IN THE CENTRAL LONDON COUNTY COURT

Case No. G00WT813

Courtroom No. 53

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

Friday, 1st December 2023

Before:
HER HONOUR JUDGE BAUCHER

B E T W E E N:

D'AUBIGNY

and

KHAN & ANOR

MR T JONES appeared on behalf of the Appellant
MS L HALLETT-LEA (Solicitor) appeared on behalf of the Respondents

JUDGMENT
(Approved)

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HHJ BAUCHER:

1. This is the appellant's appeal against the decision of Deputy District Judge Davis on 30 March 2023 when he made an order for possession on the mandatory ground of a notice under section 21 of the Housing Act 1988. Permission to appeal was refused on paper by HHJ Gerald on 31 May 2023. The appellant sought an oral hearing and on 28 September 2023, HHJ Bloom granted permission to appeal.

Background

2. The background to the appeal is common ground and I gratefully adopt the summary in Mr Jones' skeleton argument.
3. The claimants, the respondents in the instant appeal, are the landlord to the property known as Flat 3, Bullingham Mansions, Pitt Street, London, W8 4HJ. They issued a claim for possession of the property based on a notice requiring possession under section 21 of the Housing Act 1988. It was common ground between the parties that the respondents had to serve the appellant with the following documents prior to serving the notice: the gas safety record, the energy performance certificate and the document entitled "How to rent, the checklist for renting in England" as published by the Department for Communities and Local Government.
4. The respondents said they had served the appellant with the documents by post. However, the appellant disputed service on the basis that she did not receive them. The appellant argued that in the absence of a contractual clause permitting service of the documents by post, the respondents had to prove that they had come to her attention as per *Wandsworth London Borough Council v Attwell* [1995] 27 HLR 536. The deputy district judge found that the documents were properly served for the following reasons: that section 7 of the Interpretation Act 1978 applied to service of the documents and further, in the alternative, clause 13(2)(a) of the appellant's tenancy agreement provided for deemed service of notices and the word "notice" included documents that were prerequisites to notices such as the aforementioned documents.

Appeal and Respondent's notice

5. The grounds of appeal are:

> "Ground one. The learned judge was wrong to conclude that section 7 applied. The learned judge applied a purposive interpretation in concluding that section 7 applied and found that the underlying words were to be construed as meaning that any reference to statute to giving or serving documents was to be treated as synonymous with authorising or requiring service by post. The appellant will aver that there was no proper basis for concluding that Parliament intended by enacting section 7 or its predecessor for any reference in the statute to serving or giving documents to be construed as references authorising or requiring service by post. Rather, it simply provides for deemed service in circumstances where an act expressly authorises or requires postal service.
> Ground two. The learned judge was wrong to find that clause 13.2(a) applied for service of documents. The judge's finding was wrong because the documents were not mere prerequisites to service of

documents and the judge's interpretation implies that there is something for the document in question to be a prerequisite to."

6. The respondent's notice:

"That the same result would have been reached had the claimant been required to prove service at common law without the benefit of the deeming provisions. The lower court made the following findings of fact, that the *How to rent* booklet, the gas safety certificate and EPC were posted by the respondents by recorded delivery on 3 March 2020 to the correct address, named the appellant and were not returned. The Court accepted the entirety of the respondents' evidence on these matters. The appellant's case that she had not received the documents amounted to a bare assertion. Receipt of the section 21 notice was admitted by the appellant. The appellant had failed to prove on the balance of probabilities that she did not receive the documents. If the deeming provisions in 7(1) of the Interpretation Act and clause 13.2(2) of the lease did not apply such that the burden of proving service of the documents at common law fell to the respondents on the above findings of fact, the only conclusion the judge could properly reach is that service of the documents had been proven by the respondents to the balance of probabilities. In other words, this is not a case where the burden of proof formally rested on one party or the other or the deeming provision applied. Against the respondents' evidence as to service of the documents which the lower court accepted in its entirety was the bare assertion that the documents had not been received.

<u>The Law</u>

7. In relation to the law, CPR 52.21 provides that:

"(1) Every appeal will be limited to a review of the decision of the Lower Court unless:
   a) a practice direction makes different provision for a particular category of appeal; or
   b) the Court considers that in the circumstances of an individual appeal, it would be in the interests of justice to hold a re-hearing...

