended.

Errors in statutory notices

Does strict compliance matter?

- Does the statute specify what is to occur if there is non-compliance with a statutory provision?
- If not, the question is whether there is a “sufficient foundation for the commencement of the statutory procedure” for the operation of the statute, e.g. transfer/determination of property rights.
- If the consequence is not specified,
“[the] focus [must] instead [be] on (a) the purpose served by the requirement as assessed in light of a detailed analysis of the particular statute and (b) the specific facts of the case, having regard to whether any (and what) prejudice might be caused or whether any injustice might arise if the validity of the statutory process is affirmed notwithstanding the breach of the procedural requirement”

Does strict compliance matter? (2)

- In certain contexts, strict compliance with statutory procedure is always required, e.g. the determination of property rights under the Landlord and Tenant Act 1954.
- Otherwise,
“The ordinary expectation must be that persons whose property or contract rights are to be taken away or subject to significant qualification should have a fair opportunity in the course of the procedure to be followed before that occurs to raise any arguments of substance they may have to oppose that outcome.”

A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd [2024] UKSC 27.

Does strict compliance matter? (3)

- In the right to manage legislation

“The focus is on the position of the party directly affected by the procedural omission. The omission does not give other persons who are not so affected (for example, other landlords who have been properly served with a claim notice) a right to object to the making of a transfer order if the party who is so affected has not sought to complain about this.”

A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd [2024] UKSC 27.

Substantially to the same effect

- Even if the statute does specify the consequence (e.g. proceedings for possession may not be issued), a notice may be saved if it is “substantially to the same effect”.
- Does it fulfil the statutory purpose?
- May do so if information omitted is irrelevant to the rights and obligations of the recipient.

Pease v Carter [2020] EWCA Civ 175; [2020] 1 WLR 1459

Who can serve or receive notices?

Who can serve or receive a notice?

- The legal (as opposed to beneficial) owner must serve a notice to quit.
- The notice may be given by an agent on behalf of the principal.
- Notices must be served on the legal owner rather than the beneficial owner.
- In certain statutory contexts, the recipient of the notice may include the beneficial owner (but only where there is no legal owner).

How can a notice be given?

How can a notice be given?

- Common law rule is that a notice is received once it comes to the attention of the recipient.
- Is there a deemed or permissive service provision in the contract/Act?
- If permissive, other methods (e.g. email/leaving it an address) will be good service (probably).
- If an Act of Parliament authorises service to be made by post will be deemed served (under s.7, Interpretation Act 1970) unless the recipient can prove that the notice was not received in the ordinary course of post.

Thank you.

Contact us

Tanfield
2-5 Warwick Court
London WC1R 5DJ
T: +44 (0) 20 7421 5300
E: clerks@tanfieldchambers.co.uk

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