

**IN THE COUNTY COURT AT CENTRAL LONDON**

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

Date: Tuesday, 16th February 2016

**Before:**

**HIS HONOUR JUDGE DIGT**

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**Between:**

**COWTHORPE ROAD 1-1A Freehold Limited**

**Claimant**

**- and -**

**AHMED WAHEDALLY**

**Executor of Zubeida Ahamadally**

**Defendant**

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**MR. JONATHAN UPTON** (instructed by **Comptons Solicitors**) for the **Claimant**  
**MR. RICHARD CARROLL** (instructed by **Hanson Young**) for the **Defendant**  
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**Approved Judgment**

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**HIS HONOUR JUDGE DIGHT:**

1. The sole question before me is whether a landlord's counter-notice purportedly served under section 21 of the Leasehold Reform Housing and Urban Development Act 1993 ("the Act") admitting the tenant's right to acquire his interests in a building but challenging the purchase price was served in time. If it was not served in time the court may order that the tenants are entitled to acquire the freehold on the terms of the notice, in other words at the price specified by the tenant but not that specified by the landlord who cannot thereafter challenge the terms of acquisition.
2. The claim relates to the freehold of a property known as 1 and 1A Calthorpe Road, London SW8, title to which is registered at Her Majesty's Land Registry under title number LM102783. The defendant is the sole registered proprietor of the freehold. The building, which is self-contained, comprises two flats, both of which are held by qualifying tenants under long leases granted in 1984 and 1985. The tenants served an initial notice seeking to exercise their right of collective enfranchisement under section 13 of the Act and appointed the claimant as the nominated purchaser under the Act. The defendant purported to serve a counter-notice via his solicitors; that service is at the heart of the issue that I have to determine.
3. I heard no live evidence in this case but I read witness statements from the parties' respective solicitors, a number from each side, and a witness statement made on 11th February 2016 by a Mr. Narendra Pattni, the defendant's accountant.
4. The factual background is as follows. On 8th April 2013 the tenants served their initial notice under section 13 of the Act under cover of a letter dated 8th April 2013. The proposed purchase price was £41,550. By paragraph 10 of the notice the tenant stated:

"The address in England and Wales at which notices may be given to the nominee purchaser under Part I, Chapter II of the Act is: c/o Comptons Solicitors LLP, 90-92 Parkway, Regents Park, London NW1 7AN."
5. Then it gives the reference of the partner in the firm who had conduct of the matter. By paragraph 11 the notice stated:

"The date by which you must respond to this notice by giving a counter notice under section 21 is:-  
  
15th June 2013."
6. It is common ground that that date was a Saturday. The covering letter in the body stated that the solicitors acted for the tenants and said in the second main paragraph:

"We enclose herewith Notice pursuant to Section 13 of the 1993 Act by way of service."

It is common ground that the top copy of that letter contained at the foot the sentence:  
"We do not accept service by email."

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7. The counter-notice was purportedly served under cover of a letter which was dated 13th June 2013. The copy in the bundle before me is date stamped by the recipient, namely the claimant's solicitors, as 17th June 2013. It is not in dispute that this is the top copy of the letter enclosing the counter-notice which was received in the post on the morning of Monday, 17th June 2013 from the defendant's solicitors. That letter states in the top left-hand corner that it is served by fax, email and post, in the body it says:

"We refer to your letter dated 8th April 2013 together with the Section 13 Notice served thereunder.

In response, we confirm that we act for and on behalf of our above named client. [That is the defendant] Pursuant to instructions, we enclose by way of service the Reversioner Counter-Notice, (are [our] client) pertaining to the above property.

Perhaps you would be kind enough to acknowledge receipt."

8. By the counter-notice which, in contrast to the date of the covering letter, is dated 14th June 2013, admits the right of the tenant to exercise a right to collective enfranchisement, it does not accept the proposals contained in the initial notice and proposes a purchase price of £60,000. It is signed by the defendant's solicitors as agent, as it says, for the revisioner, I think it means reversioner, and identifies the defendants.
9. Chronologically I have been referred to two relevant emails. The first sent from the defendant's solicitors email address vpatel@hansonyoung.co.uk to the claimant's solicitors email address jc@comptons.co.uk on 14th June 2013 timed at 16.47, the attachments said to be a letter to Comptons 14th June 2013 and counter-notice completed being a PDF. The body of the email says:

"As a matter of professional courtesy we enclose unsigned copy of our clients' section 21 Counter Notice and covering letter".