(3) The Appeal Court will allow an appeal where the decision of the Lower Court was:
   a) wrong; or
   b) unjust because of a serious procedural or other irregularity in the proceedings in the Lower Court."

8. CPR 52.20 provides that:

"(2) The Appeal Court has power to:
   a) affirm, set aside or vary any order or judgment made or given by the Lower Court;
   b) refer any claim for issue for determination by the Lower Court;
   c) order a new trial or hearing;
   d) make orders for the payment of interest;
   e) make a costs order."

9. In relation to the service of documents, Regulation 36(6) of the Gas Safety (Installation and Use Regulations) 1998 provides:

> "Notwithstanding paragraph (5) above, every landlord shall ensure that:
> a) a copy of the record made pursuant to the requirements of paragraph (3)(c) above is given to each existing tenant at the premises to which a record relates within 28 days of the date of the check; and
> b) a copy of the last record made in respect of each appliance or flue is given to any new tenant of premises to which the record relates before that tenant occupies those premises save that in respect of a tenant whose right to occupy those premises is for a period not exceeding 28 days, a copy of the record may instead be prominently displayed within those premises."

10. In relation to the energy performance certificate, regulation 6(5) of the 2012 statutory instrument provides:

> "The relevant person must ensure that a valid energy performance certificate has been given free of charge to the person who ultimately becomes the buyer or tenant."

11. The Deregulation Act 2015 as amended by the Housing Act 1988 together with Regulations (2) and (3) of the Assured Tenancy Notices and Prescribed Requirements (England) Regulations 2015, the result is that with effect from 1 October 2015, landlords are prohibited from serving notices requiring possession under section 21 of the Housing Act unless they have complied with Regulation 36(6), Regulation 6(5) and served the latest version of the *How to rent* booklet.

12. Section 7 of the Interpretation Act 1978 provides, under the heading "References to service by post":

> "Where an Act authorises or requires any document to be served by post (whether the expression 'serve' or the expression 'give' or 'send' or any other expression is used) then unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

The decision below

13. There is no transcript of the judgment. Counsel decided to proceed on the basis of an agreed note which reads as far as material:

> "Having considered it, I consider that Mr Bates is correct. In my judgment, words in brackets can and should be interpreted as substitutes as "served by post." That is a purposive interpretation of this statute and is to be preferred to the restrictive interpretation suggested by defendant. Consistent reference to "giving" shows Parliament intended all these provisions authorised service by post. Satisfied that section 7 does apply and presumption was engaged. Defendant has not proved she has not received them. It is a bare assertion that she did not receive them. That is insufficient to show they were not served. Rely on Morgan J's decision cited by Mr Bates. Not satisfied on balance of probabilities that she did not receive them. So, I am satisfied on basis

> of section 7 and facts that the documents were deemed served on 5 March 2020. Therefore, find they were served before the section 21 notice and it follows that the section 21 notice is valid. Claimant is therefore entitled to possession.
> Fourth issue only arises if I am wrong about section 7. Mr Bates says notice can include prescribed information. He says that the ordinary man would have understood notice to be sufficiently wide to include them. Mr Jones says not. These are not notices. I agree with Mr Bates. Seems to me that the tenancy agreement is an agreement between the parties. Not sought to restrict it to a particular kind of notice. Had they been asked if the word "notice" included documents which are required by section 1 as a condition precedent to a notice, they would have said "yes." Any reasonable and ordinary person would expect clause 13.2 to cover all relevant documents."

<u>The appellant's submissions in summary</u>

14. In relation to ground one, Mr Jones argued that the Interpretation Act only applies where an Act expressly authorises or requires postal service. Mr Jones submitted the deputy district judge was wrong to give a purposive interpretation to section 7 of the Interpretation Act 1978 when he construed the Act as meaning that any reference in statute to "giving" or "serving" documents was to be treated as synonymous with authorising or requiring service by post.
15. In support of his primary contention, Mr Jones relied on the decision in *Southwark London Borough Council v Akhtar* [2017] UKUT 150. In that case, the First-tier Tribunal found that service of the section 20B notice was covered by section 7 of the Interpretation Act.
16. On appeal, the Upper Tribunal said at paragraph 66:

