Case No: C02EC341

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice,
Strand,
London WC2A 2LL

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Before:

HIS HONOUR JUDGE LUBA QC

- -

Between:

MAXIE PAVEY **Appellant**
- and -
LONDON BOROUGH OF HACKNEY

Respondent

- -
- -

MR JAMES KIRK for the **Appellant**
MR ADRIAN DAVIS for the **Respondent**

- -

Approved Judgment

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JUDGE LUBA QC:

Introduction

1. This is my judgment on an appeal brought in the context of a claim for possession of residential premises. The order under appeal was made by District Judge Swan, sitting at the County Court at Clerkenwell and Shoreditch on 14 March 2017. By his order of that date, the learned judge declared that: "The claimant has properly served a valid notice to quit." This appeal is concerned with the correctness or otherwise of that declaration. It proceeds with the benefit of permission to appeal that I granted on a consideration of the appellant's notice on the papers. On the appeal, the appellant has been represented by Mr James Kirk of counsel, who appeared below. I have had from him a helpful and comprehensive skeleton argument. The appeal is resisted for the respondent by Mr Adrian Davis. He too has provided considerable assistance by way of his oral and written submissions, and he too had appeared before District Judge Swan.

The Facts

2. Before I turn to the precise way in which the issues developed on the appeal, it is necessary to say something in more detail about the background facts. This claim for possession is concerned with the occupation of premises owned by the claimant Council at 15 Webb Estate, Clacton Common, London E5. Those premises were let by the Council to a Mr Ronald Pavey and were occupied for many years by him, and it may be by other members of his family. Sadly, Mr Pavey died in August 2014. Thereafter, his tenancy either passed by succession to a person qualified to succeed under the provisions of the Housing Act 1985, or, in the absence of such a person, simply continued as an unprotected contractual tenancy. The Council took the view that there was no person qualified to succeed the late Mr Ronald Pavey, and in those circumstances it sought to determine the continuing contractual tenancy of the premises. On 19 December 2014, a housing officer, Mr Alex Craig, delivered to the property at 15 Webb Estate a document described in its header as "Notice to Quit". The notice was addressed to "The personal representative of Mr Ronald Pavey". It indicated that the Council gave notice to quit and required delivery up of the property. The date for delivery up was stated as follows: "On Sunday 18 January 2015, or the day on which a complete period of your tenancy expires next after the 4 weeks from the service of this notice." The notice itself is dated "18 December 2014", although it was delivered the following day. The notice finishes by setting out the prescribed information required by section 5 of the Protection From Eviction Act 1977.

3. The Council did not immediately commence proceedings for possession. Instead, as explained by the witness statement of Mr Craig made on 22 August 2016, the Council waited for the date stated in the Notice to Quit to pass. At paragraph 24 of his witness statement, after recounting his delivery of the notice to quit to the property on 19 December 2014, Mr Craig stated:

> "The tenancy of the first defendant (the personal representative of Mr Ronald Pavey) was determined on Sunday 18 January 2015."

4. As a result of his understanding that the tenancy had terminated, Mr Craig caused letters to be written to the occupiers of the premises (the second and third defendants to the present claim) demanding of them damages for use and occupation for their continued occupation of the property. The second defendant, Mr Maxie Pavey, is the son of the deceased tenant, and the third defendant, Miss Sandra Steele, is his mother.

5. On 24 April 2015, Mr Craig sent a copy of the notice to quit to the Public Trustee. The letter which he sent to the Public Trustee and the copy of the enclosure to it are not before the court and do not appear to have been before District Judge Swan. What was before the court was a letter sent back by the Public Trustee addressed to Mr Craig dated 29 May 2015. That letter acknowledged receipt by the Public Trustee of the notice in respect of the property, and indicated that the notice had been added to the register of such notices maintained by the Public Trustee. The Public Trustee reported that "The date on which the entry was made is 24 April 2015." It therefore seems that the Public Trustee must have received a copy of the notice to quit very quickly after sending of it by Mr Craig.

6. Prior to sending a copy of the notice to the Public Trustee, Mr Craig had in fact visited the property in March 2015, the previous month. There, he had found in occupation, among others, the second and third defendants. He recorded what payments had or had not been made by those persons in respect of use and occupation of the property. In paragraph 28 of his witness statement, made in August 2016, Mr Craig recorded that:

> "At the date the tenancy was determined on Sunday 18 January 2015, the first defendant was in rent arrears of £2,363.65. As of 15 September 2016 the second defendant's use and occupation account is in arrears of £667.55."