10. In a second email of the same date addressed by Mr. Patel to Comptons, the same email addresses being used, purportedly attaching a letter to Comptons and counter-notice in PDF format, the solicitors say:

"Dear Sirs,

We refer to our earlier and attach by way of service signed copies of our letter and Section 21 Counter-Notice in the above matter.

We have also tried to effect serve the signed copies by fax but we are unable to do so due to your fax machine being malfunctioning. We have spoken to your office (David) and he confirmed that your fax machine was not working properly for reasons unknown.

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We will continue to try and serve the documents by fax."

11. The difference between that email and the earlier email is that there is on that second email a line headed "tracking" which suggests that the email had been read by the intended recipient at 17.25 on 15th June 2013. The second difference is that the email purported to enclose signed copies of the letter and section 21 counter-notice. It is to be noted that at the foot of both emails is a statement by Mr. Patel in the following terms: "This firm does not accept service by email or by fax".
12. The date for service of the counter-notice specified in the section 13 initial notice expired on the following day, 15th June and, as I have already said, the hard copy of the original counter-notice and covering letter arrived in the post on 17th June. The defendant asserts that in addition to the attempted faxes and emails of the various documents that have been mentioned so far, they caused a copy of the counter-notice and letter to be inserted through the letter box of the claimant's solicitors on 15th June before expiry of the time for doing so referred to in the initial notice.
13. The claimant's solicitors do not accept that they received hard copies of the covering letter and counter-notice otherwise than through the post on 17th June. In their letter of 27th June 2013 they say to the defendant's solicitors:

"Further to your letter dated 13th June 2013 (received by post on 17th June 2013) we acknowledge receipt of the Section 13 Notice but without prejudice to the fact that the same was not served prior to 15th June 2013.

We are concerned that you have sought to manipulate the dates in your letter. Pursuant to the authority of *Calladine-Smith v Saveorder* 2012 we put you to strict proof that your original Counter Notice was received by us before 15th June 2013. If you are unable to provide evidence (such as a signed recorded delivery or courier note) then we are instructed to apply to the County Court for a declaration that our clients are entitled to the freehold upon the terms as set out in its initial Notice. In such an event our clients will seek costs against your client which will be asked to be deducted from the premium.

We await hearing from you within 7 days from the date of this letter failing which we will proceed as above without further notice."

14. The defendant's solicitors deny receipt of that letter suggesting that they only received a copy of it on 16th July 2013 and by their letter of 31st July 2013 they say in so far as material as follows:

"As far as we are concerned it is somewhat disingenuous for you to challenge the date of service of our client's Counter Notice ('the Notice').

The fact of the matter is that on 14th June 2013, we made numerous unsuccessful attempts to serve the Notice by fax. On

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telephoning your office, the writer was informed that your fax machine was not working properly (see attached failure reports). In the circumstances, it was suggested that we should transmit the Notice by email. We duly did so by two tracked emails sent to you on 14th June 2013 at 16:47pm and 17:25pm. Within nine seconds of dispatch of our second email we received a computerised 'read' receipt which indicated that the recipient had received and read our earlier tracked email. Printed copies of the sent emails and 'read' receipts are enclosed.

We therefore submit that the notice effectively served on 14th June 2013, i.e. on day before the deadline.

Nevertheless, as a matter of completeness, we also arranged for the Notice to be served personally at your above address by insertion through your letter box on 15th June 2013. We will obtain and produce a certificate of service from the person who effect personal service.

Further, as the 15th June 2013 was not a working day (i.e. it was a Saturday), we also served the Notice by first class ordinary post, which would have been delivered the following day, at the earliest.

In the circumstances we are completely mystified as to how to you could contend that the Notice was not received until 17th June 2013.

Further, it seems to us that in calculating the period for service you have failed to make requisite allowance for the fact that 15th June 2013 fell on a Saturday.

