



Neutral Citation Number: [2026] EWHC 1119 (Ch)

Case No: CH-2025-000162

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
APPEALS (ChD)

ON APPEAL FROM THE ORDER OF HHJ RAESIDE KC DATED 2 JUNE 2025
SITTING IN THE COUNTY COURT AT CENTRAL LONDON (REF: L10CL385)

7 Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 12 May 2026

Before:

MR JUSTICE TROWER

Between:

BENNETS COURTYARD LIMITED

Appellant

- and -

BENNETS COURTYARD AIRSPACE LIMITED

Respondent

Ellodie Gibbons (instructed by **Jamieson Alexander Legal**) for the **Appellant**
Robyn Cunningham (instructed by **Boodle Hatfield**) for the **Respondent**

Hearing date: 26 March 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 12 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE TROWER

Mr Justice Trower:

Introduction

1. This is an appeal against an order made by HHJ Raeside KC (the “Judge”) sitting in the County Court at Central London on 2 June 2025. By that order he dismissed a claim by Bennets Courtyard Limited (“BCL”) for an order pursuant to section 25(1) of the Leasehold Reform, Housing and Urban Development Act 1993 (the “1993 Act”) determining the terms on which it was to acquire such interests and rights as were specified in an initial notice said to have been given under section 13 of the 1993 Act on 22 December 2022 (the “Initial Notice”).
2. The Initial Notice related to a building at 1 to 52, Bennets Courtyard, Watermill Way, London SW19 2RW (the “Premises”). The interests and rights sought to be acquired were:
 - i) the freehold of the Premises, which was still registered at the Land Registry in the name of Long Term Reversions (Dulwich) Limited (“LTR”) under Title number SGL678806, but in respect of which there was a pending application to register a transfer to Bennets Courtyard Freehold Limited (“BCFL”); and
 - ii) a lease of the roof space in and the airspace above the Premises, which had originally been granted by LTR to an associated company, RG Airspace Developments Limited (“RG”), on 29 April 2019 (the “Airspace Lease”) and registered at the Land Registry under Title number SGL804876.
3. Before explaining the factual background to the dispute, it is convenient to set out the relevant provisions of the 1993 Act and the Land Registration Act 2002 (the “LRA”).

The 1993 Act and the LRA

4. Section 1 of the 1993 Act provides for what is called in section 1(1) “the right to collective enfranchisement”. This enables qualifying tenants of flats contained in premises to which Chapter 1 of the 1993 Act applies to have the freehold of those premises acquired on their behalf by a person appointed by them for the purpose (the nominee purchaser) and at a price determined in accordance with the Chapter. Where that is to occur, it also allows for qualifying tenants to acquire certain related freehold interests pursuant to section 1(2) of the 1993 Act and leasehold interests pursuant to section 2(1)(b), including leases of the common parts pursuant to section 2(3). There is no issue that, in the present case, this right extended to the Airspace Lease.
5. The qualifying tenants who are entitled to exercise this right are defined in section 5 of the 1993 Act. No issues arise in relation to the definition of qualifying tenants or their identity in the present case. Section 9 is concerned with the position and identity of persons called the ‘reversioner’ and the ‘relevant landlords’, who in broad terms are those whose rights are to be acquired under the 1993 Act, in three different situations.
6. The relevant situation in the present case is described in section 9(2) of the 1993 Act, which makes provision for identifying the reversioner and the relevant landlords where (a) a claim is made to exercise the right to collective enfranchisement in relation to any

premises the freehold of the whole of which is owned by the same person, and (b) it is proposed to acquire interests of persons other than the person who owns the freehold of the premises to which the claim relates. In that situation, the reversioner and the relevant landlords are identified as follows:

“(a) the reversioner in respect of the premises shall for the purposes of this Chapter be the person identified as such by Part I of Schedule 1 to this Act; and

(b) the person who owns the freehold of the premises, every person who owns any freehold interest which it is proposed to acquire by virtue of section 1(2)(a), and every person who owns any leasehold interest which it is proposed to acquire under or by virtue of section 2(1)(a) or (b), shall be a relevant landlord for those purposes.”

7. Paragraph 1 in Part I of Schedule 1 to the 1993 Act provides that:

“Subject to paragraphs 2 to 4, in a case to which section 9(2) applies, the reversioner in respect of any premises is the person who owns the freehold of those premises.”

8. As to the proviso in paragraph 1 of Schedule 1, one of the circumstances in which the reversioner will not be the person who owns the freehold of the premises is where the court intervenes in accordance with paragraph 3 of Schedule 1 to appoint another person who must be a relevant landlord (paragraph 5(a) of Schedule 1). Paragraph 3 provides:

“If it appears to the court, on the application of a relevant landlord of any premises—

(a) that the respective interests of the relevant landlords of those premises, the absence or incapacity of the person referred to in paragraph 1 or other special circumstances require that some person other than the person there referred to should act as the reversioner in respect of the premises, or

(b) that the person referred to in that paragraph is unwilling to act as the reversioner,

the court may appoint to be the reversioner in respect of those premises (in place of the person designated by paragraph 1) such person as it thinks fit.”

9. The role of the reversioner is to conduct on behalf of all relevant landlords all proceedings pursuant to the initial notice, whether the proceedings are for resisting or giving effect to the claim (section 9(3) of the 1993 Act). It is also the person to whom notices under the 1993 Act are given or received on behalf of all relevant landlords, who conducts negotiations and other matters relating to the enfranchisement, who executes conveyances and who receives the price payable for the acquisition of any interest (paragraph 6(1) of Schedule 1 to the 1993 Act). Its acts *qua* reversioner are binding on the other relevant landlords, but it has the right to seek directions from the court as to how it should proceed in the event of a dispute (paragraph 6(2) of Schedule 1 to the 1993 Act).

10. There are detailed provisions in section 11 of the 1993 Act, which give qualifying tenants a statutory right to require their immediate landlord and any person receiving rent on their behalf to give them certain information (so far as known), including the name and address of every person who owns a freehold interest in the relevant premises (section 11(1)). It is also provided by section 11(4) and 11(8) as follows:

“(4) Any such qualifying tenant may also give

(a) to any person who owns a freehold interest in the relevant premises, ...

(b) a notice requiring him to give the tenant ...

(i) such information relating to his interest in the relevant premises ...
or

(ii) (so far as known to him) such information relating to any interest derived (whether directly or indirectly) out of that interest,

as is specified in the notice, where the information is reasonably required by the tenant in connection with the making of a claim to exercise the right to collective enfranchisement in relation to the whole or part of the relevant premises.