In other words, Mr Craig treated the tenancy as having ended at the end of Sunday 18 January 2015, and thereafter had looked to the second defendant in particular for damages for use and occupation of the property. The last quotation I have read from his witness statement is from paragraph 28, and as it indicates the position financially as at 15 September 2016. It must be that the true date of his witness statement is in fact 22 September 2016, rather than, as would appear from the manuscript, 22 August 2016. The misleading nature of that entry as to the date is made doubly mystifying by the date appearing at the head of the statement as "17 August 2016." It is but one feature of this council's muddled approach to paperwork in this particular case, and others.

The Claim

7. The present proceedings were initiated by a claim form issued on 28 September 2016. I have already identified the three defendant parties to that claim. The Particulars of Claim at paragraphs 4 and 5 read as follows:

> "4. On 22 December 2014 at 10.04 a.m the claimant served a notice to quit on the personal representatives of the first defendant by leaving it at the premises. The notice to quit states that vacant possession is required by 18 January 2015 or

> 'The day on which the complete period of your tenancy expires next after 4 weeks from the service of this notice.
>
> 5. On 29 May 2015 a copy of the notice to quit was served on the Public Trustee."

It is agreed on all sides that paragraph 5 must be inaccurate, given the content of Mr Craig's statement and the content of the receipt given by the Public Trustee, which is itself dated 29 May 2015.

8. No defence to the proceedings was lodged by the personal representative of Mr Ronald Pavey, but a defence was put in by Mr Maxie Pavey, the second defendant. The response to paragraphs 4 and 5 of the pleaded claim is as follows:

> "No admissions are made with respect to paragraphs 4 and 5 of the Particulars of Claim and the claimant is put to strict proof concerning the validity of the Notices to Quit."

9. After the joinder of pleadings in that way, the case fell for case management in the ordinary course by the judges at the county court Clerkenwell and Shoreditch. By a procedural order made on 27 January 2017 it was directed that there should be a hearing of a preliminary issue defined in these terms:

> "As to the valid service of notice to quit, and upon the claimant confirming the facts pleaded at paragraph 4 of the Particulars of Claim."

The Hearing

10. It is the hearing of that preliminary issue that was conducted by District Judge Swan on 14 March 2017. I have the advantage of the approved transcript of his judgment. In short, for reasons that will be analysed more carefully when considering the grounds of appeal, the learned judge found that the actions of the Council had validly determined the tenancy of the late Mr Ronald Pavey. The tenancy had been determined, the learned judge found, by operation of the saving provision in the notice which had been triggered when the notice was served by way of delivery of a copy of it to the Public Trustee. The tenancy therefore fell to be determined on the completion of 4 weeks of the tenancy after the service on the Public Trustee on 24 April 2015. Accordingly, the judge found that the tenancy had determined on 24 or 25 May 2015. It is for those reasons that he made the declaration that he did, that the tenancy of the deceased had been determined by the proper service of a valid notice to quit.

Another Case

11. Ordinarily, one would next come to a consideration of the grounds of appeal, but before doing so it is not insignificant to note that approximately one week later, in the same county court, much the same issue arose in another set of proceedings brought by the same landlord. That was the claim in *Hackney London Borough Council v Henry*. Those proceedings bear the claim number C02EC093. In that case, the council had let premises to a Mrs Henry. She had died intestate and, as in the instant

case, an issue had arisen as to whether there had been a statutory succession. Again, in that case, as in this case, the council took the view that there had not been a statutory succession, and it sought to determine the unprotected contractual tenancy of the late Mrs Henry. It did so by serving a notice to quit at her former home, addressed to her personal representatives. That notice to quit had been expressed to expire on 1 June 2014 "Or the day on which a complete period of your tenancy expires next after 28 days from the service of this notice". However, in that case the gap between the delivery of the notice to the premises and a sending of a copy of it to the Public Trustee was even longer. In that case the delay was not a matter of weeks, as in the instant case, but some 17 months.