Whichever way one looks at it, the indisputable fact of the matter is that the Notice was properly served before expiry of the time limit. There is no requirement for the Notice to be served before 15th June 2013."

15. I pause there to note, first, that notwithstanding the assertion that a certificate of service would be produced, none was produced. Secondly, although there is reference to personal service in that letter and, indeed, elsewhere in the material which has been put before me, it is common ground and the defendant accepts that personal service was never made or attempted, that being a misuse of the word "personal" in the context of this case is intended to be reference to insertion of a copy of the letter and counter-notice through the post box of the claimant's solicitors.
16. With that impasse having been reached the claim was issued in the Croydon County Court and was met by a response dated, I think, 29th August 2013 in paragraphs 3 and following of which the defendant sets out its formal position. The defendant says in that paragraph among other things as follows:

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"(a) the defendant avers that the Counter-Notice was properly and effectively served on the Claimants solicitors on 14th June 2013. Additionally, as a matter of completeness the said counter-notice was also personally served on 15th June 2013.

(b) The Defendants solicitors Hanson Young served the Notice on the Claimants solicitors both on 14th and 15th June 2013.

(c) On 14th June 2013 Hanson Young made numerous unsuccessful attempts to serve the Notice by fax. The Claimant's solicitors were telephoned on the same day and they confirmed that the fax machine was not working properly and it was suggested that the Notice is transmitted by email.

(d) Hanson Young duly transmitted by two tracked emails sent to the Claimants solicitors on 14th June 2013, [it says 2013] at 16.47pm and 17.25pm. Within 9 seconds of the dispatch of the second email Hanson Young received a computerised 'read' receipt which indicated that the recipient has received and read the earlier tracked email.

(e) In the circumstances the defendant submits that the counter notice was effectively served on 14th June 2013 and the Claimant's claim be dismissed.

(f) For the sake of completeness a further copy of the Notice was served personally at the Claimants solicitors address by insertion through the letter box as the 15th June happened to be a Saturday.

(g) In the circumstances the defendant avers that the Counter Notice was further effectively served on the 15th June 2013.

(h) Further as 15th June 2013 was not a working day (that it was a Saturday) Hanson Young also served the Notice which first class ordinary post which would have been delivered the following day.

(i) In all the circumstances the defendant submits that there was proper service of the Counter Notice and the relief sought by the Claimant be dismissed.

4. Further and in the alternative as the 15th June was on a weekend it is submitted that a proper date for the expiry of the Notice period should be the next working day, namely 17th June 2013."

17. That response was verified by a statement of truth signed by Mr. Viresh Patel, the partner in the firm of solicitors Hanson Young acting on behalf of the defendant. The relevant evidence appears in the witness statements that I have already referred to.

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Mr. Compton in his witness statement of 23rd January 2014 says, among other things, in paragraph 4 in respect of the purported service by email as follows:

"With regards to service by email as stated by our firm's headed note paper our firm does not accept service in this manner and in any event service by such a method is not permitted under Section 99 of the 1993 Act. As to the allegation that the Notice was served by hand we have asked for evidence but none has been supplied. Only one Counter-Notice has ever been received and that was that [*sic*] received by post at my firm's address on Monday 17th June 2013."

18. In his second witness statement made on 3rd February 2016 Mr. Compton gives further evidence about the emails that were sent by the defendant's solicitors. In paragraph 3 of that witness statement he says:

"It would only have been a copy of that sent by post. This firm's office hours are 9.15am to 5.15pm. I cannot recall receiving any email directly from Hanson Young dated 14th June 2013. I recall that a single email containing an attachment was received by my assistant, Vijya Patel, which was forward to me. This email was received by us out of office hours and I believe that this was after Mr. Patel had left the office for the weekend. The email is it not come to my attention until I opened the said attachment on Monday 17th June 2013. I subsequently deleted it when I noted that the attachment had been a copy of what appears to be a Counter Notice sent by post as I do on all such occasions. This is because it is a strict policy of this firm (as detailed on our headed note paper) not to accept service of a Counter Notice by email given that we deal with high volumes of statutory enfranchisement and lease extension claims and the serious consequences in the event a Counter Notice was not emailed and not dealt with."

