



Neutral Citation Number: [2020] EWHC 369 (Admin)

Case No: CO/2910/2019

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**DIVISIONAL COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 24/02/2020

**Before :**

**The Rt. Hon. Lord Justice Davis and The Hon. Mr Justice Holgate**

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**Between:**

**Mr James McGrath**  
**- and -**  
**London Borough of Camden**

**Appellant**  
**Respondent**

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**Mr W. Robert Griffiths QC and Ms Nicola Strachan** (instructed by **Clarks Legal**) for the **Claimant**  
**Mr Asa Jack Tolson** (instructed by **Camden London Borough Council**) for the **Defendant**

Hearing date: 29 January 2020  
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**Approved Judgment**

## **MR. JUSTICE HOLGATE:**

### **Introduction**

1. This is an appeal by way of Case Stated from the decision of District Judge Julia Newton delivered in the Highbury Magistrates' Court on 29 April 2019 in which she made a liability order for the payment of £642.00 BID levy (together with costs assessed at £6264.25) against the Appellant in this court, Mr James McGrath.
2. The order was made on a summons issued by the Respondent, the London Borough of Camden ("LBC"). LBC is the relevant billing authority for the purposes of BID levy chargeable under the Local Government Act 2003 ("the 2003 Act"). Section 41 enables a billing authority such as LBC to make "arrangements" for a Business Improvement District ("BID") within its area to enable projects to be carried out for the benefit of that district or for those who live, work or carry on any activity there. These arrangements set out the objectives and scheme for the BID and how the projects are to be financed by a BID levy imposed on ratepayers (identified under the Local Government Finance Act 1988 – "LGFA 1988") of "non-domestic rates", often referred to as business rates.
3. On 1 October 2016 the Hampstead Village Business Development District came into existence. It will endure for 5 years (subject to any extension authorised for a further period of up to 5 years). The proposal to establish the BID was approved by a statutory ballot of eligible non-domestic ratepayers held on 15 July 2016. The "arrangements" for the Hampstead Village BID are set out in its "Business Plan 2016-2021", including the identification of the ratepayers liable to pay the levy, set at 1.5% of the rateable value of each "hereditament", or rateable property. The object was to raise about £1.2m over the 5 year term charged on 245 properties. It appears from the Plan that by 2016 over 240 BIDs had already been established (of which 51 were in London) generating around £300m a year.
4. The summons related to unpaid BID levy for the 2018-2019 chargeable year which began on 1 April 2018. In January 2017 the Appellant became the landlord of the King William IV public house, 77 Hampstead High Street, London NW3 1QX, a property chargeable to the BID levy. On 18 January 2019 he transferred the property to his daughter. Accordingly, under the 2003 Act he was "liable" for the BID levy apportioned so as to cover the period 1 April 2018 to 18 January 2019 in the sum of £642.00.
5. The recovery of BID levy is governed by regulation 15 and Schedule 4 of the Business Improvement Districts (England) Regulations 2004 (SI 2004 No. 2443 – "the 2004 Regulations"). In short, a liability order cannot be made unless the Magistrates' court is satisfied that the BID levy claimed has become "payable" by the person named in the summons and has not been paid. A person who is liable to pay BID levy under the 2003 Act is not required to pay it to the billing authority unless a statutory "demand notice" is served on him requiring payment.
6. In the present case, a demand notice dated 13 April 2018 was served on the Appellant. A statutory "reminder" notice was sent to him on 8 August 2018. Because of non-payment a summons seeking a liability order against the Appellant was issued on 19 September 2018.
7. Before the District Judge the Appellant advanced a number of arguments to why as a matter of law the application for a liability order should fail. However, it is now accepted by the

Appellant that he was properly served with a demand notice which contained the matters required to be specified therein.

8. The argument in this court arises from the requirement imposed on LBC by paragraph 3(2) of Schedule 4 to the 2004 Regulations, namely that when the demand notice was served the authority should also have supplied to the Appellant information on the revenue from the BID levy it was due to receive in the 2017-18 financial year, the amount spent on the BID in that year and how it had been spent, and the matters on which it intended to spend the BID levy for the 2018-19 financial year. It is common ground that LBC failed to comply with this requirement. The main issue for the court is whether the legal effect of that failure was that the BID levy specified in the demand notice was not “payable” by the Appellant.