...

(8) Where—

(a) a person has received a notice under subsection (4), and

(b) within the period of six months beginning with the date of receipt of the notice, he—

(i) disposes of any interest (whether legal or equitable) in the relevant premises or in any such property as is mentioned in subsection (3)(c) otherwise than by the creation of an interest by way of security for a loan, or

(ii) acquires any such interest (otherwise than by way of security for a loan),

then (unless that disposal or acquisition has already been notified to the qualifying tenant in accordance with subsection (7)) he shall notify the qualifying tenant of that disposal or acquisition within the period of 28 days beginning with the date when it occurred.”

11. Section 13 of the 1993 Act makes provision for how the process of collective enfranchisement is to be initiated:

“(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.

(2) A notice given under this section (“the initial notice”) –

(a) must

(i) in a case to which section 9(2) applies, be given to the reversioner in respect of those premises; and ...

(b) must be given by a number of qualifying tenants of flats contained in the premises as at the relevant date which is not less than one-half of the total number of flats so contained”

12. Section 13 also sets out further detailed provision for the information which must be specified and contained within the initial notice. This includes details as to the premises, rights and interests to be acquired (section 13(3)(a) and (c)), the proposed purchase price, particulars of the qualifying tenants and the nominee purchaser, and the date by which the reversioner must respond to the initial notice by giving a counter-notice under section 21 of the 1993 Act. The prescribed contents of a counter-notice are detailed, but essentially provide for the reversioner to set out the extent to which it agrees with the proposals contained in the initial notice and the extent to which it does not. Those matters include a response not just to the proposals as they affect the reversioner, but also as they affect the position of any relevant landlord

13. Section 13(13) provides for Schedule 3 to the 1993 Act to have effect. The relevant parts of Schedule 3 are concerned with the dissemination of copies of the initial notice to relevant landlords amongst whom are the proprietors of leases falling within section 2, including in the present case the Airspace Lease:

i) The material parts of paragraph 12 of Schedule 3 provide for copies of an initial notice to be given by qualifying tenants to relevant landlords in the following terms:

“(1) In a case to which section 9(2) applies, the qualifying tenants by whom the initial notice is given shall, in addition to giving the initial notice to the reversioner in respect of the specified premises, give a copy of the notice to every other person known or believed by them to be a relevant landlord of those premises.

(2) The initial notice shall state whether copies are being given in accordance with sub-paragraph (1) to anyone other than the recipient and, if so, to whom ...”

ii) The material parts of paragraph 13 of Schedule 3 provide for copies of an initial notice to be given by recipients of the initial notice to relevant landlords in the following terms:

“(1) Subject to sub-paragraph (2), a recipient of the initial notice or of a copy of it (including a person receiving a copy under this sub-paragraph) shall forthwith give a copy to any person who

(a) is known or believed by him to be a relevant landlord, and

(b) is not stated in the recipient's copy of the notice, or known by him, to have received a copy.

(2) Sub-paragraph (1) does not apply where the recipient is neither the reversioner nor another relevant landlord.

(3) Where a person gives any copies of the initial notice in accordance with sub-paragraph (1) he shall

(a) supplement the statement under paragraph 12(2) ... by adding any further persons to whom he is giving copies or who are known to him to have received one; and

(b) notify the qualifying tenants by whom the initial notice is given of the persons added by him to that statement.”

14. Section 25 of the 1993 Act applies where the reversioner does not give a counter-notice and is the provision under which the proceedings before the Judge were brought. It empowers the court in those circumstances to make an order determining the terms on which the nominee purchaser may acquire the interests and rights specified in the initial notice in accordance with section 13(3). Those rights include both the freehold of the premises to which section 1(1) applies and any freehold and leasehold interests proposed to be acquired from relevant landlords in accordance with section 1(2) and 2(1) of the 1993 Act.

15. Section 97(1) of the 1993 Act provides that an initial notice under section 13 is registrable under the Land Charges Act 1972 or may be the subject of a notice under the LRA as if it were an estate contract. Where that occurs section 19(1) of the 1993 Act prevents any person who owns the freehold from making any disposal severing his interest in the premises or granting any lease liable to be acquired by section 2(1).

16. Section 19 also provides:

“(2) Where the initial notice has been so registered and at any time when it continues in force —

(a) any person who owns the freehold of the whole or any part of the specified premises or the freehold of any property specified in the notice under section 13(3)(a)(ii) disposes of his interest in those premises or that property, or

(b) any other relevant landlord disposes of any interest of his specified in the notice under section 13(3)(c)(i),

subsection (3) below shall apply in relation to that disposal.

(3) Where this subsection applies in relation to any such disposal as is mentioned in subsection (2)(a) or (b), all parties shall for the purposes of this Chapter be in the same position as if the person acquiring the interest under the disposal—

(a) had become its owner before the initial notice was given (and was accordingly a relevant landlord in place of the person making the disposal), and

(b) had been given any notice or copy of a notice given under this Chapter to that person, and

(c) had taken all steps which that person had taken;

and, if any subsequent disposal of that interest takes place at any time when the initial notice continues in force, this subsection shall apply in relation to that disposal as if any reference to the person making the disposal included any predecessor in title of his.”

17. A number of sections in the LRA also featured in the argument:

i) Section 24 of the LRA is concerned with the right to exercise owner’s powers in relation to a registered estate, the main one of which consists of the power to make a disposition of any kind permitted by the general law in relation to an interest of that kind (section 23(1)(a)). It provides that:

“A person is entitled to exercise owner’s powers in relation to a registered estate or charge if he is

(a) the registered proprietor, or

(b) entitled to be registered as the proprietor.”

ii) Section 27 of the LRA provides that –

“(1) If a disposition of a registered estate or registered charge is required to be completed by registration, it does not operate at law until the relevant registration requirements are met.

(2) In the case of a registered estate, the following are the dispositions which are required to be completed by registration—

(a) a transfer, ...”

iii) Section 28 of the LRA describes the basic rule on the effect of dispositions on priority as follows:

“(1) Except as provided by sections 29 and 30, the priority of an interest affecting a registered estate or charge is not affected by a disposition of the estate or charge.

(2) It makes no difference for the purposes of this section whether the interest or disposition is registered.”

iv) Section 29 of the LRA provides for the postponement of unregistered interests affecting a registered estate where a registrable disposition is made in the following terms:

“(1) If a registrable disposition of a registered estate is made for valuable consideration, completion of the disposition by registration has the effect of postponing to the interest under the disposition any interest affecting the estate immediately before the disposition whose priority is not protected at the time of registration.”