19. Mr. Patel himself gave evidence in a number of witness statements. In his witness statement of 27th January 2014 he dealt with the service of the counter-notice in paragraph 7 in the following terms. He referred to having sent the counter-notice by email, fax and post and then said that he had difficulty in faxing and as a result telephoned the claimant's solicitors office and was informed that there was a problem with their fax. In addition he arranged for a courier to deliver the counter-notice to the claimant's solicitors on Saturday, 15th June and requested confirmation from the courier firm. They are presently checking their archive for the relevant record and will forward this as soon as it is received.
20. That statement was made on 27th January 2014. The record that is referred to there has not been produced. In his further witness statement dated 11th February 2016 Mr. Patel refers under the heading, "Personal service" to the witness statement of Mr. Narendra Pattni whom I have already mentioned and then goes on to say "which clearly states the physical delivery of the counter-notice".

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21. I will turn to that witness statement in due course. He also says in paragraph 4(d) that having attempted to fax the notice he then telephoned the claimant's solicitors and then he says: "... only to be informed by David that their fax machine was not working."
22. Mr. Pattni's witness statement also made on 11th February 2016, describes himself as an accountant who had known Mr. Patel in a personal and professional capacity for a number of years and then set out in the body of his witness statement the steps that he took to serve the counter-notice on the claimant. He says in paragraph 2:
- "On 14th June 2013 Mr. Viresh Patel telephoned me to request a favour to delivery some documents which he passed by email to a mutual friend Younus who intended being in the area early next day and if for some reason he could not deliver the same he would email me and I would arrange for the delivery of the said documents. As a result I received a email with the documents on Friday 14th June 2013 at 18.33pm. He produces a copy of the email]
3. As I could not personally deliver them to Compton solicitors I arranged for a mini cab to pick them up on 15th June 2013 for delivery. The minicab company was called Liberty cars based at 214-216 Preston Road, Wembley, Middlesex HA9 8PB. These documents were picked up on the morning of 15th June 2013 and to the best of my knowledge and belief were delivered around 12 noon.
4. The nature of my work involved me being out of the country on numerous occasions and sometime in 2014 I was contacted by Mr. Viresh Patel to obtain details of the delivery from the minicab company. I contacted them and was informed that as the matter was a year old they did not keep records. This company no longer exists and presently a company called radio cars operates from the same address.
5. As I did not have an account with Liberty cars I would have paid them in cash. I subsequently called the minicab office and was told that the documents had been delivered around 12 noon. I recall informing Viresh Patel that the documents had been delivered over the weekend."
23. The email that he refers to is part of a chain which starts with the 17.25 email from Mr. Patel to Comptons. On the face of it, it does not at that point specifically refer to an attachment. That is then sent by Mr. Patel a moment or so later to his own email address, a personal one I infer from the address given.
24. He then sends that on, at a time which cannot be ascertained from the document itself, to an address which is younus29@hotmail.com and then there is an email at 18.33 from younus29@hotmail.com to nalu.pattni@BTinternet.com which simply says: "Please deliver to Parkway", signed Younus Mohamed. That in turn has been



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forwarded by Mr. Pattni to Mr. Patel on 11th February 2016, the date of the witness statement.