12. Again the council brought a claim for possession based on having validly served a notice to quit. In that case, the prospective successor of Mrs Henry defended the claim on the basis that the notice to quit was not valid because it had not been delivered to the Public Trustee until long after the date stated in the notice or the date calculated from the date of service at the premises by operation of the saving clause. I shall return in due course to the reason which led Deputy District Judge Brayfield on that occasion to accept the submission that the notice to quit had not been a valid notice, or not been validly served, and accordingly to make an order dismissing the possession claim. Although in that case the possession claim was dismissed on 23 March 2017, no appeal has been brought to this court, the appropriate appellate court, in respect of the order made by Deputy District Judge Brayfield.

The appeal in the present case.

13. The appellant's notice in the present case is accompanied by a document described as "Grounds of Appeal", extending to some 4 paragraphs, but in reality containing a ground of appeal encapsulated in a single sentence. That reads as follows:

> "The learned judge was wrong to find that the claimant had given an effective notice to quit in accordance with section 18(1) of the Law of Property (Miscellaneous Provisions) Act 1994 in circumstances in which the notice did not inform its addressee of the date on which the claimant purported to end the tenancy."

14. In order to understand that ground of appeal, it is obviously necessary first to consider the provisions of section 18 of the 1994 Act. The 1994 Act was based upon a draft bill prepared by the Law Commission. It was attached to the Law Commission's report, Property Law: Title on Death (Cm 777), published in 1989. That report contained, as paragraph 1.1 of it makes clear: "Recommendations for reform to tackle specific practical problems which arise in dealing with the land of owners who have died." Although the Commission's paper was primarily concerned with the question of owners of premises, the report plainly indicates that ownership for these purposes included leasehold ownership and the holding of tenancies. A helpful section of the report deals with the issues relating to notices to be given where an owner of property has died. Paragraph 2.27 of the Law Commission's report sets out some of the difficulties consequent upon the state of the law as it was when the Law Commission reported. Amongst those difficulties were the difficulties faced by the other party to a transaction in land with the deceased. Difficulties would arise for that person if they wished to serve notice and either did not know that the other party was dead, or, if

they knew of the death, they were unable to easily discover whether there was a will or whether executors had been appointed and, if no executors had been appointed, whether any personal representatives had been appointed. The Law Commission considered that the law (as it then was) was "unjust". The injustice was that the then law did not "offer a procedure to overcome the consequences of this capricious disruption of the parties' contractual relations" caused by death.

15. Thus it was that the Law Commission proposed a draft new bill containing a miscellany of provisions, among them provisions to deal with the death of a person holding an estate in land. That draft bill became the Law of Property (Miscellaneous Provisions) Act 1994. The first significant provision within it for present purposes is section 14, which substituted a new section 9 into the Administration of Estates Act 1925. The new section 9(1) provides that:

> "Where a person dies intestate, his real and personal estate shall vest in the Public Trustee until the grant of administration."

By this simple method, the Law Commission had created a corporation legally capable of receiving a notice in relation to land. However, section 9(3) of the new section 9 continued:

> "The vesting of real or personal estate in the Public Trustee by virtue of this section does not confer on him any beneficial interest in, or impose on him any duty, obligation or liability in respect of the property."

16. Thus it was that the Public Trustee became the convenient notional new tenant of premises where the true tenant had died, but he had died intestate and administration of his or her estate had not been granted. This, at a stroke, dealt with the perceived problem that the Law Commission had identified in paragraph 2.27 of its report. However, it only dealt with one side of the equation, i.e. the position of the giver of notice to the estate of the deceased. What of the position of those who had an interest in the deceased's estate?

17. In relation to that, the Law Commission devised a scheme of dual or double service which would require notice to be given in physical form, not simply to the Public Trustee but also to others. In paragraph 2.37 of the report the Law Commission say this:

> "In proposing these two new methods of service we have tried to balance the interests of those who require to be able to serve a notice, but who, because of the death of the landowner, are unable to do so, and the interests of the deceased's estate. Clearly enabling notices to be served before any grant of representation has been made may lay the deceased's estate open to the risk of prejudice. There might, for example, be only a limited time within which a counter-notice could be served, or a lack of response could bind the estate to revised contractual terms. For this reason, it is important that there should be a reasonable expectation that there will be an opportunity to take any necessary action on behalf of the estate.

> We consider that any notice served in accordance with our proposal would have a good prospect of coming to the attention of those concerned. That would then give them the opportunity of applying for a prompt, and if necessary, limited grant of representation."