## **Statutory Framework**

### *Liability for non-domestic rates*

9. The Explanatory Note to the 2004 Regulations states that Schedule 4 is based upon the rules for the collection and enforcement of non-domestic rates contained in the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (SI 1989 No. 1058 – “the 1989 Regulations”).
10. The liability to pay business rates stems from the Local Government Finance Act 1988 (“LGFA 1988”). That liability to pay rates is imposed on the occupier of each occupied hereditament (s. 43) and the owner of each unoccupied hereditament (s. 45). Section 62 and Schedule 9 provide for regulations to be made for the collection and recovery of rates, i.e. the 1989 Regulations. Regulation 7(6) of those Regulations provides that a ratepayer need not make any payment of the amount payable by him for the hereditament unless a notice has been served on him in accordance with Part II. Regulation 4 requires the billing authority to serve a demand notice on each ratepayer for each chargeable financial year.
11. Part III of the 1989 Regulations deals with enforcement. Regulation 10 (2) provides that a “sum which has become payable to a billing authority under Part II and which has not been paid shall be recoverable under a liability order, or in a court of competent jurisdiction, in accordance with regulations 11 to 21.” These are mutually exclusive remedies (see regulation 20). A “reminder notice” must be served under regulation 11 as a precursor to the making of an application to a Magistrates’ court for a liability order under regulation 12. Regulation 12(5) provides that “the court shall make the order if satisfied that the sum has become payable by the defendant and has not been paid.” A failure to pay the sum due under a liability order may give rise to serious consequences. Payment may be enforced by seizure of goods under the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (regulation 14), or by committal to prison (regulation 16).

### *Local Government Act 2003*

12. Sections 49 to 52 lay down the procedure for making proposals for a BID and their approval by a ballot of the non-domestic ratepayers in the proposed district. The proposal has to be approved by a majority by reference to both the number of ratepayers voting and the aggregate rateable value of the hereditaments of those voting (s.50). Once approved, the BID arrangements may last for a period of up to 5 years (as specified in the arrangements), and may be renewed for a further period of up to 5 years, subject to a further ballot (s.54).
13. Section 44 requires the authority to comply with the BID arrangements while they remain in force. Section 45 enables a BID levy to be imposed in accordance with a charging scheme

set out in those arrangements. The levies received by a billing authority have to be managed in a separate BID Revenue Account (s.47).

14. Like LGFA 1988 in relation to non-domestic rates, LGA 2003 creates a liability to pay the BID levy, but whether that liability must be discharged depends upon the machinery set up by secondary legislation on recovery. By s.46(1) the BID arrangements must describe the non-domestic ratepayers in the district who are to be liable for the levy. A person is liable for the levy if he falls within that description for a chargeable period (s.46(2)). The amount of that person's liability is to be determined in accordance with the BID arrangements (s.46(3)). Section 46(4) requires that any amount for which a person is liable be paid to the relevant billing authority. Section 49 empowers the Secretary of State to make regulations for the imposition, administration, collection and recovery of the BID levy, including regulations of the kind which may be made under Schedule 9 to the LGFA 1988.

*The Business Improvement Districts (England) Regulations 2004*

15. The 2004 Regulations are the relevant regulations made under s.49 of LGA 2003. Regulation 15 requires each billing authority to provide for the collection and recovery of BID levy in accordance with Schedule 4.

16. Paragraph 7(6) of Schedule 4 provides: -

“No payment in respect of the amount payable by a person who is liable for the BID levy in relation to a hereditament for any chargeable period need be made unless a notice served under this Schedule requires it.”

17. Paragraph 9 of Schedule 4 applies Part III and Schedule 4 of the 1989 Regulations to the enforcement of the BID levy subject to a number of modifications. In so far as is relevant to this case, Part III of the 1989 Regulations is applied as follows:-

- (i) The references in regulations 10(2) and 20(1) of the 1989 Regulations to a sum which has become payable to a billing authority under Part II of those Regulations includes a sum which has become payable to a billing authority as BID levy under Schedule 4 to the 2004 Regulations. Accordingly, such BID levy is recoverable *inter alia* under a liability order made by a Magistrates' court under regulation 12 of the 1989 Regulations;
- (ii) Following the service of a demand notice (under regulation 2 of the 2004 Regulations), a “reminder notice” must be served under regulation 11 before an application may be made for a liability order (regulations 11(1) and 12(1));
- (iii) Regulation 12(5) requires the Magistrates' court to make a liability order if satisfied that the sum has become payable by the defendant and has not been paid;
- (iv) Where a liability order is made, non-payment may be dealt with under the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 for seizure of goods (regulation 14), or by committal to prison (regulation 16).

18. Thus, the legislature has taken the same general approach to the recovery of BID levy as for the recovery of business rates. Although the primary legislation imposes a liability to pay on each individual ratepayer, that charge is not payable and hence is not recoverable unless a notice has been served under Schedule 4 to the 2004 Regulations requiring payment from the ratepayer.