25. That is the state of the evidence at this trial. It was not suggested that any of those witnesses would be required for cross-examination and the evidence is what it is, as it were.
26. The issues for me to determine now are, first, whether purported service of a counter-notice by email is valid. Second, was service by email on the claimant's agents, namely, Comptons solicitors, on 14th June 2013, valid service of the counter-notice? Third, was the notice in any event served by hand on 15th June 2013? Fourth, is the last date for service deemed to be 17th June, when 15th June was a Saturday, in other words, a non-working day. Fifth, can the court extend time for service until the 17th June in any event?
27. Mr. Upton originally sought to persuade me that service by email was not possible. The only authority supporting that contention is an authority of a county court judge not binding on me. There is no suggestion in the Act or in related statute to support the contention that service by email is possible and, bearing in mind the importance within the statutory scheme of receipt of notices and counter-notices, it is not possible, it is submitted, to construe the legislation as permitting service of initial notice and counter-notice by email.
28. Second, Mr. Upton submits, that although if one accepts the theory that a counter-notice can be served by email it was not valid service if served on this occasion on the claimant's agents, bearing in mind the limitation on their authority contained within the headed notepaper which specifically states, for the reasons given by Mr. Compton in his witness statement, that they do not accept service by email.
29. Third, it is submitted that the evidence relied on by the defendant as showing that the notice was in any event served before expiry of the time for doing so does not overcome the evidential burden which the defendant in the circumstances bears.
30. Fourth and fifth, Mr. Upton submits that there is no good reason and no authority for treating the day for service as Monday the 17th, where the date of Saturday the 15th had been stated and noted as the date when time for service of the notice expired and there is no power in the court to extend time for service until the Monday in any event.
31. On the other hand Mr. Carroll, on behalf of the defendant, submits that properly construed the only requirement contained in the Act for service of the notice is that the notice must be in writing. There is nothing which expressly prevents service of the notice by email bearing in mind that Schedule 1 of the Interpretation Act 1978 defines writing as including:

"Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form ...".
32. He says that the court should construe the requirement that the notice must be in writing as including the form of writing which appears in an email and that I should

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reach the conclusion that an email can be a good notice and, therefore, service by email can be a good method of service.

33. In relation to service on Comptons by email Mr. Carroll submits that although the solicitors assert that they were unwilling to accept service via email, given the fact that their fax machine was not working, the defendant was entitled to adopt a different method of service and reliance was placed on the reasoning given in the judgment of Brooke LJ in *Rc Residuals Ltd V Linton Fuel Oils Ltd* [2002] EWCA Civ 911, paragraphs 36 and 37 in support of that proposition.
34. It was also said that if one took all the evidence contained in the witness statement and the correspondence together it was apparent that the gentlemen referred to as "David" who worked in the offices of Comptons had in any event expressly stated that the firm, Comptons, would accept service by email and, accordingly, service by email was good service.
35. Third, it is submitted that the notice that was served by hand was delivered within time and that the evidence is sufficient to enable me to reach that conclusion.
36. Fourth, it is submitted that where the last date for service of the notice was a Saturday there is some sort of defect in the notice, that it does not therefore comply with the purpose for which the statute contains a provision specifying a date for service, that the court can treat that therefore, whether by rectification or otherwise, as being not a week date but the next working day when the office is likely to be open, namely the 17th June.
37. Lastly, there was a submission, although not developed orally, that the court has power to extend time.
38. The statutory framework is well-known. The requirements of an initial notice are contained within section 13 of the Act headed Notice by qualifying tenants of claim to exercise right:

"(1) A claim to exercise the right to collective enfranchisement with respect to any premises is made by the giving of notice of the claim under this section."
39. Subsection (3) provides that the initial notice "must" and then sets out a number of things that need to be included and then specifically in subparagraph (f):

"state the full name or names of the person or persons appointed as the nominee purchaser for the purposes of section 15, and an address in England and Wales at which notices may be given to that person or those persons under this Chapter; and

(g) specify the date by which the reversioner must respond to the notice by giving a counter-notice under section 21."
40. By subsection (5) that date has to be a date "falling not less than two months after the relevant date" which, by virtue of section 1(8) of the Act is defined as meaning that

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the notice of claim was given for section 13. So not less than two months after 8th April 2013 in this case.

41. Section 21 of the Act, which is headed, Reversioner's counter-notice provides in subsection (1) as follows:

"(1) The reversioner in respect of the specified premises shall give a counter-notice under this section to the nominee purchaser by the date specified in the initial notice in pursuance of section 13(3)(g)."

42. Under section 25 of the Act where the reversioner has failed to give a counter-notice the court may on the application of the nominee purchaser make an order determining the terms on which he is to acquire such interests and rights as are specified in the section 13 notice and, as I have already mentioned in the beginning of this judgment, the terms in the absence of a counter-notice will be the terms specified in the initial notice so that the landlord would effectively be confined to the purchase price, among other things, specified in the tenant's initial notice.

43. Section 99 of the Act headed "Notices" provides in subsection (1):

"(1) Any notice required or authorised to be given under this Part —

(a) shall be in writing; and

(b) may be sent by post."