> "The FTT found that at its paragraph 22, that section 7 applied to the section 20B notices. It noted that the Landlord and Tenant Act 1985 does not prohibit service by post and that service by post is permitted at common law; accordingly, the FTT said 'We infer that section 7 gives an implied authority to give a notice by post where that is permitted at common law.' The First Respondent says that is wrong. Mr Madge-Wyld cites a number of cases including *Postermobile Plc v Kensington & Chelsea RLBC* [2000] P & CR 524 as authority for the proposition that section 7 is not engaged where nothing is said about service by post. The Appellant does not express any disagreement with this. It seems to me that the First Respondent is right about this".

17. Mr Jones also relied on the underlying decision referred to in *Akhtar, Postermobile Plc*. Mr Jones submitted that in that case, the Town and Country Planning Regulations specifically referred to "notified in writing" and it was found that section 7 of the Interpretation Act did not apply as there was no express provision within the regulations which referred to service being permitted by post.
18. Secondly, Mr Jones contended the decision was absurd. He said the appellant agreed that "give" means "serve" but Mr Jones contended that it did not extend to service by post. He argued that based on the Deputy District Judge's construction, it was impossible to say whether postal service was "required" or merely "authorised" which resulted in confusion as

to interpretation that Parliament could not have intended. Mr Jones said that in other instances, Parliament had expressly made provision such as in section 99 of the Leasehold Reform, Housing Urban Development Act 1993: "Any notice…may be sent by post". In addition, section 233(2) of the Local Government Act 1972:

> "Any such document may be given to or served on the person in question either by delivering it to him, or by leaving it at his proper address or by sending it by post to him at that address."

19. Mr Jones said that here, the Act was silent and therefore, it was not possible to know whether it was a requirement so to serve by post or merely authorised.
20. The final strand of Mr Jones' submissions in relation to ground one was that the Deputy District Judge was wrong in concluding that the purpose of section 7 was to make service easier and that should "trump" the recipient's interest that the document should have been brought to their attention.
21. In respect of ground two, Mr Jones said that clause 13.2(a) in the assured tenancy agreement referred to "Any notice…. shall be deemed to have been properly served if (a) sent by first-class post to the property." Mr Jones submitted that the deputy district judge was wrong to extend the word "notice" to what the deputy district judge described as "documents" which were a prerequisite to a notice. Mr Jones argued they were not mere prerequisites, but documents that contain important information about gas safety, energy performance and how to rent the property. He said the documents were not appendices to anything, but separate documents. Thus, Mr Jones argued, that applying normal contractual principles, an ordinary person would have construed the clause as only applying to a notice.
22. In response to the respondent's notice, Mr Jones said the deputy district judge had not found that the documents had been hand-delivered to the property and that the deputy district judge's finding had to be considered in the context that the deputy district judge found the Interpretation Act applied.

<u>The respondents' submissions in summary</u>

23. Mr Bates contended that Mr Jones' submissions in respect of ground one were "bold." He said it was striking that there was no express provision in the Housing Act 1988 which permitted service by post so that if Mr Jones' submissions were correct, then all section 8, section 13 and section 21 notices were at risk. He said there was also no such provision in the Housing Act 2004 which covered the deposit scheme. Mr Bates argued that if Mr Jones' argument prevailed, then there was no purpose for the provision of the words "unless the contrary intention appears" in section 7 of the Interpretation Act.
24. Mr Bates argued that the prevailing authority is the Court of Appeal decision in *Freetown Limited v Assethold Limited* [2012] EWCA Civ 1657. He relied on paragraph 25:

> "In this context, I should also refer to section 17 of the Law of Property (Miscellaneous Provisions) Act 1994, which provides:
> '(1) Service of a notice affecting land which would be effective but for the death of the intended recipient is effective despite his death if the person serving the notice has no reason to believe that he has died.
> (2) Where the person serving a notice affecting land has no reason to believe that the intended recipient has died, the proper address for the purposes of section 7 of the Interpretation Act 1978 (service of documents by post) shall be what would be the proper address apart from his death.'