- v) Section 74 of the LRA makes the following provision for the effective date of an entry made in the register:

“An entry made in the register in pursuance of—

- (a) an application for registration of an unregistered legal estate, or
- (b) an application for registration in relation to a disposition required to be completed by registration, has effect from the time of the making of the application.”

The Facts

18. The Initial Notice was given on 22 December 2022 by 32 of the 52 qualifying tenants with leasehold interests in the Premises (the “participating tenants”), naming BCL as their nominee purchaser. It was given to BCFL, which had recently completed on a transfer of the freehold of the Premises from LTR, although it was not yet registered as proprietor.
19. The transfer by which BCFL acquired the freehold of the Premises from LTR was made as a result of an earlier claim for collective enfranchisement under the 1993 Act in which BCFL had acted as nominee purchaser for a differently constituted group of participating tenants. In that earlier claim, BCFL had only sought to acquire the freehold of the Premises for which it paid £380,000. It had not sought a transfer of the Airspace Lease.
20. The transfer from LTR to BCFL had completed on 23 September 2022 and an application for its registration had been made to the Land Registry on 6 October 2022. When eventually entered on the register under title number SGL678806, the transfer was dated as of the date of the original application, i.e., 6 October 2022, which was therefore before the time that the Initial Notice was given.
21. The entry of the date of application as the date from which the registration took effect reflected section 74 of the LRA. The Judge said that the evidence did not include an official copy of the title as at the time the Initial Notice was actually given (22 December 2022) and there was no evidence as to precisely when BCFL was registered as proprietor of the freehold. Nonetheless, it was common ground that, as at the date of the Initial Notice, the transfer of the freehold of the Premises from LTR to BCFL had not been entered on the register. An official copy of the title showing the entries on the register as at 4 January 2023 was the only evidence as to the date by which BCFL was entered on the register as proprietor of the freehold.
22. BCL’s case was that BCFL was the person to whom the Initial Notice was to be given in accordance with section 13(2)(a)(i) of the 1993 Act because, at the time of doing so, BCFL had completed on the transfer of the freehold and had applied to be registered as the proprietor. It was said that BCFL was therefore the person who owned the freehold of the Premises and the reversioner in respect of the Premises within the meaning of section 9(2)(a) and Part I of Schedule 1 to the 1993 Act.

23. For reasons I shall explain shortly, the defendant in these proceedings is Bennets Courtyard Airspace Limited (“BCAL”). Like RG, it is associated with LTR, and its case is that LTR was the person to whom the Initial Notice should have been given in accordance with section 13(2)(a)(i) of the 1993 Act. It was said that this was because, at the relevant time, LTR remained the registered proprietor of the freehold. For that reason, and notwithstanding completion of the sale of the freehold to BCFL, LTR was the reversioner in respect of the Premises within the meaning of section 9(2)(a) and Part I of Schedule 1 to the 1993 Act.
24. BCAL’s involvement in the dispute arose out of its position as the registered proprietor of the Airspace Lease and therefore a relevant landlord within the meaning of section 9(2)(b) of the 1993 Act. It was proprietor of the Airspace Lease as a result of a transfer from RG. The Judge recorded that there was no evidence as to when the Airspace Lease was assigned by RG to BCAL, although 29 November 2022 was the date on which the application for registration of the Airspace Lease in the name of BCAL was made.
25. At the time the Initial Notice was given by BCL to BCFL, a copy was also served on RG and BCAL. BCL believed that one or other of them was a relevant landlord within the meaning of section 9(2)(b) of the 1993 Act, because they owned a leasehold interest which it was proposed to have transferred (the Airspace Lease) and were therefore entitled to receive a copy of the Initial Notice in accordance with paragraph 12(1) of Schedule 3 to the 1993 Act. The address for service was 16-18 Warrior Square, Southend-on-Sea, which was also LTR’s registered address.
26. At the time of giving the Initial Notice, BCL was faced with a transferor and a transferee of both the freehold of the Premises and the Airspace Lease. An application had been made for registration of the transfer of both interests, but in neither case had registration occurred. In both cases there was therefore a legal owner who remained as proprietor and an equitable owner whose interest did not appear on the register, but whose priority would relate back to the time of the application (which was before giving the Initial Notice) if and when registration took place: section 74 of the LRA.
27. BCL adopted different approaches to notifying the legal and equitable owners of the Premises and the Airspace Lease. As I have already mentioned, it sent a copy of the Initial Notice to both RG and BCAL in recognition of their status as actual and putative relevant landlords derived from their interests as legal and equitable owners of the Airspace Lease. But LTR (although mentioned in the Initial Notice in its capacity as the original lessor of the Airspace Lease before its transfer to RG), was not identified as a recipient of the Initial Notice or a copy, whether in its capacity as legal owner of the freehold, as reversioner or otherwise. BCL had identified that the reversioner was BCFL and the Judge found that it was to BCFL that the Initial Notice was given.
28. The Initial Notice made provision for the reversioner’s counter-notice under section 21 of the 1993 Act to be given by 6 March 2023. Before that occurred, RG and BCAL sought and obtained from Judge Monty KC a without notice injunction restraining BCFL, as the reversioner named in the Initial Notice, from serving a counter-notice. The injunction was granted in proceedings seeking an order substituting RG as reversioner of the Premises under paragraph 3 of Schedule 1 to the 1993 Act. At that stage, the application for registration of the transfer of the Airspace Lease from RG to BCAL, which had been made on 29 November 2022, had still not been completed.