19. The notice referred to is a demand notice under paragraph 2 of Schedule 4:-

**“2. The requirement for demand notices**

- (1) For each chargeable period a relevant billing authority shall, in accordance with paragraphs 4 to 6, serve a notice in writing on every person who is liable for the BID levy in relation to the BID arrangements for the period.
- (2) Different demand notices shall be served for different chargeable periods.
- (3) A demand notice shall be served with respect to the amount payable for every hereditament as regards which a person is liable for the BID levy, though a single notice may relate to the amount payable with respect to more than one such hereditament.
- (4) If a single demand notice relates to the amount payable with respect to more than one hereditament the amounts due under it, and the times at which they fall due, shall be determined as if separate notices were issued in respect of each hereditament.”

Regulation 1(2) (which provides for the interpretation of the 2004 Regulations) states:-  
“ “demand notice” means the notice required to be served under paragraph 2(1) of Schedule 4.”

20. Paragraph 1(2) to (9) of Schedule 4 sets out requirements for a number of methods by which a notice may be served relying in part upon s.233 of the Local Government Act 1972. Subject to certain conditions, paragraph 1(5) allows a billing authority to rely upon electronic communication or the use of a website not only for the *service* of a notice but also the *supply* of information to a person in accordance with paragraph 3(2) when a demand notice is served.

21. Paragraph 5 of Schedule 4 deals with the timing of the service of a demand notice. Paragraph 6 enables a billing authority to serve demand notices based upon estimates of liability and to deal with a person becoming or ceasing to be liable for BID levy during a chargeable period.

22. Paragraph 3 of Schedule 4 provides as follows:-

**“3. Content of demand notices**

- (1) A demand notice shall contain the following matters –
  - (a) a statement of the address and description of each hereditament to which the notice relates;
  - (b) a statement explaining how the BID levy is calculated for each hereditament to which a notice relates; and
  - (c) a statement of the days (if any) on which, for the purposes of calculating the payments required to be made under the notice, it was understood that the person who is liable for the BID levy in respect of the hereditament fell within the description in the BID arrangements of persons who are liable for the BID levy for the chargeable period in question.

- (2) A billing authority must when it serves a demand notice supply to the person to whom the notice is served the following information –
- (a) the revenue from the BID levy the billing authority was due to receive in the previous year;
  - (b) the amount spent on the BID arrangements in the previous year;
  - (c) a description of the matters on which it was spent; and
  - (d) a description of the matters on which it is intended to spend the revenue from the BID levy in the financial year.”

23. Paragraph 4 of Schedule 4 provides as follows:-

**“4. Invalid notices**

- (1) Where –
- (a) A demand notice is invalid because it does not comply with paragraph 3
  - (b) the failure so to comply was due to a mistake; and
  - (c) the amounts required to be paid under the notice were demanded in accordance with paragraph 3(1), the requirement to pay those amounts shall apply as if the notice were valid.
- (2) Where a requirement to pay an amount under an invalid notice subsists by virtue of sub-paragraph (1), the billing authority shall as soon as practicable after the mistake is discovered issue to the person who is liable for the BID levy concerned a statement of the matters which were not contained in the notice and which should have been so contained.”

**The proceedings before the Magistrates’ Court**

24. LBC conceded in their Statement of Case that the demand notice had not contained the information which paragraph 3(2) of Schedule 4 to the 2004 Regulations required to be supplied, but they submitted that the legislation did not insist upon it being provided in the demand notice itself. It sufficed if the information was provided “when” the demand notice was served. The authority argued that they had complied with paragraph 3(2) by including an insert with the demand notice which referred to the website for the Hampstead Village BID where, it was said, the necessary information was to be found. In the alternative, LBC submitted that if by that method they had failed to comply with paragraph 3(2), their failure was a “mistake” within paragraph 4(1)(b), so that the requirement in the demand notice served on the Appellant to pay the BID levy applied “as if the notice were valid”.
25. LBC also submitted that on 22 February 2019 they sent to the Appellant a document which complied with the requirement in paragraph 4(2) to issue to him as the person liable for the BID levy a notice of the matters which ought to have been supplied under paragraph 3(2) as soon as practicable after their mistake was discovered.
26. The Appellant submitted to the District Judge that LBC was not entitled to rely upon the BID website to satisfy the requirement in paragraph 3(2) to provide the specified information to the Appellant because of the absence of any agreement between LBC and himself to the use of that method for that purpose (see paragraph 1(5)(b)(i) of Schedule 4).