> It is submitted on behalf of Freetown that these provisions suggest that section 7 will at least generally apply to statutory provisions authorising or requiring the service of notices affecting land. I would accept that section 7 provides a general statutory code regarding sendings by post and that the statutory presumption is that it will apply- unless a contrary intention appears."

25. Mr Bates said that the underlying notice was irrelevant, and the critical question was whether the statute excluded service by post. He said in that regard, *Akhtar* did not provide support for Mr Jones' position as Southwark London Borough Council had not argued the point as they appreciated, they were going to succeed in the case in any event thus paragraph 66 was obiter. Mr Bates also submitted the underlying decision of *Postermobile* did not assist Mr Jones as in that case, the requirement was to "notify in writing" and the justices found that there was no evidence that any notice was sent and, therefore, inevitably, there was a finding that it was not received. Mr Bates said that was very far removed from the facts of this case.
26. In relation to the appellants' argument on absurdity, Mr Bates contended there was no absurdity. He said there was no tension between "authorise" and "require". He said the absurdity in this case was Mr Jones' disapplication of the five words in brackets in section 7 of the Interpretation Act.
27. In relation to the third limb of Mr Jones' submissions on ground one, Mr Bates said that the deputy district judge's finding was in accordance with the applied principle of certainty. In that regard, he relied on the Supreme Court decision of *UKI (Kingsway) Limited v Westminster City Council* [2018] UKSC 67 and Lord Carnwath at paragraph 16:

> "Specific statutory provisions such as paragraph 8 are designed, not to exclude other methods, but rather to protect the server from the risk of non-delivery. As was said by Slade LJ in *Galinski v McHugh* [1988] 57 P & CR 359, 365, in relation to a similar service provision in the Landlord and Tenant Act 1927 section 23(1)):
> 'This is a subsection appearing in an Act which … contains a number of provisions requiring the giving of notice by one person to another and correspondingly entitling that other person to receive it. In our judgment, the object of its inclusion ... is not to protect the person upon whom the right to receive the notice is conferred by other statutory provisions. On the contrary, section 23(1) is intended to assist the person who is obliged to serve the notice by offering him choices of mode of service which will be deemed to be valid service, even if in the event the intended recipient does not in fact receive it."

28. Mr Jones said that *Attwell* should be distinguished as it related to a notice to quit and section 196 of the Law of Property Act 1925.
29. In relation to ground two, Mr Bates said that the deputy district judge had asked himself the right question and that notice must refer to more than the document itself. Further, he said that the deputy district judge was right to consider the three documents which needed to be served as prerequisites to the notice as for the notice to be valid, the documents had to be served before the notice.
30. In relation to the Respondent's notice, Mr Bates argued that regardless of the court's findings in relation to the grounds of appeal, based on the deputy district judge's findings of fact, the only construction that could be placed on the findings was that the tenant had received the documents in any event.

Discussion

Ground 1

31. It was common ground that a requirement in a statute to give something to someone is as per Lord Salmon in *Sun Alliance and London Assurance Company Limited v Hayman* [1975] 1 WLR 177 at page 185 as expressly approved in *UKI v Westminster*:

> "According to the ordinary and natural use of English words, giving a notice means causing a notice to be received. Therefore, any requirement in statute or a contract for the giving of a notice can be complied with only by causing a notice to be actually received unless the context of some statutory or contractual provision otherwise provides."