29. On 21 February 2023, Judge Saggerson made an order substituting RG as reversioner of the Premises. He also made an order that BCAL be substituted as reversioner once it was registered as proprietor of the Airspace Lease. That seems to have occurred on or before 7 March 2023 and, in that capacity, BCAL is now the respondent to this appeal.
30. The position adopted by RG and BCAL before Judge Saggerson was that it was appropriate for them to be appointed (successively) as reversioners because the argument between landlord and tenants as a result of the giving of the Initial Notice was as to the value of the Airspace Lease not the value of the freehold of which BCFL was now the registered proprietor. They were (in the case of RG) or were about to become (in the case of BCAL) lessees of the Airspace Lease, and they had the relevant commercial interest in negotiating terms, including the price, with the participating tenants. BCFL did not have that interest because, although now the owner of the freehold, it, like BCL, was a nominee for qualifying tenants (albeit those who had participated in the earlier enfranchisement) and the only real value was in the Airspace Lease.
31. Not surprisingly, given the nature of the application, during the course of that hearing counsel for BCAL (Mr Anthony Radevsky) represented on more than one occasion that BCFL was the reversioner in respect of the Premises. Also, during the course of that hearing, Judge Saggerson asked Mr Radevsky why it was necessary for RG to be substituted as reversioner in circumstances in which it had already sold the Airspace Lease to BCAL and was simply awaiting registration. Mr Radevsky's response was:
- “The reason why it matters, possibly, is that there is no reason to suppose there would be any problem about registration but if there was a problem, then [RG] would remain as the registered proprietor and the legal owner of the lease, as far as any third party is concerned, so to cover all bases, that is why we have done it that way and I apologise for the slight complication of that. It is not a point of any substance.”
32. It follows that, so far as the Airspace Lease was concerned, BCAL recognised that any difficulties with registration would mean that RG as legal owner would remain the relevant landlord and therefore the only person entitled to be appointed reversioner because of the restrictive provisions of paragraph 5(a) of Schedule 1 to the 1993 Act.
33. On 3 March 2023, BCAL purported to give a counter-notice (the “Counter-Notice”) to BCL pursuant to section 21 of the 1993 Act. By the Initial Notice, BCL had offered £100 for the purchase of the freehold and a premium of £1,000 for the Airspace Lease. By the Counter-Notice, BCAL accepted BCL's proposal that the price for the freehold should be £100, but proposed a premium for the Airspace Lease of £1,500,000. The significant difference in the parties' positions on the value of the Airspace Lease is at the root of the dispute.

The Judge's judgment

34. A number of issues determined by the Judge are not the subject of this appeal. They include his findings that the Counter-Notice was of no effect because the recipient did not have authority to receive it on behalf of BCL. Amongst other things this meant that one of the jurisdictional pre-requisites to bringing a claim under section 25 (the failure

of the reversioner to give a valid counter-notice: section 25(1)(a)) was satisfied. It follows that, on this issue, BCL succeeded at the trial.

35. The main issue with which the appeal is concerned is whether the Initial Notice was given to the reversioner as required by section 13(2) of the 1993 Act. The Judge agreed with BCAL that giving the Initial Notice to BCFL was insufficient because, at the time it was given, BCFL was not the registered proprietor of the freehold of the Premises. He therefore dismissed the claim on the grounds that the Initial Notice had not been given in accordance with section 13 of the 1993 Act. It had been given to the wrong party and the court's jurisdiction to grant relief under section 25(1) was not therefore engaged.
36. BCL's principal argument was that the Judge was wrong because, in giving the Initial Notice to BCFL on 22 December 2022, it had complied with section 13(2) of the 1993 Act. BCFL was then the equitable owner of the freehold and was simply awaiting completion of the entry on the register. It was therefore the person who owned the freehold of the Premises and the reversioner for the purposes of section 13.
37. BCL also advanced three alternative reasons as to why the Judge was wrong to dismiss the claim:
 - i) even if LTR was the reversioner, it was more likely than not that LTR had received a copy of the Initial Notice;
 - ii) the Initial Notice had been given to the reversioner in accordance with section 13(2)(a) of the 1993 Act by virtue of it being given to RG and BCAL, both of which were subsequently and successively appointed reversioner by the order made by Judge Saggerson on 21 February 2023; and
 - iii) BCAL was estopped from asserting that the Initial Notice had not been validly served.
38. The Judge started his analysis by explaining that section 13(2)(a)(i) of the 1993 Act provides that, in a case to which section 9(2) applies, the Initial Notice must be given to the reversioner in respect of those premises. He said that this was a case to which section 9(2) applies because the claim was to exercise the right to collective enfranchisement in relation to premises the whole freehold of which was owned by the same person and it was proposed to acquire interests of a person other than the person who owns the freehold, i.e., the Airspace Lease.
39. He then explained that, for these purposes, the reversioner in respect of the premises is defined by section 9(2)(a) of the 1993 Act to be "the person identified as such by Part I of Schedule 1 to this Act". Paragraphs 2 to 4 in Part I provide for a number of circumstances in which the court may appoint an alternative reversioner (including pursuant to the power exercised by Judge Saggerson on 21 February 2023), but, subject to those paragraphs, paragraph 1 of Schedule 1 to the 1993 Act provides that, "in a case to which section 9(2) applies, the reversioner in respect of any premises is the person who owns the freehold of those premises."

40. The Judge therefore concluded that the primary question for him to decide was the true and proper construction of the meaning of the words, “the person who owns the freehold of those premises”. There was no dispute that the Judge was correct to describe the principal issue he had to decide in the way that he did. He also explained that there was no binding authority provided to him by counsel as to the true and proper meaning of what he called these critical words. That remains the case.
41. The Judge’s starting point was set out in paragraph [91] of his judgment as follows:
- “Initially, and quite simply, on a straightforward reading of the words given their ordinary natural meaning in the context of the facts “the person who owns the freehold of the premises” requires the court to construe and connect three perfectly well-known ordinary terms (1) the owner of (2) the freehold of (3) the Premises which taken together indicate that it is the legal title of the premises and since 2002 which one can ascertain as a matter of evidence from HM Land Registry in a simple and certain straightforward way from an enquiry who that legal owner is without the need to make enquiries of any equitable title or any different person who might have a different equitable interest other than those shown for the Premise of the freehold. In other words, all that is required is a simple uncostly and quick search of HM Land Registry to see what is recorded for all the world to see before the Initial Notice is sent out to ensure the right person is served under the Act.”
42. He said that this approach was supported by passages from Megarry and Wade: The Law of Real Property” 10th edn (2024) and Gray: Elements of Land Law 5th edn (2009). In Megarry and Wade at paragraph 7-002, it is said that “ownership in the fullest sense means that the owner holds the land in freehold tenure for an estate in fee simple absolute”. In Gray at paragraph 2.2.7, it is said that:
- “with the steady movement towards comprehensive registration of title has to come to a new conceptualism of ownership. The regime of title registration inaugurated by the Land Registration Act 2002 offers a new degree of security of those estates which are brought on to the Land Register. An inescapable by-product, the modern statutory regime is the emergence of much more robust and deeply stabilised form of state-endorsed title.”
43. The Judge also relied on the way in which the purpose of the 1993 Act was described in Gray at paragraph 4.6.14:
- “The professed objective of the 1993 Act was to enable flat owners to gain effective ownership and managerial control of their blocks of flats, thereby overcoming the deleterious effects of oppressive or inefficient absentee landlordism. The legislation proved controversial partly because of the way it endorsed yet a further process of compulsory acquisition from existing freeholders and partly because its complexity withheld the benefits of statutory enfranchisement from a substantial minority of leaseholders. It has been said, however, that the 1993 Act should be construed purposively on behalf of tenants and not restrictively as a body of expropriatory legislation.”
44. The Judge concluded from these citations that “the purpose of the Act would have in mind a single simple straightforward approach for all tenants in service of the Initial Notice on the existing freeholder and where the facts permit this as in this case”. This

was said to accord with the principles of certainty and rationality, as two central concepts of English land law.