44. The "may" therefore is permissive and not mandatory. It is plain that service of the notice may be made by other methods, but nevertheless the requirement is that the notice shall be in writing.

45. The only other provision that I want to refer to at this stage is Schedule 4 of the Act which is brought into effect pursuant to section 21 and is headed: Information to be furnished by reversion about exercise of rights under Chapter 2. As with other provisions of the Act in other parts of the Act dealing with extension of long leasehold interests, the Act contains provisions which require the recipient of notices to provide copies of the notices to other people with interests or potential interests in the property which is being disposed of or the right to collective enfranchisement or extension of leases.

46. Confining myself for the moment to Schedule 4 it is important to note that the schedule refers not only to notices and counter-notices but also to copies of notices which under Schedule 4 are required to be served on such other people as I have already mentioned, who might have an interest in the property being disposed of or the process of enfranchisement that is being undertaken.

47. I turn therefore to the questions which I have to address. The first being is email good service? I confine my comment to the form of service that is said to have taken place here, namely by attaching a PDF file containing a scanned copy of the counter-notice. The facts, as I understand them, are that the first email contained unsigned copies of

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the letter and counter-notice. The second email contained a scanned copy of a signed version of the letter of counter-notice. The original was received by post on 17th June and I infer, although there is no evidence one way or another, that the document which it is said was delivered by putting through the letter box on the Saturday, was also a copy. I infer that for this reason, that there is no suggestion that there can be two original counter-notice and there is no doubt that the original or top copy of the counter-notice was that which was received by post on the Monday morning.

48. Section 99 of the Act in my judgment is the starting point. That requires the notice to be given in writing. The fact that it suggests that the document may be sent by post suggests to me that what is contemplated is a hard as opposed to digital version of the document.
49. The Interpretation Act in referring to "typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form", is, on one view, capable of referring to an electronic document which has no physical form but, in my judgment, that is not the answer to the situation in the present case.
50. There are two authorities which I can refer to which are said, depending on whose submissions one is considering at the time, to shed some light on the question I have to decide. The first is the decision of His Honour Judge Oppenheim QC who in a case known as *Stoll Construction v Kelly* decided in the Brentford County Court on 3rd November 2000 decided that section 99 did not authorise a notice to be given under the Act by fax. He held that the notice given under section 42 of the Act for an extension of lease in that case was invalid and he gives his reasons for that conclusion.
51. On the other hand in *Achieving Perfection Limited v Gray* a decision of His Honour Judge Coltart in the Brighton County Court on 18th May 2015, the learned judge there came to the conclusion that service by email of a section 13 notice was valid. His conclusion in paragraph 6, having referred to section 99 and the Interpretation Act 1978, was in the following terms:

"I see no reason why these days an email should not be an acceptable form of Notice under Section 99 as it represents words in a visible form. Given that the 1993 Act was passed for the benefit of lessees it would be odd if these five Claimants, who represent a qualifying proportion under Section 13 but not the two-thirds required to invoke the provisions of Section 26 to dispense with service where the landlord cannot be found, can be frustrated by a landlord who refuses to provide an address for service but can clearly be reached by email. After all, the overriding purpose of most Notice provisions is to ensure that the matter is brought to the attention of the recipient. Email does just that and indeed here the landlord himself specified that the only way of contacting him was by email until such time as he sold the property."
52. As I have said neither of those decisions is binding on me and I am entitled to look at the matter as a matter of principle. It seems to me that one has to start, as I have already said, with section 99 of the requirement that the notice has to be in writing

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and maybe sent by post, the inference being that the document has to be a hard copy document.