Accordingly, it followed that LBC had failed to comply with paragraph 3(2) and, the Appellant said, the demand notice served had been invalid. The Appellant also submitted that in any event the information required by paragraph 3(2) should have been included in the demand notice itself.

27. The Appellant contended that LBC was not entitled to rely upon paragraph 4(1) to cure the invalidity regarding the demand notice because that provision only applies where the failure to comply with paragraph 3 was due to a mistake as to *fact* and not to a misunderstanding or deliberate breach of the 2004 Regulations. Here there was no evidence of any factual mistake having been made.
28. The Appellant also argued that LBC had failed to comply with paragraph 4(2) because the purported notice sent on 22 February 2019 had not been served on him “as soon as practicable” after any relevant mistake had been discovered by LBC. It was not sent until after the Appellant had raised the authority’s failure to comply with paragraph 3(2) in response to the summons issued on 19 September 2018.
29. In her careful and thorough judgment the District Judge correctly defined the issue before the court as being whether the sum claimed by LBC was payable by the Appellant under the 2004 Regulations. There was no dispute that it had not been paid. She decided that the demand notice had set out those matters which it was required to contain under paragraph 3(1) and that paragraph 3(2) did not require the information specified to be contained in a demand notice. Instead, the Regulations require that information to be supplied when the demand notice is served. The judge found that LBC had failed to comply with paragraph 3(2) firstly, because there had been no agreement for any website to be used to supply that information and secondly, because the website relied upon by LBC had failed to provide all the required material in any event (paragraph 32 of judgment).
30. The judge then went on to consider the application of paragraph 4(1). There had been no issue before her as to whether this provision could apply where the failure to “comply with paragraph 3” related to the requirements of paragraph 3(2). The submissions of both parties proceeded on the basis that it could so apply and, understandably, the judge adopted that approach (paragraph 34). She found that “the amounts required to be paid under the notice were demanded in accordance with paragraph 3(1) (paragraph 4(1)(c)). The only remaining issue was whether there had been a relevant “mistake” for the purposes of paragraph 4(1)(b). The judge found that each of the errors she had identified as reasons why paragraph 3(2) had not been satisfied amounted to such a mistake. She construed paragraph 4(1)(b) as not being limited to mistakes as to fact. She also found that there had been no evidence of any deliberate attempt to flout or circumvent the legislation (paragraph 33).
31. Accordingly, the judge concluded that notwithstanding the failure to comply with paragraph 3(2), the requirement in the demand notice for the Appellant to pay the BID levy applied as if that notice was valid (paragraph 33).
32. In paragraph 93 of the Case Stated the District Judge accepted that she had made no findings as to whether the document dated 22 February 2019 containing the paragraph 3(2) information had been sent to the Appellant “as soon as practicable” after the discovery of the mistake. But she explained that this was because she took the view that an obligation to pay BID levy pursuant to paragraph 4(1) does not depend upon compliance with paragraph 4(2) (see also paragraph 33 of the judgment).

## The issues in this court

33. In paragraph 96 of the Case Stated two questions are identified for the opinion of the High Court:-

“(a) whether on the facts of the case as found, the failure to comply with paragraph 3(2) of Schedule 4 of the BID Regulations was due to a mistake and whether as a result thereof the requirement to pay the BID Levy should apply as if the Notice were valid by reason of paragraph 4(1) of the BID Regulations.

(b) whether the BID Levy was payable pursuant to paragraph 4(1) of Schedule 4 of the BID Regulations regardless of whether or not paragraph 4(2) of Schedule 4 of the BID Regulations was complied with”

34. Those questions arose from the manner in which the case was argued before and therefore determined by the District Judge.

35. On question (a) the parties broadly maintained their respective submissions in the Magistrates’ court. Although Mr Griffiths QC accepted on behalf of the Appellant that the information specified in paragraph 3(2) of Schedule 4 to the 2004 Regulations was not required to be contained in a demand notice, he submitted that a failure to comply with paragraph 3(2) would nevertheless render the demand notice invalid. He relied upon the reference to paragraph 3 in paragraph 4(1)(a) of Schedule 4. He submitted that, on that basis, the issue whether paragraph 4(1) applied still remained relevant, and the District Judge had been incorrect to decide that the Respondent’s error was a “mistake” so that the sum demanded was “payable” by virtue of that paragraph. He submitted that an error of law which involved breaching an obligation in paragraph 3 of Schedule 4 to the 2004 Regulations, whether deliberate or not, could not qualify as a “mistake” under paragraph 4(1)(b).

36. LBC has not sought to challenge the judge’s findings that it failed to comply with paragraph 3(2) in the two respects she identified. On the central issue dividing the parties, Mr Tolson submitted for LBC that the reference to “mistake” in paragraph 4(1)(b) is unqualified and therefore should not be read down so as to exclude mistakes of law. That term applies to any mistake to which a failure to comply with paragraph 3 is attributable.