45. The Judge then explained that, in his view, having regard to well known and long established concepts of ownership, the need for a degree of certainty and an approach to interpretation in favour of the tenant, the conclusion was reasonably clear. He said that, when a tenant seeks to serve the initial notice on the landlord, who may be difficult to find, he simply goes to HM Land Registry, sees the name of the person involved and can “simply and shortly without wasting costs or time start the process which is what the Act appears to favour”. In particular, the Judge said that this approach meant that there was no need for the tenants to inquire of the landlord as to anything other than his legal ownership of the freehold. They do not need to inquire whether there is some equitable interest that could be difficult and take a long time to find. It would cause delay and be expensive, and, in his view would undermine the purpose of the 1993 Act.
46. He then considered *RM Residential Ltd v Westacre Estates Ltd & Anor* [2024] UKUT 56 (LC) (“*Westacre*”) and *Curzon v Wolstenholme & Ors* [2017] EWCA Civ 1098 (“*Curzon*”) to which he had been referred by Ms Ellodie Gibbons for BCL and decided that he had received no assistance from either authority. He also considered *Renshaw v Magnet Properties South East LLP* [2008] 1 EGLR 42 (“*Renshaw*”), *Pye v Stodday Land Ltd & Anor* [2016] EWHC 2454 (Ch), [2016] 4 WLR 168 (“*Pye v Stodday*”) and *Smith v Express Dairy Co Ltd* [1954] JP 45 (“*Smith v Express Dairy*”) from which he said that he gained some assistance, because they demonstrated the importance of the registered proprietor as the person on whom statutory notices are usually to be served by tenants “who have no idea of the state of play regarding the ownership of the property apart from the register”.
47. The Judge then expressed his legal conclusion in a manner which he described as short and straightforward. He said that, given the particular facts, the tenant was obliged to serve its notice on the landlord and existing freehold owner as recorded and shown on the legal title to the Premises at HM Land Registry as at the date of the Initial Notice. He went on to acknowledge that not every case would permit that approach.
48. Having reached that conclusion on the law, the Judge held that BCAL was not estopped from asserting that the Initial Notice was not validly served. He said that there was no witness statement from BCL to evidence that it had acted to its detriment in reasonable reliance on a representation by BCAL that there had been valid service of the Initial Notice. He concluded that what was said by counsel at the hearing before Judge Saggerson on 21 February 2023 was quite insufficient to prove what he called the three legal ingredients of an estoppel.
49. It is also relevant to the appeal that there were two findings, which the Judge did not make, viz. the first two of the alternative reasons referred to in paragraph 37 above. BCL said that, if he had made those findings, it would have enabled and required the court to rule in its favour, even if the Judge had been correct to conclude that LTR was the reversioner as at the time of service of the Initial Notice.

The first four grounds of appeal

50. The first four grounds of appeal all relate to the Judge’s finding that, as BCL was only the equitable owner of the freehold, because it was not yet registered on the title as proprietor at the time of service of the Initial Notice, it was not the reversioner in respect of the Premises within the meaning of section 13(2)(a)(i). BCL had submitted that BCFL was the equitable owner of the freehold of the Premises from the time of the application to register the transfer (6 October 2022) and indeed from the time of completion of the transfer (23 September 2022).
51. BCAL did not contend to the contrary but said that this was not sufficient and that the Judge was correct to conclude that BCFL’s status as an equitable owner did not mean that it had therefore become the person who owns the freehold of the Premises within the meaning of paragraph 1 of Schedule 1. BCAL’s position, and the conclusion reached by the Judge, was that this only occurred when the transfer operated at law on registration in accordance with section 27(1) of the LRA. This disagreement gives rise to a short but not entirely straightforward question of construction of section 9(2)(a) and paragraph 1 of Schedule 1 to the 1993 Act.
52. The first ground of appeal (Ground 1) was that the Judge cited extensively from textbooks and authorities to which the parties had not referred and which the Judge had not put to the parties during the course of the hearing. The next three grounds all focus on three different aspects of the Judge’s approach to construing the phrase “the person who owns the freehold of those premises” which are challenged by BCL:
- i) the Judge failed to have any proper regard to the retrospective nature and effect of section 74 of the LRA (Ground 2);
 - ii) the Judge failed to have any proper regard to the fact that, if the Initial Notice had been given to LTR and not BCFL, the rights of the participating tenants would not have been protected, because any application to register the Initial Notice would have post-dated the application to register the freehold transfer, such that the freehold transfer would have ranked in priority to the Initial Notice (Ground 3); and
 - iii) the Judge failed to have proper regard for what BCL called the “multitude of means” by which participating tenants could ascertain that the freehold had been transferred and to whom (Ground 4).
53. It is said that, if proper regard had been paid to the matters identified in Grounds 2, 3 and 4, the Judge would or should have concluded that, during the period between the time at which an application was made to register the transfer of the freehold of the Premises and the time of its actual registration (that time being part of what is called the ‘registration gap’), BCFL was “the person who owns the freehold of those premises” within the meaning of paragraph 1 of Schedule 1 to the 1993 Act. It was said that this was the case, even though, by operation of section 27(1) of the LRA, the disposition of the freehold did not operate at law until the relevant registration requirements were met.

Grounds of Appeal: Ground 1

54. Expressed as it was in the way I have just described, Ground 1 reads as a challenge to the manner in which the hearing was conducted. However, Ms Gibbons confirmed in her oral argument that the real point was that the Judge misapplied the relevant principles of statutory interpretation, and in particular mischaracterised the purpose of the 1993 Act, which caused him to reach the wrong conclusions on its proper construction.