18. The two methods of service envisaged by the Law Commission are those now contained in section 18 of the 1994 Act. Section 18 appears, like section 14, in Part II, which bears the title "Matters arising in connection with death". Section 18 provides as follows:

> "Notices affecting land: service on personal representatives before filing of grant.
>
> (1) A notice affecting land which would have been authorised or required to be served on a person but for his death shall be sufficiently served before a grant of representation has been filed if—
>
> (a) it is addressed to 'The Personal Representatives of' the deceased (naming him) and left at or sent by post to his last known place of residence or business in the United Kingdom, and
>
> (b) a copy of it, similarly addressed, is served on the Public Trustee."

19. Although I have only read from the terms of section 18(1), other general points may be made about the way in which this provision works. Both were eloquently put by Mr Davis. The first is that section 18 is concerned with all notices affecting land and not simply notices to quit. These may be notices to exercise options, activate break clauses or review rents. Secondly, section 18(1) containing this new twin method of service is not exhaustive. It may be dispensed with where either a statute or a written agreement between the parties provides for a different method of service. In the instant case, of course, the notice with which the court is concerned is a notice to quit and there is no ousting provision either in the tenancy agreement of the late Mr Ronald Pavey, or in any statute. Accordingly, this is a case in which, if a landlord wishes to rely on a notice to quit given to determine the tenancy of a deceased tenant, it must comply with the conditions of section 18.

20. Having directed attention to the statutory provision mentioned in the grounds of appeal, I can turn to the way in which it is contended that the learned judge below erred in his treatment of the question whether in this case a valid notice had been given in accordance with the terms of section 18.

21. Two specific points are drawn out of the ground of appeal by Mr Kirk in his skeleton argument at paragraph 30. He contends that the judge's granting of a declaration in this case was wrong for either one or both of two reasons. They are expressed as (a) and (b) in the following terms:

> "(a) The saving clause ran from the date of service of the notice at the property, rather than the date on which a copy of it was sent to the Public Trustee; and it be on the learned judge's construction, the notice would not be sufficiently clear".

I deduce that these are in fact two separate grounds of appeal that seek to achieve the same aim, namely the result that (b) declared that this tenancy has not been validly determined by the acts of the Council. I shall call them respectively Grounds 1 and 2, but deal with each in turn.

Ground 1

22. Mr Kirk approaches his first ground by inviting an answer to the question: When did the saving clause run from? That question arises, says Mr Kirk, because the twofold service method required by section 18 was not fulfilled until after the date expressly stated in the notice to quit, i.e. 18 January 2015. Therefore, the notice can only be valid if the savings clause saves it. Mr Davis, for his part, accepts that proposition.

23. Because the notice to quit did not come into the hands of the Public Trustee until some months after 18 January 2015, it can only be a valid notice to quit in the future sense if the date on which the tenancy is to determine is a future date derived from the operation of the saving clause once the notice gets into the hands of the Public Trustee. Accordingly, it is important to determine the date from when the saving clause runs. I remind myself again of the words of the saving clause as they appear in the notice to quit in question. Possession is required to be given up "on Sunday 18 January 2015 or on the day on which a complete period of your tenancy expires next after the 4 weeks from the service of this notice". Critically therefore, on a true construction, the saving clause operates from the date on which the notice is served. Mr Kirk invites me to say that in this context, i.e. service of notice to quit where a tenant has died, service, for the purposes of this saving clause, is achieved by delivery of the notice to the premises last occupied by the deceased in accordance with the provisions of section 18(1)(a) of the statutory scheme. That submission did not carry the day with District Judge Swan. He was not satisfied that service for this purpose meant simply service under section 18(1)(a). He accepted the submission made to him by Mr Davis, and repeated before me, that service in the saving clause must be a reference to sufficient or adequate service of the notice. In other words, the provisions of the saving clause are not triggered and do not run until the twofold method of service set out in section 18 is achieved.

24. Much the same point was advanced before Deputy District Judge Brayfield in the case of *Hackney v Henry* (to which I have already made mention). It is briefly noted in the journal "Legal Action" in the issue for June 2017 at pages 31 and 32. In that case, the deputy district judge appears to have acceded to a submission made in much the same terms as Mr Kirk has made his submissions to me. The note of the judge's judgment is to this effect:

> "Section 18(1) provided that the document left at the property was 'the Notice' and the document sent to the Public Trustee was merely 'a copy'. The notice was 'served' when it was left at the property, albeit that it was not yet 'sufficiently served' for the purposes of section 18(1). Therefore, on its plain

> reading the saving clause ran from the date the notice to quit was left at the property and not the date on which the copy wasn't sent to the Public Trustee."