32. In this instance, the deputy district judge found that the three documents were properly addressed and posted, and the bare denial of receipt was insufficient. The central dispute therefore turns on the deputy district judge's findings in relation to section 7 of the Interpretation Act.
33. I start with some uncontroversial observations concerning my approach to the interpretation exercise. The objective of any exercise of statutory interpretation is to determine the intention of the legislator and the starting point for that exercise is the ordinary grammatical meaning of the legislative provision under consideration. It is also not just the dictionary definition of each word, but the syntax of the expression used and its context. If the meaning is clear on its face, it follows there is no need to resort further unless the construction produces a result that is so startling that it could not have been intended.
34. Mr Jones' primary submission is that any Act must expressly authorise or require service by post. In my view, that leads to an attendant difficulty when section 7 is read in its context as Mr Jones' construction does not engage with Mr Bates' submission that such an interpretation renders the words "unless the contrary intention appears" redundant. I consider there is force in that submission. Whilst Mr Jones sought to persuade me that the words were not rendered redundant because Parliament could provide in a statute for authorisation by post, but nonetheless disapply section 7 for postal service, in my view, that argument does not withstand close scrutiny. If an Act authorises postal service then it is difficult to envisage why, or for what purpose, the Act would then require section 7 to be disapplied. Mr Jones was also unable to refer to any statutory authority to support that submission. In reality, Mr Jones' position must logically be that the words "unless the contrary intention appears" serve little or no purpose; which is not a promising starting point for an argument on statutory interpretation.
35. Further, Mr Jones' submission ignores the positioning of the words in parenthesis. The relevant word for the purpose of this appeal being "give" follows the words "where an Act authorises or requires any document to be served by post" and thereby, expressly follows the reference to service by post. When section 7 is read as a whole, in my view, the plain and natural meaning is therefore that when an Act authorises or requires a document to be served by post, that is permitted if the Act refers to "serve", "give" or "send." Those words are merely examples of where Parliament might use such words or similar in a statute to permit service by post, as in my view, it is made expressly clear by the addition of the words "or any other expression" used at the conclusion of the parenthesis. If Parliament does not want "give" to have that interpretation, then the words "unless the contrary intention appears" bite and have application.
36. Neither counsel was able to refer to any case directly on point. Mr Jones relied principally on *Southwark v Akhtar*. I do not consider that case is of any persuasive authority for the reason

Mr Bates submitted, namely, paragraph 66 of that decision was not a finding based on any legal submissions. Further, I find that the underlying case referred to of *Postermobile* does not lend Mr Jones' interpretation any support. In that case, the Queen's Bench Division was considering inter alia the application of town and country planning requirements and condition four which provides "at least 14 days before the advertisement is first displayed, the Local Planning Authority shall be notified in writing by the person displaying it." The appellants sought to rely on section 7 of the Interpretation Act and it was held that section 7 had no application. Whilst Mr Jones seized on that decision to lend support to his argument I am satisfied that the decision in relation to a planning law provision has no application as in my view, it is clear from Pill J's conclusion on the point at page 532 when he said:

> "In my judgment, the appellants have not established in this case that the appropriate notification in writing was given. Section 7 bears the heading 'References to service by post'. Condition four does not set out the manner of service and does not allow the incorporation of section 7. Its wording is plain: The Local Planning Authority 'shall be notified in writing'. Not only did the justices find as a fact that no such notice had been received, but there was no such evidence of such notification."

37. In that case, the appellants did not satisfy the court there was any evidence of any notification in writing. I find that is a very different case from one where there has been a finding a document has been sent and there is a statutory reference which uses the expression "give."
38. I, therefore, do not consider that either *Akhtar* or *Postermobile* are authority for the proposition that section 7 only applies when postal service is expressly authorised or required.
39. I find support for my interpretation from the decision in *Freetown Limited* because of the legal analysis which culminates at paragraph 25, when Rix LJ said:

> "It is submitted on behalf of Freetown that these provisions suggest that section 7 will at least generally apply to statutory provisions authorising or requiring the service of notices affecting land. I would accept that section 7 provides a general statutory code regarding sendings by post and that the statutory presumption is that it will apply unless a contrary intention appears."

40. I consider that statement of principle is of general application albeit that *Freetown* was a Party Wall case and there was an express provision in relation to postal service.
41. I also consider a broader interpretation for the application of section 7 of the Interpretation Act is consistent with the leading textbook, *Woodfall: Landlord and Tenant* whose learned editors consider at paragraph 17.242 of their work that section 7 is applicable to a notice to quit.
42. I do not consider that such construction of the application of the Interpretation Act produces an absurd result as Mr Jones contended. I also do not consider that such argument is informed by reference to other statutory instruments such as the Civil Procedure Rules or section 99 of the Leasehold Reform, Housing and Urban Development Act 1993. I do not consider there is any inherent tension in the Act between the use of the words "authorise" or "require". It depends on the Act and the statutory provision. Here the landlord was required to "give" three documents.
43. In relation to the third aspect of Mr Jones' submission, I am satisfied that the deputy district judge was entitled to find that a purposive construction was consistent with promoting certainty in favour of the sender. I consider that is entirely consistent with the approach endorsed in the decision of *UKI (Kingsway) Limited v Westminster City Council*.