37. His argument involved accepting that paragraph 4(1) applies to an invalidity through failure to comply with paragraph 3(2). However, at one point he went even further by submitting that because paragraph 4(1)(c) assumes compliance with the *whole* of paragraph 3(1), paragraph 4(1) could *only* be engaged where the non-compliance relates to paragraph 3(2). Correctly, he accepted that the provisions of paragraphs 3 and 4 of Schedule 4 to the 2004 Regulations must be read together, and indeed with other relevant provisions. But it is plain that on his reading the reference in paragraph 4(1)(a) to “paragraph 3”, when describing the invalidity at which that provision is aimed, is not to be taken literally, but is to be read down as being limited to a breach of paragraph 3(2).

38. Plainly on any view the true construction of paragraphs 3 and 4 depends upon a proper understanding of the interrelationship between the two provisions. During argument the court raised with counsel an alternative interpretation, namely that paragraph 4(1) is only concerned with the invalidity of a demand notice where “it”, i.e. the demand notice, does not comply with paragraph 3. Paragraph 3(2) does not impose a requirement with which



(using the language of paragraph 4(1)) a demand notice must comply. It is simply a requirement that the billing authority shall supply specified information when a demand notice is served. Furthermore, in certain circumstances paragraph 1(5) allows such information to be supplied electronically, irrespective of how the demand notice itself is served. If this is the correct construction of the legislation, then a failure to comply with paragraph 3(2) does not fall within the ambit of paragraph 4(1) and the issue whether LBC made a “mistake” within paragraph 4(1)(b) does not arise. It would also follow that the application of paragraph 4(2) and question (b) in the Case stated would not arise. Because this is an issue of construction which arises in any event on the Case Stated it is a question which this court should deal with so that the law is stated correctly.

39. Mr Tolson adopted this approach as an alternative analysis to that upon which he had succeeded before the District Judge. However, Mr Griffiths QC maintained that paragraph 4(1) applies where the invalidity of a demand notice is attributable to either paragraph 3(1) or (2).
40. On question (b) Mr Griffiths QC submitted that the District Judge had erred in law because she had failed to make a finding as to whether LBC’s statement sent to the Appellant on 22 February 2019 had been issued “as soon as practicable” after it had discovered its “mistake” and so had failed to apply paragraph 4(2). In paragraph 93 of the Case Stated the District Judge accepted that she made no such finding.
41. Mr Tolson responded by relying upon the judge’s reasoning that there had been no need to make any such finding because compliance with paragraph 4(2) was irrelevant to the question which she had to determine, namely whether the sum claimed was *payable* by the Appellant, which only depended upon the application of paragraph 4(1).

## **Discussion**

### *Requirements relating to a demand notice*

42. Although the liability to pay BID levy derives from s.46 of the 2003 Act and the charging scheme in the BID arrangements, the recovery of the levy depends upon it becoming “payable”, in the sense that the person liable has been served with a demand notice under Schedule 4 to the 2004 Regulations (paragraph 7(6) of the Schedule). The statutory liability to pay the levy is not qualified by reference to any other requirement in the legislation, in particular compliance with paragraph 3(2) of Schedule 4.
43. This analysis is maintained consistently throughout the code. Regulation 1(2) makes it plain that a demand notice means the notice required to be served under paragraph 2(1) of Schedule 4. Such a notice must be served by the billing authority on each person liable for the BID levy for each chargeable period (paragraph 2(1)). The notice must state the amount payable by the person served for each hereditament for which he is liable (paragraph 2(3)). Unless a person has been required to pay BID levy pursuant to a demand notice and has failed to meet that demand, the levy is not recoverable by way of a liability order (regulation 10(2) of the 1989 Regulations as modified); if those two conditions are met then the Magistrates’ court must make that order (regulation 12(5)).
44. Before coming to the relationship between paragraphs 3 and 4 of Schedule 4 it is important to note that a billing authority’s ability to show that BID levy is “payable” by the defendant to a summons may depend upon a number of other provisions which fall outside the ambit of those paragraphs.