That determination was of course made some 10 days after the determination of District Judge Swan, which I am invited to consider. With the greatest of respect to the learned deputy district judge, I prefer the construction adopted by District Judge Swan. That construction, it seems to me, is the more consistent of the two with the actual wording of section 18. I accept entirely that the format of section 18 is that it requires, service of the actual notice at the premises directed to the personal representatives, and delivery only of a copy of it to the Public Trustee. But the function of section 18(1) is to indicate to all parties when such a notice shall have been "sufficiently served". On my reading of section 18(1), a notice to quit shall only be treated as sufficiently served if the notice has been delivered in accordance with 18(1)(a) and a copy of it has been delivered (or, to use the statutory language, served) on the Public Trustee in accordance with section 18(1)(b).

25. It is in that context, of a statute which defines sufficiency of service, that one returns to the saving clause in a particular notice to quit to see how it works. This saving clause (like most saving clauses) refers to a period running "from the service of this notice". It seems to me that District Judge Swan was entirely justified in construing those words as meaning from the date of sufficient legal service of the notice. Otherwise, the word "service" would have been unnecessary. Service in the context of this saving clause must mean sufficient or valid service. But Mr Kirk's submission, which logically he was driven to make, is that a saving clause was triggered or operated even in the context of service which was necessarily insufficient for want of compliance with section 18. That is not only an unattractive submission, but is, in my judgment, wrong as a matter of law. I accept Mr Davis' alternative submission that, on a true construction of the saving words read in the context of section 18, there can only be the running of time from proper service rather than partial service of a notice to quit. For my part, therefore, I would reject ground 1 of the grounds of appeal and uphold District Judge Swan on this point, expressing due deference to the contrary view reached by Deputy District Judge Brayfield in the *Hackney v Henry* case.

Ground 2.

26. I then turn to the second of the grounds of appeal in the instant case. On this ground Mr Kirk's submission has the attraction of great simplicity. His assertion is that it is well settled as a matter of law that a notice to quit must be clear as to the date on which it determines the tenancy. If the reasonable recipient of the notice cannot determine from it the date on which the tenancy ends or will end, then it fails for want of clarity. In support of that familiar proposition of the common law Mr Kirk deployed a wide range of authority, although it is probably not necessary to mention decisions other than that of the House in Lords in *Mannai Investment Co Limited v Eagle Star Assurance Company Limited [1997] AC 749.* Clarity has always been, in the common law, a requirement in relation to dates of delivery up and possession required by Notices to Quit. The question therefore for District Judge Swan in the instant case was whether the notice to quit here given was sufficiently clear in its effect to identify a future date for the determination of the tenancy. District Judge Swan accepted the submissions, repeated before me, of Mr Davis. They were to the effect that the important function of a notice to quit was to make the date of

determination of tenancy clear to the recipient tenant. In the instant case the recipient tenant was the Public Trustee. The Public Trustee received the notice on or about 24 April 2015. The Public Trustee will have appreciated from reading the notice (as any reasonable Public Trustee or tenant would) that the date of the 18 January 2015 had passed, and therefore the future date for delivery up of the tenancy could only be that found by the application of the saving words. The Public Trustee would have known, submits Mr Davis, that the notice to quit had been served on him on 24 April 2015, and that therefore the tenancy would determine 4 weeks hence, i.e. on or about 24 or 25 May 2015. As I have indicated, the learned judge was satisfied as to the correctness of that submission.

27. Mr Kirk submitted that this was to give undue weight to only one of the two methods of service envisaged by the provisions of section 18 and the Law Commission's report. The Law Commission's report directed, for the reasons explained in it, that under the future statutory arrangements both the prospective personal representatives of the late tenant and the giver of the notice would know when there had been effective service of a notice to quit so that they could, on each part, calculate any consequences and liabilities. From the giving landlord's point of view it would be important to know when the notice had been sufficiently served and operated to determine the tenancy, so that it would be known when the landlord was free to re-let. From the perspective of the personal representatives, or prospective personal representatives, it would be important to know when the liability of the estate for the payment of rent and other obligations under the tenancy had come to an end. So, submitted Mr Kirk, it was necessary that there be clarity for both giver and for recipient of the notice envisaged by the service provisions of section 18.