44. Finally, for the sake of completion, and in deference to counsel's submissions, I do not consider that *Wandsworth LBC v Attwell* [1997] HLR 536 has any material bearing on the matter for my determination as it relates to the service of a notice to quit and section 19 of the Law of Property Act, not the application of the Interpretation Act.
45. Thus, for the reasons given I reject Mr Jones' approach to the construction of section 7 of the Interpretation Act and ground one is accordingly dismissed.

<u>Ground 2</u>

46. Neither counsel relied on any legal authorities in respect of my approach to this exercise. However, it was evident from the legal submissions that the basic legal principles as to the interpretation of contracts was not in dispute. In *Wood v Capita Insurance Services Limited* [2015] EWCA Civ 839, Lord Hodge said at paragraph 10:

> "The Court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. It has long been accepted that this is not a literalist exercise focused solely on a parsing of the wording of the particular clause but that the Court must consider the contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning."

47. It was that objective approach that the deputy district judge adopted in the instant case. The clause the district judge considered reads:

> "Any notice sent to the tenant under or in connection with this agreement shall be deemed to have been properly served if sent by first class post to the property."

48. Counsel concentrated their submissions on considering whether the three documents were prerequisites to the notice or were separate documents in their own right. In my view, there was no need to descend into such granular detail because when one stands back and considers the entire sentence in the contract, I consider that any objective analysis leads only to one clear outcome. As with my analysis of the Interpretation Act, words in an agreement have a purpose. Here, there was not only an express reference to "notice" but the words that follow are significant: "under or in connection with this agreement". I do not consider that the restrictive interpretation that Mr Jones seeks is borne out by the plain and natural construction of the clause.
49. First, notice is not defined by a capital letter which in my view, it should be if "notice" is to be confined as Mr Jones seeks to notice per se and nothing else. Secondly, if "notice" is simply confined to a notice in abstract, then there would be no purpose for the words "or in connection with." I find that on an objective analysis those words clearly encompass the three documents in issue. Thirdly, while I accept that each of the three documents have an importance in their own right, I concur with Mr Bates that any objective construction of the clause would include any documents which are required to be served prior to a section 21 notice being valid. To hold otherwise and to descend into a debate as to whether documents or appendices such as rent statements reveals the absurdity of the construction Mr Jones seeks.
50. In my view, on a plain and natural reading of the entire sentence, a reasonable person would have understood the parties to have meant by the word "notice" and following words that the notice encompassed documents such as the three in question. Such a construction accords with common sense.

51. For all these reasons given I find the deputy district judge was entitled to find that the clause encompassed the three documents and accordingly, ground two also fails.

Respondent's Notice

52. In relation to the Respondent's Notice, it is, therefore, strictly unnecessary for me to turn to it but I shall do so briefly in deference to counsels' submissions.
53. The findings of the deputy district judge were clear, and they were not the subject of appeal. He found: all three documents were sent, they were sent to the correct address, they named the defendant, they were not returned, the method of service had been effected to bring the section 21 to the attention of the tenant and the tenant's only evidence was a bare denial of receipt.
54. I am not persuaded that *Wandsworth v Attwell* provides an answer to the appellant as in every case it is a question of fact. Whilst I accept that the deputy district judge's findings were in the context of him finding that the Interpretation Act applied, I do not consider that for the respondent's argument to hold sway further evidence needed to have been adduced at the hearing before the deputy district judge and that the respondent needed to have put to the tenant that the documents had come to her attention. There are two ways of "giving"; actual and deemed. In my view, given the deputy district judge's findings included that the section 21 notice had been received and come to the appellant's attention, I consider that the only conclusion the deputy district judge could properly have reached, had he been required to do so, was that the service of the documents had been proved by the respondents on the balance of probabilities.
55. Thus, had I been so required, I would have upheld the decision of the deputy district judge on the basis that the same result would have been reached if the respondent had been required to prove service at common law without the benefit of the deeming provisions.
56. It follows for the reasons given that the appeal is dismissed.

End of Judgment.

Transcript of a recording by Acolad UK Ltd
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This transcript has been approved by the judge.