55. In particular, Ms Gibbons criticised the way in which the Judge, at [94] of his judgment, picked out a single sentence from paragraph 30 of Lord Leggatt’s judgment in *Kostal (UK) Ltd v Dunkley & Ors* [2021] UKSC 47, in which he summarised the correct approach to interpreting a statute by reference to its purpose. She said that the Judge does not appear to have had in mind the full passage, which contains a very clear statement of the applicable principles and can usefully be cited in full:

“First, as with any question of statutory interpretation, the task of the court is to determine the meaning and legal effect of the words used by Parliament. The modern case law - including, in the field of employment law, the recent decision of this court in *Uber BV v Aslam* [2021] UKSC 5; [2021] ICR 657, para 70 - has emphasised the central importance of identifying the purpose of the legislation and interpreting the relevant language in the light of that purpose. Sometimes the context and background, or the statute viewed as a whole, provides clear pointers to the objectives which the relevant provisions were seeking to achieve. In other cases, however, the purpose needs to be identified at a level of particularity which requires it to be elicited mainly from the wording of the relevant provisions themselves.”

56. I do not think that the Judge failed to appreciate that what was said in the full citation was the exercise he was required to carry out. But I agree with Ms Gibbons that the way he paraphrased Millett LJ’s summary of the purposes of the 1993 Act in *Cadogan & Anor v McGirk* [1996] EWCA Civ 1340, [1996] 4 All ER 643 did not give the full picture. The Judge said that Millett LJ had held that the 1993 Act “should be construed purposely on behalf of tenants and not restrictively as a body of expropriatory legislation”.

57. Ms Gibbons pointed out that Millett LJ’s description of the purpose of the 1993 Act was in fact slightly different. He expressed himself in the way that he did because he was addressing an argument that the 1993 Act was expropriatory in nature and therefore should be strictly construed. He said the following at p.647j:

“It would, in my opinion, be wrong to disregard the fact that, while the Act may to some extent be regarded as expropriatory of the landlord’s interest nevertheless it was passed for the benefit of tenants. It is the duty of the Court to construe the Act fairly and with a view, if possible, to making it effective to confer on tenants those advantages which Parliament must have intended them to enjoy.”

58. In the light of the Judge’s approach, which placed considerable weight on the desirability of certainty and simplicity for the leaseholders in giving effect to the process of collective enfranchisement, this difference in emphasis is of some materiality. It seems to me that the way in which Millett LJ described the purposes of

those parts of the 1993 Act that are concerned with the effectiveness and fairness of the process by which the advantages of collective enfranchisement are to be achieved deserves equal emphasis.

59. I therefore think that Ms Gibbons was correct to submit (basing herself on *Curzon* at [32]) that, when interpreting the 1993 Act, “it is necessary to consider the consequences of the rival constructions and that the more absurd or inconvenient the results, the less likely it is that the interpretation reflects the intention of the legislature”. She also submitted:
- i) that the advantages which Parliament must have intended tenants to enjoy under the 1993 Act are the ability to compulsorily acquire interests in property, which are superior to their leasehold interest whether by way of an extended lease or a collective enfranchisement; and
 - ii) that the 1993 Act can only effectively and fairly confer those advantages if any person whose interest is to be acquired receives notice of any claim and is bound by it.
60. The essence of Ms Gibbons’ submission was that the advantage of collective enfranchisement could only be conferred on the qualifying tenants in a manner that was effective and fair if proper notice was given to those whose interests were sought to be acquired and if they were bound by the claim that has been made. On one level there is force in that submission, but it does not of itself identify the legislative intent as to what notice is to be given and how an appropriate level of certainty as to the binding effect of the process is to be achieved.
61. More particularly, I do not accept that it necessarily follows from this that the owner of an equitable interest in the freehold of the Premises to be acquired, such as that held by BCGL, must be treated as the reversioner to whom the Initial Notice must be given on the grounds that they are likely to have a much greater economic interest in the outcome. Indeed, having regard to the potential constituency of relevant landlords in cases such as the present, the legislation contemplates that there will be circumstances in which the most appropriate reversioner to carry out the negotiation with the participating tenants, once the initial notice has commenced the process, may be best left to be dealt with on a case by case basis under Paragraph 3 of Schedule 1. Indeed, this is what happened in this case on the application to Judge Saggerson.
62. Furthermore, the role of the reversioner is to act on its own behalf and on behalf of others (the relevant landlords) in the respects I have explained when summarising the extent of its role as set out in section 9(3) and paragraph 6 of Schedule 1 to the 1993 Act. There are many different forms of equitable interest in the freehold which might exist, but it seems to me that the most likely legislative intent was that, by vesting in one readily identifiable person the power to act on its own behalf and the duty to do so on behalf of others, the process of collective enfranchisement would work more effectively in furtherance of the statutory purpose.
63. I also consider that Ms Gibbons was incorrect to characterise what it is that the participating tenants seek to acquire during the registration gap as the interest of the equitable owner. What they seek to acquire is the legal interest in the freehold free of any equities. This is a point to which I will revert a little later, but it is a perfectly

coherent scheme for the existing relationship between a legal and an equitable owner of the freehold (whether the equity arises out of a contract for the transfer of the freehold, a completed but unregistered transfer of the freehold or some other circumstance) to be regarded as sufficient to protect the equitable owner from the potential impact on its rights of the giving of an initial notice to the legal owner.

64. All it needs is either an express or an implied provision in the instrument by which it has acquired its equitable interest entitling it to stand in the shoes of the legal owner to ensure that its interests are protected in the enfranchisement process, or the ability to contend that its interest takes priority over the Initial Notice if and when registered as an estate contract in accordance with section 97 of the 1993 Act. This approach reflects one of the points made by Falk LJ in *159-167 Prince of Wales Road RTM Co Ltd v Assethold Ltd* [2024] EWCA Civ 1544 (“*Assethold*”), an issue to which I will also revert later in this judgment.
65. In my view, the purposes of the legislation do not compel a conclusion that the reversioner should be the unregistered transferee of the freehold, such as BCFL in the present case. Indeed, looked at by reference to the role of the reversioner, and without regard to the three specific factors identified in grounds 2, 3 and 4 of BCL’s grounds of appeal, I think that the approach of the Judge, as supplemented by the considerations I have just explained, all point the other way.