28. To strengthen that argument, Mr Kirk made the same point which had carried the day before Deputy District Judge Brayfield in the *Henry* case, namely that the statute envisages service of the actual notice to quit on the prospective personal representatives, and only a copy of it on the Public Trustee. This, submitted Mr Kirk, emphasises the importance of the question of clarity, not simply for the Public Trustee but also for the others to whom the notice is addressed. As I have indicated, District Judge Swan was satisfied that the requirement as to clarity was a requirement only in respect of the copy of the notice as received by the Public Trustee, and if the effect of the notice as received by the Public Trustee on 24 April 2015 was to determine by operation of the saving clause the tenancy on 24 or 25 May 2015, that was sufficient.

29. A different view had again been taken by Deputy District Judge Brayfield in *Henry*. According to the case note, his holding in respect of this second matter was as follows:

> "Even if the saving clause could be construed as proposed, it would not meet the common law requirement of clarity to the reasonable recipient. In the context of section 18, this required clarity not only to the Public Trustee (as termed) but also to the prospective personal representatives of the property (as addressees). In addition to being contrary to the plain meaning, Hackney's interpretation would require the prospective personal representatives to engage in the kind of complex and difficult exercise including obtaining contextual information to

> which they were not privy, i.e. the date on which a copy was sent to the Public Trustee."

I have not, in that extract from the note of the deputy district judge's judgment, mentioned the authorities to which reference is therein made. I have myself been taken to much the same material by way of authority.

30. To my mind, on this aspect of the grounds of appeal, it is the reasoning of Deputy District Judge Brayfield that carries the day. I consider, with great respect, that the reasoning of District Judge Swan was wrong. I reach that conclusion for reasons which I shall express in this summary form.

31. First, it is of importance and significance that, in the twofold service methodology set out in section 18, the actual notice goes to the property addressed to the personal representatives and only a copy of it to the Public Trustee. Secondly, it is important that in both notices there is set out the same date for termination of the tenancy, or the same rubric for determining the date. It cannot have been envisaged by the Law Commission, or by Parliament in enacting the 1994 Act, that the date for determination of the tenancy could or should be understood to be a different date in the hands of each of the two recipients, i.e. the addressees, the personal representatives, and the person to whom a copy was to be sent, the Public Trustee. Thirdly, it is important, particularly in the context of notices intended to determine interests, but also in relation to notices intended to affect interests, that the notices be clear. Mr Davis was inclined to submit that the notice only needs to be clear to the actual tenant who receives it. In my judgment, it is important that it is clear to that person, but it must also be clear to any other person who may legitimately have an interest in the validity of the notice or otherwise. One thinks of those who are sub-tenants of the true tenant, those with other interests contingent on the true tenant, the legal advisers of the true tenant, and indeed, as importantly, the landlord him or herself. They all need to know from an examination of the terms of the document itself, with clarity, when it determines the tenancy. In the instant case, for Mr Davis to be right and for District Judge Swan to have correctly held that the tenancy determined on 24 or 25 May 2015, that has to have been tolerably clear to the reasonable recipient of the copy of the original notice delivered on 19 December 2014. In my judgment, it is impossible to contend that the notice was so clear. The date stipulated in it was not the date of 24 or 25 May 2015, and there was no way of calculating that date on the face of the notice. It would only have been possible to calculate that date if one could speculatively have known on what future date the notice, or a copy of it, was served, if served at all, on the Public Trustee. But it seems to me that the point goes even further. Was the notice clear in the hands of the Public Trustee when he received it on 24 April 2015? Mr Davis submits that it was clear, because the Public Trustee could see by operation of it that the notice determined 4 weeks after the Public Trustee had received it. But I ask rhetorically: how could the Public Trustee be so satisfied unless he also knew that the original notice to quit had been served on the premises? He could not know that without further enquiry. In my judgment, although that is very much an aside, it seems to me that it cannot be said in this case that the notice to quit, as delivered to the premises, was clear.

32. In those circumstances, this notice to quit fails on the test of validity for a lack of clarity, in the sense that the recipient of it, when the notice is delivered, could not

reasonably understand from the notice the date on which the tenancy was to determine by operation of the saving clause.

33. On that basis, I consider, with great respect, that District Judge Swan was wrong and that the logic and reasoning of Deputy District Judge Brayfield in the other case was correct. It must follow that the declaration made that the notice to quit was valid was given in error and must be replaced by a declaration that the notice to quit did not validly determine the tenancy.

34. This appeal will accordingly be allowed.