

**IN THE DARTFORD COUNTY COURT**

Home Gardens  
Kent

**Before HIS HONOUR JUDGE PARKER**

**IN THE MATTER OF**

**MANJIT KAUR SANGHERA**

**(Claimant/Respondent)**

**-v-**

**(1) OSARETIN CELIA OSAGIEDE**

**(2) OGHOMWEN OSAGIEDE**

**(Defendants/Appellants)**

**THE FIRST AND SECOND DEFENDANTS/APPELLANTS appeared in person**  
**MR DIAMOND appeared on behalf of the Claimant/Respondent**

**JUDGMENT**

**23<sup>rd</sup> NOVEMBER 2023**

**(AS APPROVED)**

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*WARNING: This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.*

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JUDGE PARKER:

1. I am now giving judgment in the case of Sanghera and Osagiede. This follows a hearing today of the appeal by the defendants, Mr and Mrs Osagiede, against a possession order made by Deputy District Judge Cockburn on 31<sup>st</sup> August 2022 in relation to 23 Maritime Gate, Gravesend.
2. The appeal was proceeding on three grounds, but I only heard argument about Ground 3, as that is the ground with which Mr Osagiede - who presented the appeal in person - chose to start. I did not go on to consider the other grounds because, after discussion, Mr Diamond who appears for Mr Sanghera conceded that Ground 3 was correct.
3. I will attempt to describe briefly what Ground 3 is about. The possession order of Judge Cockburn was granted under s.21 of the Housing Act 1988. For a notice under s.21 to be valid, numerous formalities have to be complied with. One of those formalities is that the then current version of the How to Rent guide should be given to the tenant before the s.21 notice is served. If that has not been done, a s.21 notice is not valid.
4. The possession claim was brought using the standard form N5B. That form goes through, as best it can, by asking a series of questions about them, the different formal requirements - including the issue of the How to Rent guide. In filling out that form, the claimant or her lawyers said that the then current version of the How to Rent guide had been provided to the defendants on 19<sup>th</sup> June 2019. The date of 19<sup>th</sup> June 2019 is the date when the defendants were granted a tenancy by the claimant.
5. The possession claim form then requires the claimant to attach copies of the documents that were served, which are to be marked as "H". That was done in this case: what we find at "H" is a certificate of service apparently signed by the claimant herself saying that, on 19<sup>th</sup> June, the How to Rent guide was served by hand by the claimant's agent, Orange Property Services (UK) Limited.
6. Clearly, or at least very probably, something was handed over on 19<sup>th</sup> June. I say that because, on the final page of the tenancy agreement, the tenants signed to acknowledge receipt of a number of documents one of which was described as the How to Rent guide. That acknowledgment did not refer to which version it was of the How to Rent guide that had been provided.
7. What is attached to the certificate of service which I have just mentioned is a copy of the How to Rent guide (as required by the form N5B): that copy of the guide is dated (on page 2) May 2019. That, however, appears to be a misleading date.
8. How to Rent guides have a long history of being amended from time to time by the Ministry of Housing (or whatever it may be at the time). The relevant history is as follows: up to and including 30<sup>th</sup> May 2019, the current version of the How to Rent guide was a version issued in 2018. The How to Rent guide was amended on 31<sup>st</sup> May 2019 to include a reference to the Tenant Fees Act 2019, parts of which came into force on 1<sup>st</sup> June 2019.
9. The How to Rent guide was further amended on 3<sup>rd</sup> June 2019 to correct the name of one of the professional bodies which accredits letting agents.
10. The How to Rent guide was then altered again on 29<sup>th</sup> July 2019. The alteration was to page 4. The previous version which was current until then contained a final paragraph which

ended by saying: “You can ask Shelter for help”. From 29<sup>th</sup> July 2019, that sentence in the How to Rent guide instead read: “You can ask Shelter for advice”.

11. The document attached to the certificate of service, which was said to have been served on the defendants on 19<sup>th</sup> June, is demonstrably the version which was only introduced on 29<sup>th</sup> July 2019, because it refers to asking Shelter for advice. Mr Diamond conceded that the document attached to the certificate of service cannot possibly have been the document which was handed to the tenants on 19<sup>th</sup> June. The document attached to the certificate of service did not exist at that time.