45. First, the demand notice must have been served on the defendant (paragraphs 2(1) and (3) and 7(6) of Schedule 4). Paragraph 1(2) to (9) of Schedule 4 lays down methods by which service of a demand notice may be effected. They include service by post to, or by being left at, a person's place of business or "proper address". The proper address refers to a person's last known address, or a company's registered or principal office or a partnership's principal office (s. 233(4) of the Local Government Act 1972 or an address for service specified under s.233(5)). Paragraph 1(5) enables the use of electronic methods of service for a demand notice provided that the person to be served has agreed to the use of such a method for that purpose.
46. Plainly, where the billing authority fails to take any steps to serve a demand notice on the person to be served, a fundamental requirement for obtaining a liability order would not be satisfied (paragraphs 2(1) and (3) and 7(6)) and the summons would be dismissed. The same may well apply where the defendant has never received the demand notice because the authority sent it to the wrong address, e.g. an address with which the defendant has never been connected and which the authority had no reason to suppose related to him. In the present case there is no dispute about the service of the demand notice on the Appellant and so the court has not had to decide what the outcome might be for potential breaches of the rules on service. The significant point for present purposes is that failures in relation to service of a demand notice are not addressed by paragraphs 3 or 4 of Schedule 4.
47. Second, assuming that a demand notice has been properly served on a defendant, that in itself does not render him liable to pay the amount of BID levy demanded. In some cases a defendant may be entitled to have the summons dismissed on the grounds that he is not liable for any of the BID levy demanded according to section 46 of the 2003 Act and the charging scheme in the BID arrangements. In those circumstances, the amount would not be "payable" by the defendant. Once again, this subject is not addressed by paragraphs 3 or 4 of Schedule 4.
48. Third, paragraph 5 of Schedule 4 deals with the timing of the service of a demand notice. Paragraph 6 enables a billing authority to serve demand notices based upon an estimated liability and to deal with a person becoming or ceasing to be liable for BID levy during a charging period. A failure by an authority to comply with such provisions may give rise to issues about whether a sum demanded is "payable", but would not fall within the ambit of paragraphs 3 or 4 of Schedule 4.
49. Paragraph 3 of Schedule 4 is headed "Content of demand notices". Reference may be made to such a heading as an aid to construction (R v Montila [2004] 1 WLR 3141). However, headings do not control or override the language used in the enacted provisions (see e.g. Director of Public Prosecutions v Schildkamp [1971] AC 1, 10, 20; R v Okedare (No. 2) [2014] 1 WLR 4088 [22 to 23]; Bennion on Statutory Interpretation (7<sup>th</sup> ed.) section 16.7).
50. Here it is plain that paragraph 3(1) sets out matters which must be contained in a demand notice, but paragraph 3(2) does not. The latter provision only deals with information which must be provided when a demand notice is served. It does not require that information to be contained within the notice. The information is of a general nature relating to the overall operation of the BID. The same information has to be provided to all persons liable to pay BID levy. None of the material required to be supplied under paragraph 3(2) would enable an individual served with a demand notice to understand or challenge the levy which that notice requires him to pay.
51. Under paragraph 3(1) of Schedule 4 a demand notice must: -

- (a) contain the address and description of the hereditament to which it relates;
- (b) explain how the BID levy has been calculated for each hereditament the subject of the notice;
- (c) state the days upon which the person served is liable for the amount calculated under (b).

These are more detailed provisions than the basic requirements contained in paragraph 2(1) and (3). In particular, paragraph 2(3) requires a demand notice to state “the amount” payable for every hereditament for which the person served is liable.

52. Where legislation requires a procedural step or action to be taken, it may not specify the legal consequences of a failure to comply with that requirement, for example, whether any other step or document must be treated as invalid or non-compliant with the legislation. In such circumstances the court must firstly construe the instrument in order to determine whether the legislature intended “total invalidity” to follow (R v Soneji [2006] 1 AC 340 [15], [23], [78]; Bennion at section 7.3). If the answer to that question is ‘yes’ then no further issue arises. But if the answer is ‘no’, then the second question is whether the circumstances of the instant case indicate that invalidity should be the consequence. The answer to that question may be affected by whether there has been substantial compliance with the requirement, or whether any non-compliance has caused significant prejudice relevant to the purposes of the legislation (see e.g. Secretary of State for the Home Department v SM (Rwanda) [2018] EWCA Civ 2770).
53. On the other hand, there is no scope for applying the “Soneji principle” in so far as the legislature has spelled out the consequences of non-compliance with a statutory requirement (Shahid v Scottish Ministers [2016] AC 429 [20]).