53. Second, the section 13 notice is a notice which has to be signed. It is, in my judgment, not possible in the ordinary sense of the word to sign an electronic document with an original signature. It makes no sense to my mind for an electronic document with an electronic signature to satisfy the requirements of the Act. The requirement for signature is contained in section 99(5)(a) and as I understand the legislation, given the date at which this notice was signed, the amendments to the Act which alter the requirements for personal service by the individual participating tenants have not altered the requirement in respect of this particular notice which pre-dated those changes coming into effect.
54. That provision, in my judgment, makes an argument that notice can be contained in an email wholly inappropriate. The tenant could not sign, in my judgment, the electronic document within the terms anticipated by section 99(5)(a) and the notice in this case which contained the original signature was in the usual way sent by post to the landlord. Given that the section 13 requirements are such, it seems to me that by parity of reasoning, albeit that the landlord's notice does not have quite the same importance as the tenant's, that the landlord's counter-notice has itself to be a hard copy document served in top copy form rather than electronically.
55. The consequences of service or non-service of both section 13 and, in this case more importantly, section 21 counter-notices, is crucial to the proper operation of the Act. Strict compliance with the provisions is, in my judgment, a requirement and one only has to look at the decision of Chadwick LJ in *Burman v Mount Cook Land Ltd* [2001] EWCA Civ 1712 for authoritative support for that proposition.
56. In my judgment, therefore, an email does not amount to writing for the purposes of the Act and service of what is not a top copy cannot comply with the Act. There is a separate argument that the copy rather than the original is not compliance with the Act. I refer in that respect to the comments of the learned editors of Hague on Leasehold Enfranchisement, sixth edition, where in the first supplement at paragraph 34-23, commenting on a decision of Judge Coltart in achieving perfection they say:
- "The landlord had previously indicated in response to a request for a postal address that email was 'the sure way albeit not good service'. The landlord did not argue that a document sent as an attachment to an email was not actually signed by or on behalf of the participating tenants, but was only a copy of a signed notice. Permission to appeal is being sought."
57. Although they do not say it expressly the inference from that comment is that a copy for service would not suffice and if that is what they intended to say I wholeheartedly agree with it.
58. The Act, as I have already said, refers in other provisions to copies of notices which in my judgment one has to compare with the express wording of section 13 and section 21 which refer to notices rather than copies and that is additional support, in my judgment, for the conclusion that service of a copy, whether by fax for the reasons

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given by His Honour Judge Oppenheim or by PDF for the reasons which I have given, cannot be good service of a notice in accordance with the Act.

59. I turn, therefore, to the second argument whether, if one can serve by email, service on the claimant's solicitors as agents can be good service in the context of the facts in this case. In my judgment the ordinary principles of agency apply. The section 13 notice stated in paragraph 10 that notices may be given to the claimant's solicitors at the address which is contained in that notice, the specific address given is a postal address or a physical address rather than an email address and the covering letter expressly provided that service by email would not be accepted.
60. The authority of Comptons as the agents of the claimant was, in my judgment, specifically circumscribed by the terms of the covering letter. The participating tenants and the claimant were authorising Comptons and holding Comptons out to the defendant as authorized only to accept service in physical form at the address contained at paragraph 10 of the notice. They had no authority, in my judgment, to accept service in any other way. Therefore, in my judgment, purported service by email could not have been valid service.
61. The reasons for that stance are apparent from what Mr. Compton says in his witness statement that because of the importance attached to the time limits contained within the 1993 Act the service of documents, the dates for service of documents, the form of service of documents are crucial parts of the process. The solicitors put themselves at considerable risk if they agree to accept service by forms which it might be hard to monitor and it is quite within their contractual powers in terms of the retainer between them and their client, to agree that their authority to act on behalf of their clients is limited in the way in which it was in this case.
62. One can imagine the sort of steps that the solicitors would have to take to ensure that they monitored and maintained a service for receipt of statutory notices by email, a service which in many systems are inadequate or delayed or corrupted in some way.
63. There are, therefore, in my judgment good reasons of principle and policy why service by email may not be agreed to by parties to enfranchisement claims. Those reasons might also be good additional public policy reasons for requiring original versions of notices to be served but I do not pray that in aid in support of the conclusions I have already reached.
64. It was suggested that "David", who worked at the office of the claimant's solicitors, had expressly agreed that notwithstanding what appeared on the letterhead that service could be made by email of this counter-notice. That is not, in my judgment, a fair reading of the evidence which has been put before me which, on a proper and indeed generous construction, suggests that David, when informed that the fax was not working, merely in an effort to help the defendant's solicitors suggested that they use email instead. There is no evidence to suggest that he was someone of sufficient standing within the firm who had the authority in any event to agree that the firm would extend their methods of receipt of documents to service by email. In my judgment, therefore, nothing turns on that assertion. Nor indeed, in my judgment, is it right as a matter of principle to conclude that because a fax document could not be safely received because the fax machine was not working, that the sender could use email instead.