12. So we start with a claim form which asserts that something was given to the defendants which clearly was not given to them

13. When the defendants managed to secure a hearing of the possession claim, a possession order made on paper having previously been set aside, the claimant obtained a witness statement of the letting agent, Mr Stone. Mr Stone dealt with this at paragraph 7 of his witness statement dated 7<sup>th</sup> May 2022. He referred to the acknowledgement receipt on the tenancy agreement and he said: “The defendants are put to very strict proof they didn’t receive a copy of the How to Rent guide as alleged, given that the evidence clearly suggests otherwise. For the avoidance of doubt, I also confirm that the How to Rent guide provided to the defendants was in fact the then current 2019 version”. That is not a clear statement: as I have shown, from the beginning of 2019 up to July 2019, there were four different versions which were current at various different dates.

14. There is no explanation from Mr Stone in his witness statement or anywhere else, and there is no explanation from the claimant anywhere, as to how the wrong document came to be attached to the particulars of claim.

15. Beyond that, there appears to be only one further piece of documentary evidence that is relied upon by Mr Osagiede. It is an email from Amanda Parkes of the claimant’s letting agency, Orange. It was sent to the defendants on 28<sup>th</sup> August 2019 and it simply says this: “Due to the tenants fee laws changing as of 1<sup>st</sup> June this year, please find attached a copy of the updated version of the How to Rent document”.

16. The defendants have effectively put the claimant to proof as to whether the then current version of the How to Rent guide was served on them. The claimants do not seek to say that there was any valid service of the current version of the How to Rent guide on a date later than 19<sup>th</sup> June 2019. I should add for completeness that the emailing of a copy of the How to Rent guide in August (whatever version it may have been) would not have counted as effective service because it was only delivered by email: the claimants cannot identify any provision in the tenancy agreement or anything said by the defendants to permit service by email.

17. The claimant’s case thus stands or falls on whether the then-current version of How to Rent was in fact provided to the defendants on 19<sup>th</sup> June 2019.

18. As to this, the first difficulty is an obvious one. The claimant has asserted, supporting it by a statement of truth, that a particular document was handed to the defendants. It was impossible that it could have been. If it had been, it would not have been the then current version. It was the version that only became current at some future date. There is clearly something wrong with the claimant’s evidence.

19. Mr Stone's witness statement, in my view, is of no assistance to the claimant. The inaccuracy in the particulars of claim raises real concerns about the reliability of what is said by and on behalf of the claimant. Mr Stone does nothing to allay those concerns, but just makes a general assertion that was provided was the current version - indeed, by saying so he betrays a lack of understanding of whether there was more than one current version in 2019.

20. Then there is the email of August 2019. That is an interesting document. The stated reason why that email was sent is that the tenant fee law changed on 1<sup>st</sup> June. The sender of the email appears to have thought that the tenant had not received a copy of the How to Rent document which dealt with the new Tenant Fees Act, which came into force on that date. If that is right, it would mean that all the defendants had received would have been a version of How to Rent which preceded 31<sup>st</sup> May - because from 31<sup>st</sup> May the How to Rent guide did talk about the Tenant Fees Act. The email thus suggests that the sender, Ms Parkes of the claimant's letting agents, considered the tenants had not received the then current version on 19<sup>th</sup> June 2019.

21. This point about the How to Rent guide was one which the Defendants raised but which was not considered in any detail by the DDJ. It is not clear to me what her reasons were for rejecting it. It does not seem to me that anything would be gained by remitting the case for another hearing, as it involves only written evidence which I am in an equally good position to assess. If I put all that evidence together and consider whether the claimant has shown on the balance of probabilities that the then current version of How to Rent was served on the defendant on 19<sup>th</sup> June 2019, it seems to me the answer must be: no, she has not established that. The s.21 notice relied upon to support the possession claim cannot be valid and the possession claim must be dismissed.

22. The appeal is allowed. The possession order is set aside. This possession claim is dismissed.

23. I understand there is another possession claim pending, and nothing I have done today makes any difference to the position in that claim.

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This transcript has been approved by the Judge