Grounds of Appeal: Ground 2

66. BCL’s next ground for contending that the Judge was wrong was that the Initial Notice was given during the registration gap, a period which flows from and is recognised by the combined effect of sections 27 and 74 of the LRA. BCL submitted that the Judge did not have sufficient regard to the nature and effect of section 74 when construing the 1993 Act.
67. Both parties cited a number of authorities which considered the position of equitable owners in analogous circumstances and more especially where the law made provision for notices to be served on or by landlords or tenants. It is convenient to consider them at this stage of the argument.
68. In particular, BCL submitted that, whatever the position may be where equitable ownership arises in some other context, as a matter of language “the person who owns the freehold of those premises” is a phrase which is capable of extending to the person who is the equitable owner of the freehold during the registration gap. During that period the equitable owner is simply awaiting the registration of its title in order to perfect its legal interest and, when that occurs, the priority of that interest relates back to the time it applied for registration.
69. In support of its submission that this state of affairs is important to the true construction of the definition of reversioner, BCL relied on the judgment of Judge Elizabeth Cooke (sitting in the Upper Tribunal (Lands Chamber)) in *Westacre*. When considering the effect of the registration gap, she said at [41] that:

“The practical effect of that is well known to anyone who has bought a house and to conveyancers: on completion day the transfer is signed and dated, the keys are handed over, and the purchaser moves. The property belongs in equity to the

purchaser, and to say that at that stage it is not the owner of the property both flies in the face of everyday reality and betrays a failure to understand equitable ownership. True, there are just a few things the equitable owner cannot do in the registration gap, such as giving notice to quit; but entering the property is not one of them.”

70. Judge Cooke’s language in *Westacre* was used as part of her consideration of section 24(b) of the LRA, which deals with a person’s entitlement to exercise owner’s powers (as defined in section 23 of the LRA) in relation to a registered estate when, although not yet the registered proprietor, it is entitled to be registered as such. In that context, Judge Cooke was considering whether a landlord whose title to the freehold had not yet been registered was entitled to seek a dispensation from the requirement to consult with leaseholders before carrying out certain works. She said that there was no good reason why the fact that the works were carried out in the registration gap should affect the underlying question of whether dispensation from consultation should be granted.
71. In my view, the situation with which Judge Cooke was concerned was materially different from the present case and, in that context, it is not surprising that she used the language she did. She was concerned with whether a person was entitled to exercise a freeholder’s power in their capacity as such. The fact that a person is entitled to exercise owner’s powers, and in that context is treated as a matter of ordinary language as the owner of the property, is different from the question of whether they are the owner of the freehold for the technical purpose of being the reversioner under the 1993 Act. Although the ultimate aim of the collective enfranchisement is for the nominee purchaser to acquire the freehold, the specific role of the reversioner in that context is not to utilise the owners powers in the form of “a disposition of any kind permitted by the general law” with which section 23, as applied by section 24, is concerned. It is to act on its own behalf and on behalf of others in accordance with the powers and duties referred to in section 9(3) and paragraph 6 of Schedule 1 to the 1993 Act.
72. It is also worthy of note that Judge Cooke was referring to the period after the moment at which the purchaser completed on the sale. Ms Gibbons’ definition of the registration gap, on which her argument rested, was that the registration gap from which ownership of the freehold ran in the current context commenced with the application to register the freehold transfer, which may have been some time later.
73. More fundamentally, however, Ms Robyn Cunningham for BCAL submitted that *Westacre* does not assist because, generally speaking, where the question in issue relates to the service of a notice, the transfer of the beneficial title is not relevant. For those purposes, what matters is the legal relationship between the lessees and the lessors.
74. For this proposition Ms Cunningham relied on the judgment of Mummery LJ in *Brown & Root Technology Ltd v Sun Alliance and London Assurance Co Ltd* [2001] Ch 733 (“*Brown & Root*”) at p.742C. In this case the Court of Appeal was concerned with the correct construction of a clause in a lease permitting the lessee to serve a break notice, where the right to do so was personal to the original lessee and was not exercisable by any assignee of the leasehold interest. There was an intra-group transfer of the leasehold interest to the lessee’s parent company, which was never registered and, subsequently, the break notice was sought to be exercised by the original lessee. The

question was whether it could do so once there had been an assignment in equity to the parent.

75. In that context, the Court of Appeal decided that it is necessary to keep clear and distinct the position between the transferor and the transferee on the one hand and the position of a third party on the other. Transfer of the beneficial title in that context, although affecting the position in equity as between the parties to the intra-group transfer, was not relevant to the legal relationship between lessor and lessee. It followed that the original lessee was still entitled to serve the break notice notwithstanding the unregistered transfer.
76. I do not think that either *Westacre* or *Brown & Root* supply a clear answer to the question of whether the registered proprietor or an equitable owner is the person who owns the freehold of the premises for the purposes of paragraph 1 Schedule 1 of the 1993 Act is. They are both dealing with the questions with which they are concerned in a very different context. Nonetheless, *Brown & Root* makes an important point about the need to keep in mind the distinction between the relationship between the freeholder and a lessee on the one hand and between the freeholder and its assignee on the other and forms part of a run of authority, which is more consistent with BCAL's case than that of BCL.
77. Of more direct relevance is the decision of HH Judge Collins CBE in *Renshaw*, a case which also involved a claim under section 25 of the 1993 Act. The decision of Judge Collins was given on a strike out application by the freeholder on the grounds that a claim under section 25 was not available to the lessees because a valid counter-notice had been served under section 21 (see section 21(1)(a)). The response of the lessees was that the counter-notice had been served by an assignee of the freeholder during the registration gap, and that it was invalid for that reason – the transferee was not then the legal owner.
78. Judge Collins agreed with the lessees. He explained that it was common ground that there could be no sensible distinction between notices served on the freeholder and notices served by the freeholder. He relied on *Smith v Express Dairy* in which Harman J had held in what was reported as a very short judgment that the service of a notice to quit by an unregistered transferee of the landlord was invalid.
79. Judge Collins went on to decide that, for a number of practical reasons, the registered proprietor was the owner of the freehold for the purposes of identifying the reversioner in section 9(1) of the 1993 Act. In reasoning, which was echoed by the Judge in the present case, he said:

“[10] ... The tenant has to know who it is to serve notices on and it has to know who is serving notices on it, and it seems to me that the argument that that has to be the registered owner is irresistible.

[11] Subject to the operation of section 19(3), it does not seem to me that that necessarily creates any injustice or difficulty for a purchaser, which is always entitled to protect itself, either by express contract or stipulations or by drawing upon the obligations that remain upon the vendor as a result of whatever remains of the equitable relationship after a transfer has been executed but before it is

registered. It seems to me that, in principle, the reversioner, for the purpose both of receiving and giving notices, must mean the registered proprietor.”

