Are you being served?

The implications of the Supreme Court's decision in *UKI (Kingsway) Limited v Westminster City Council*.

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UKI (Kingsway) – context

- Common ground – property can't be entered in rating list in existing state without deemed completion provisions in s.46A/schedule 4A
  - The completion notice procedure is the only way of entering a building which is not in fact ready for occupation into a rating list; even if the building is very nearly ready to be occupied, without a completion notice it will never be able to enter the list until actually complete

    See:-

    Porter (VO) v Trustees of Gladman Sipps [2011] RA 337 at paragraph 66 (offices)

    Aviva v Whitby (VO) [2014] RA 61 (confirms Porter and applies it to warehouses)

Completion notices

- Two types of completion notice exist:

    a. **Sch 4A para 1(1): building reasonably expected to be completed within three months. BA must serve the notice as soon as reasonably practicable**

    a. Sch 4A para 1(2): building has in fact been completed.

UKI (Kingsway) Ltd v Westminster City Council

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- Completion notice addressed to “the owner” left with receptionist employed by facilities management company
- Soft copy forwarded by email to owner
- Issue is whether deemed completion date under schedule 4A had been triggered

Two key issues

- Does it matter that the notice only reached the owner via the receptionist who was not authorised to accept service? (the indirect receipt point)

- Does it matter that the owner never received the hard copy notice but only a scanned version sent by email? (the electronic service point)

Decision different at every stage of appeal process

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- VTE – not validly served because not addressed to owner properly and original not received
- UT (LC) – eventual (indirect) receipt by owner is enough; fact that electronic copy rather than hard copy also not fatal
- CA:
  - 1. Must be service by billing authority; UT (LC) went too far in deciding that indirect communication via unauthorised agent was good service by billing authority

    (stresses need for certainty and tax context)
  - 2. minded to accept ratepayer's argument that electronic service is not valid but does not need to decide.

Underlying tensions

- Deeming provision which triggers liability for tax against taxpayers interest vs “common law rules”
- Certainty in other cases vs fair result in this case
- Public law vs property law

- Ordinary notices vs special notice that affects multiple parties (billing authority, ratepayer and VO)
- Incremental innovation vs deliberate statutory framework

Supreme Court – approach to indirect service

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- Critical issue is whether billing authority "caus[ed] the notice to be received (see paras 15, 32, 36-39)
  - Para 36 "must be a sufficient causal connection between the authority's actions and the receipt of the notice by the recipient"
  - Receptionist passing on was "natural consequence of the Council's actions" (para 37)
  - Fact that Council not in control of receptionist is not fatal – "causation does not necessarily depend on control" (para 38)
  - Needs to be "actual receipt of the notice, and a sufficient causal link with the actions of the council" (for indirect receipt to count as service by the Council)

Supreme Court – indirect service

- Seems to distinguish other unauthorised agent cases (eg sols not authorised to accept service/potentially rating surveyor without authority to accept service) due to “purely mechanical role played by receptionist in this case” (para 41)

- But….

Does this create a workable boundary?

What is the situation if an unauthorised agent receives a notice that s/he is not authorised to receive and passes on to principal?

Does this put solicitors/rating practitioners who receive a notice in an invidious position?

Electronic communication

- Supreme Court applies permissive approach to service by fax (Hastie) to service by email
- Rejects argument that Electronic Communication Act provisions restrictively regulated use of email to specific cases where consent was given

Implications:

- Completion notice can be served by email without consent?
- What constitutes receipt? ends up in junk mail? held on server by firewall?

Where are we now?

- SC confirm that modes of service stated in para 8 of schedule 4A of LGFA 1988 and s.233 of LGA 1972 are permissive

- If one of these is used, Council protected from the risk of non-receipt (see para 16 of Supreme Court judgment; citing Galinski v McHugh)

- If different method of service is used then Council must prove receipt (in time) but indirect (eventual) receipt may well be enough provided that there is a sufficient causal link between the actions of the council and the actual receipt of the notice

- Other methods of service now include electronic service

Potential problem case – wrongly addressed notices

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- UKI Kingsway concerned a notice which was not addressed to the owner by name; what is the position when the notice is received by the owner is misidentified?
  - Issues – is there actual receipt by the real owner?
  - Does it "fairly convey to the recipient what is the subject matter of the notice" (Henderson v Liverpool MDC [1980] RA 238) (case about the property in question but can it be adapted in circumstances where the correct owner receives the notice which is wrongly addressed (but knows that he is the correct owner).

    See also discussion in Weekes: Property Notices (2nd ed) at pp.80-83 about misaddressed notices which have sufficed in all the circumstances to convey the required information to the right person. Post UKI Kingsway; these property cases are likely to be applicable.

How to challenge effectiveness/validity of c/n

- proposal to delete list entry – clear!
  - See:-
    - Prudential Assurance v VO [2011] RA 337
    - R (Reeves (VO) v VTE [2015] EWHC (Admin) 973 at 21, 23
    - Delph Properties v Alexander (VO) [2018] RA 343 confirms
    - NB – this is the route taken in UKI Kingsway itself
- moot point about whether schedule 4A appeal works (see Reeves at para 26). But see:-
  - Spears Brothers v Rushmoor BC [2006] RA 49 (notice quashed under schedule 4A appeal)
  - Provident Mutual Life Association v Derby [1981] 1 WLR 173 at 177 ("obvious convenience" of raising validity as part of appeal)

  (may be remedy issues under schedule 4A route eg Reeves)