*The ambit of paragraph 4(1) of Schedule 4 to the 2004 Regulations*

54. Paragraph 4(1) does indeed address failures to comply with *certain* of the requirements in Schedule 4. But it only deals with the invalidity of a demand notice and, even then, only in relation to its non-compliance with paragraph 3 (paragraph 4(1)(a)). Within that provision only paragraph 3(1) concerns requirements with which a demand notice must comply. Provided that paragraphs 4(1)(b) and (c) are satisfied, the requirement to pay the amounts specified in the demand notice is treated as if the notice were valid.
55. Paragraph 4(2) only applies where all three limbs (a), (b) and (c) in paragraph 4(1) are satisfied. Where a requirement to pay a BID levy applies because the demand notice is deemed to be valid under paragraph 4(1), the billing authority must issue to the person liable for that levy a statement of “the matters” which “were not contained *in the notice* and which should have been so contained” (emphasis added). That language makes it plain that paragraph 4(1) does not apply to a failure to comply with paragraph 3(2), because the latter has nothing to do with the contents of a demand notice. Furthermore, paragraph 4(1) does not apply to any non-compliance with a requirement which falls outside paragraph 3(1).
56. However, paragraph 4(1) does not apply so that a demand notice is deemed to be valid, unless “the amounts required to be paid under the notice were demanded in accordance with paragraph 3(1)” (paragraph 4(1)(c)). That can only be a reference to the requirements in paragraph 3(1)(b) and (c), namely that the notice must state how the BID levy demanded is calculated for each hereditament, including the number of days for which the person served is liable. The upshot is that paragraph 4(1) only has the effect of treating a demand notice as valid where the ground for invalidity arises from non-compliance with paragraph

3(1)(a); i.e. the notice fails to state the address and/or the description of the hereditament to which it relates. This construction gives effect to the cross-reference in paragraph 4(1)(a) to paragraph 3.

57. It also follows that Mr Tolson's suggestion (see paragraph 37 above) that paragraph 4(1)(a) can only refer to non-compliance with paragraph 3(2), because paragraph 4(1)(c) assumes compliance with *all* the requirements in paragraph 3(1), is unsustainable. It is impossible to read the clear language of paragraph 4(1)(c) as referring to anything other than paragraph 3(1)(b) and (c).
58. As noted in paragraphs 44 to 48 above, non-compliance with other requirements for a demand notice fall outside the ambit of paragraph 3(1) and, hence, the ambit of paragraph 4(1). So, for example, if a notice contains the correct address and description of the hereditament to which it relates (thereby complying with paragraph 3(1)(a)), but it is not served at all, or is only sent to or left at an address which is not a proper address for service, then paragraphs 2(1) and (3) and 7(6) would not be satisfied and the BID levy would not become payable unless and until a demand notice is properly served.

*Answers to Questions (a) and (b)*

59. In the present case the demand notice served on the Appellant complied with all of the requirements of paragraph 3(1) and so paragraph 4(1) did not fall to be applied. It follows that the District Judge should not have been asked by the parties to determine whether the errors which occurred in relation to non-compliance with paragraph 3(2) amounted to a "mistake" within paragraph 4(1)(b). On the analysis set out above, question (a) in the Case Stated does not arise for consideration. Furthermore, because the BID levy demanded in this case did not become payable by virtue of paragraph 4(1), it also follows that question (b) in the Case Stated does not arise.

*Paragraph 3(2)*

60. The District Judge found that the Respondent made two errors in relation to paragraph 3(2); first, its reliance upon a website for the supply of the required information where the necessary consent from the Appellant was lacking and second, the failure to provide that information on that website. For the reasons set out above, those failures could not have amounted to an invalidity falling within paragraph 4(1). But Mr Griffiths QC maintained that that non-compliance nevertheless rendered the demand notice invalid and so the BID levy was not "payable" by the Appellant. Mr Griffiths accepted that if these errors fell outside the ambit of paragraph 4(1), then the "Soneji principle" must be applied.
61. Whether the legislature intended non-compliance with paragraph 3(2) in respect of a single ratepayer to render a demand notice served on that person invalid depends upon the proper construction of the language used in the legislation. First, although paragraph 4 addresses the invalidity of a demand notice arising from non-compliance with "paragraph 3", the legislature has made it plain that a demand notice is invalid but that invalidity is cured where the non-compliance relates to paragraph 3(1)(a) alone and not paragraph 3(1)(b) or (c). The implication is that the legislature did not intend non-compliance with paragraph 3(2) to render a demand notice invalid. Second, there is nothing in paragraph 3(2) itself, or in any other part of the legislation, which expressly or impliedly indicates that the content or purposes of paragraph 3(2) are relevant to the validity of a demand notice or to the issue of whether BID levy is "payable" by the person served with a demand notice. Third, the reasoning in paragraph 50 above is relevant again here. The purpose of paragraph 3(2) is to enable all persons liable to pay the BID levy in a district to see how the BID is performing

in relation to the statutory BID arrangements, the amount of levy collected and how it was spent in the previous financial year, and how it is proposed to be spent in the current or forthcoming financial year. This information may enable such a person to follow the progress of the BID and to make representations on its management and any proposal for altering or renewing the arrangements. It has nothing to do with understanding the basis upon which an individual's liability for BID levy has been calculated or for resisting liability to pay that amount. Mr Griffiths QC accepted this point.