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65. I turn, therefore, to the third matter whether there was good service of the counter-notice on Saturday the 15th. The claimant asserts that the document if served on Saturday was effectively out of hours and would not come to the claimant's solicitors attention and reliance is placed on the common law authorities which suggest that there is not good service on a recipient unless the recipient is in a position, at the very least, to receive the document which it is proposed to serve. Reliance is placed on a number of authorities and on the commentary contained in property notice, validity and service by Tom Weekes, now Queen's Counsel, at paragraphs 5.10 to 5.12.
66. In my judgment however, notwithstanding those principles where a party specifically states that service may take place at a certain address and goes on to state that the service may take place by a specific date, where the server in fact puts the document through the box at that address before the expiry of that date, the risk that the document will not be received by the intended recipient because they happen not to be there falls on the person who specified that method and date for service. Notwithstanding the common law rules, in my judgment therefore, in this case service of the counter-notice at Comptons address on 15th June would have been good service. However, for two reasons, as a matter of fact, it seems to me that there was not good service in this case or at least the defendant who accepts that it has the burden of proving good service cannot overcome the necessary hurdles and discharge that burden.
67. First, for reasons I have already given, I draw the inference that the document which it was intended to insert through the letter box on 15th June was a copy rather than the original which was in fact received by post on Monday the 17th.
68. Second, when properly analysed the defendant's evidence in support of the contention that it had served the document does not begin to satisfy the burden. I pause there to say, even if the makers of the witness statements that are put before me in support of the contention that service has been effected on the Saturday were called for cross-examination the position could not be improved.
69. The evidence of Mr. Patel and Mr. Pattni is, at best, confusing; it is, at worst, inconsistent with each other. The appearance from Mr. Patel's witness statement is that he directed the service of the notice via a courier company and that there would be a record in written form of the service of the counter-notice or some sort of certificate of service which has not been provided.
70. The reality appears to be, if one accepts Mr. Pattni's evidence at face value, that through a rather indirect chain, involving an intermediary called Younus Mohamed, Mr. Pattni was the person who was directed to effect service and he did that by handing it on to a minicab driver. The best that he could say is that to the best of his knowledge and belief the documents were delivered around noon on 15th June 2013 and he says in paragraph 5 of his witness statement that he:

"... subsequently called the minicab office and was told that the documents had been delivered around 12 noon. I recall informing Viresh Patel that the documents had been delivered over the weekend".

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71. That last sentence is inconsistent with the previous sentence. The evidence given on its face is more than first-hand, possibly second or third hand hearsay. It is unsupported by any documentary proof and, in my judgment, can be taken really as no more than Mr. Pattni having made arrangements for the documents to be delivered.
72. There is an assertion on the other side that no such documents were delivered and in my judgment the inconsistencies between the evidence of Mr. Patel and Mr. Pattni and the unsatisfactory hearsay nature of the evidence which they provide is not capable, as I have already said it would not be improved by cross-examination, of overcoming the burden of showing that the notice, even if it were a copy, was served on the Saturday.
73. For those reasons the only factual conclusion open to me is that the original counter-notice was in fact served on Monday, 17th June, two days out of time.
74. The last point is this, there is no power on the part of the court, whether within the Act or elsewhere, entitling me to extend time for service of the counter-notice however meritorious that may have been. The conclusion that I therefore reached is that the counter-notice was not validly served within the time specified pursuant to section 13(3)(g) and the landlord is therefore, unfortunately, saddled with the terms of acquisition proposed by the tenants in their initial notice.

*(Further discussion followed)*

MR. UPTON: The reason I mentioned the Law Commission Guidance is that I would not want any other party to think that it was not before you if trying to distinguish ----

JUDGE DIGHT: Okay. It is a very interesting case, thank you both very much.

MR. UPTON: I am very grateful.

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