62. Accordingly, a complaint regarding non-compliance with paragraph 3(2) in respect of a single ratepayer would be incapable of rendering a demand notice invalid or of causing BID levy otherwise due from that person to become non-payable. That conclusion applies to the concepts of both "total invalidity" and "invalidity in the absence of substantial compliance" with paragraph 3(2). Instead, a possible remedy for a failure to comply with paragraph 3(2) could be an application for judicial review. For completeness, it should be recorded that if an alternative view were to be taken that a demand for payment of BID levy might be invalid on the grounds of substantial non-compliance with paragraph 3(2), Mr Griffiths QC was unable to point to any prejudice suffered by the Appellant flowing therefrom which might be relevant to the provisions dealing with demand notices or liability to pay BID levy in this case.

*Mistake*

63. As set out above, only if paragraph 4(1)(a) of Schedule 4 to the 2004 Regulation were to construed to include non-compliance with paragraph 3(2), could the issue in question (a) arise as to whether LBC's non-compliance in this case was caused by a "mistake" within the meaning of paragraph 4(1)(b). However, I would add that there is no basis for criticising the District Judge's finding on this point as being wrong in law. The legislation does not qualify "mistake" so as to restrict that word to errors of fact, or to exclude an error of law in the application of the provisions in Schedule 4 for the supply of information under paragraph 3(2). The District Judge found that there was no evidence of any deliberate attempt to breach or circumvent the legislation, a finding to which there has been no challenge.

**Conclusions**

64. The Appellant's contention that he was not obliged to pay any of the BID levy specified in the demand notice because of LBC's failure to comply with paragraph 3(2) of Schedule 4 to the 2004 Regulations, and so the District Judge erred in making the liability order, must be rejected. The appeal should therefore be dismissed. For the reasons set out above, and given the way in which they were framed, questions (a) and (b) do not fall to be determined by this court.

**LORD JUSTICE DAVIS:**

65. I agree that this appeal must be dismissed.
66. It is plain enough that the introduction of the BID in Hampstead Village has not proved popular in a number of quarters; and the Appellant is obviously one of those aggrieved at its introduction. But it is not for the court to pronounce on the merits (or otherwise) of the scheme; and these proceedings cannot be used as a proxy for criticising it. The debate can no doubt be renewed in 2021, when the initial five year period expires. But

for present purposes the issue raised has to be decided on the technicalities of the wording of Schedule 4 to the 2004 Regulations.

67. By reference to the way in which the matter was argued before the District Judge (and I would pay tribute to the thoroughness of her judgment on a matter which is by no means standard fare in the Magistrates' court) I can see no error in her conclusion. No doubt the Council did misunderstand the effect of the 2004 Regulations with regard to the supply of the required information, in circumstances, moreover, where the Appellant had not agreed to accessing the information via the relevant website. But that was not deliberate. Rather, the Council was mistaken. Mr Griffiths QC maintained that the word "mistake", as used in paragraph 4(1)(b), could not apply to what he styled a fundamental breach of the obligations imposed by this legislative scheme: a failure to act in accordance with law, as he put it. But I can see no reason at all, given the language used and the legislative context, why the word "mistake" should be so limited and should not be available where an error, or misunderstanding, of the law is involved, such as occurred here.
68. Consequently, the appeal would fail by reference to that conclusion of the District Judge: which was a justified conclusion on the arguments presented to her.
69. But, as Holgate J has identified, there is an even more fundamental problem for the Appellant's case.
70. It is plain that Schedule 4 in general, and paragraph 3 of Schedule 4 in particular, distinguish between what is required to be "contained" in a demand notice and what is required to be "supplied" with such a notice. Although the language used is somewhat opaque, that distinction is then reflected in paragraph 4 of Schedule 4 also, notwithstanding the broad reference in paragraph 4(1)(a) to "does not comply with paragraph 3". Indeed, it is to be noted that paragraph 4(2) relates to a "statement" of the matters which should have been "contained" in the demand notice: it does not purport to relate to information which should have been "supplied" with it.
71. Accordingly, since it was expressly found on the evidence by the District Judge (and as was not disputed before us) that the amounts required were in fact demanded by the Council in accordance with paragraph 3(1), the demand notice was valid. Consequently, the Appellant was for that reason obliged to pay the sum demanded.