80. The decision in *Renshaw* is cited with approval in a leading textbook in the area (Hague on Leasehold Enfranchisement (7th edn) at paragraphs 4-01, 4-01A and 24-01), as authority for the proposition that in property statutes generally, rights and obligations of tenants and landlords refer to the legal owner of the interest. It was also cited with approval by Norris J in *Pye v Stodday* at [12] as a case which had followed *Smith v Express Dairy*. I agree that Norris J considered it appropriate to draw *Renshaw* into what Ms Robyn Cunningham for BCAL called the notice to quit coterie of cases.
81. The issue in *Pye v Stodday* was different but illuminating nonetheless. It was concerned with the validity of a notice to quit under the Agricultural Holdings Act 1986 which had been served on the tenant by the landlord’s assignee before the transfer had been registered. Norris J held that any such notice had to be valid at common law, which meant that it had to be given by the person entitled to the landlord’s reversionary estate, not by an equitable owner of the reversion. He said that section 24 of the LRA did not affect that position: it did not permit a person entitled to be registered as proprietor of the reversion to terminate the claimant’s tenancy by serving him with a notice to quit. Norris J analysed a number of authorities and concluded at [25] of his judgment as follows:

“This is a well-established and coherent body of law in support of the proposition that where a legal right to bring a tenancy to an end by notice to the tenant is being exercised, then it is the person in whom the reversionary estate is vested who must give the notice.”
82. Ms Gibbons did not submit that Norris J’s summary of the law was inaccurate in the circumstances with which it was concerned, but she said that the context in which an initial notice is served under the 1993 Act is quite different. The issue which arose in *Smith v Express Dairy* and *Pye v Stodday* was whether or not there had been a valid termination of a leasehold interest by service of a notice to quit, which is served by reference to a contractual relationship between lessor and lessee. This was said to be materially different from the giving of an initial notice initiating the process of enfranchisement, which flows from the legislation that gives the lessees the right to acquire an interest. It does not flow from the leases themselves.
83. She said that this is an important difference, because the participating tenants are not seeking the legal interest shorn of the equitable title. What matters for them is the equitable interest – that is the thing of value which they seek to acquire. Ms Cunningham put the position differently. She said that the purpose of the initial notice is to acquire the legal ownership of the freehold title. The equitable ownership is central as well but that will follow the legal ownership unless it takes priority over the rights acquired by the nominee purchaser as a result of the giving of the initial notice.
84. Ms Cunningham also relied on two recent authorities in which the Court of Appeal has considered the question of whether a person with an equitable interest in property is to be treated as the landlord or the tenant for the purposes of the Commonhold and Leasehold Reform Act 2002 (the “2002 Act”). This legislation gives certain leaseholder-owned companies (an “RTM company”) the ability to acquire and exercise certain rights to manage property, the freehold of which belongs to a third party.

85. The first of these is *Assethold*. As part of the procedure by which an RTM company acquires these rights, a claim notice must be served on a number of persons, including a “landlord under a lease of the whole or any part of the premises” in accordance with section 79(6) of the 2002 Act. The issue was whether the purchaser of a freehold who had not yet become the registered proprietor at the date of a claim notice was such a landlord. The issue arose because a claim was initiated against the original freeholder (“Millcastle”) and its transferee (“Assethold”). The claim was then withdrawn and Assethold sought to exercise the statutory right under section 88 of the 2002 Act to recover the costs thrown away by the proceedings.
86. The Upper Tribunal decided the case on the grounds that the RTM company was estopped from denying that Assethold was the landlord for the purposes of section 88. As Falk LJ explained, the Upper Tribunal was obviously struck by what it regarded as the unfairness of the RTM company pursuing an application against Assethold and then seeking to deny a liability for costs.
87. The Court of Appeal decided to deal first with the question (which arose on a respondent’s notice) of whether Assethold was a landlord for the purposes of section 88. Although the equitable ownership of the freehold had passed to Assethold in October 2019, the title had still not been registered in its name by the time of service of the claim notice in June 2021. The consequence was described by Falk LJ at [28] as follows:

“I do not agree that an equitable owner can be a “landlord” for the purposes of ss.79(6) and 88 of the CLRA. In its ordinary and natural meaning, a “landlord under a lease” means the landlord as a matter of law. Both the freehold and headlease interest were existing registered estates. Their legal owners at the relevant time were the two Millcastle entities, not Assethold, because under s.27(1) of the Land Registration Act 2002 the transfers did not operate at law unless and until they were completed by registration. Until Assethold became the registered owner the legal estate remained vested in Millcastle. It could not therefore be said that Assethold was a landlord under any lease of the premises.”

88. Falk LJ then explained that her conclusion was supported by the context and purposes of the legislation. In particular she identified a number of provisions in the legislation which indicated that the landlord under a lease was the person who is the party to a lease. She then explained the significance of the decision of the Supreme Court in *AI Properties (Sunderland) Limited v Tudor Studios RTM Limited* [2024] UKSC 27 (“*AI Properties*”) to the correct answer at [44] of her judgment as follows:

“The conclusion that the intention was to confine the concept of a landlord to holders of legal interests is also supported by the purpose of the RTM legislation, as discussed in some detail in *AI Properties*. I accept that the overall objective of the legislation is to facilitate the transfer of management functions to a tenant-managed company and that the procedure is intended to give those who are likely to be affected by that the chance to object. Critically, however, the process was intended to be “as simple as possible to reduce the potential for challenge by an obstructive landlord”: *AI Properties* at [25], quoting a paragraph from the consultation paper that accompanied the draft bill which Lord Briggs and Lord Sales (with whom Lord Hamblen, Lord Leggatt and Lord Stephens agreed) said should be regarded as “a general statement of the purpose of the CLRA.”

89. Falk LJ went on to explain at [46] of her judgment that the requirements of the legislation were deliberately prescriptive to minimise the prospects of obstruction from those unwilling to acquiesce in the transfer of management and the known difficulties in that amongst other contexts of identifying transfers of equitable ownership:

“... but the aim of having a simple process would be further, and materially, undermined if the difficulties were compounded by including equitable owners of interests that are registered. Rather, RTM companies should so far as possible be able to rely on the entries on the register.”

90. It is of some significance to the present case that Falk LJ concluded that these considerations were not outweighed by Assethold’s actual role in managing the property or the difficulties caused by delays in or pertaining to registration. She said that it was always open to a buyer in Assethold’s position to mitigate the potential risks attendant on an RTM claim before registration by ensuring that the terms of its acquisition made appropriate provision for the seller to pass on notices or take other steps in relation to leases. These might include acting as the buyer directs following completion and prior to registration. She pointed out that a properly drafted provision of that sort would not only have required Millcastle to pass on any claim notice but would have permitted Assethold to instruct Millcastle how to respond to it and to take other steps on its behalf.
91. It is evident that a number of the considerations taken into account by the Court of Appeal in *Assethold* are relevant to the parties’ submissions in the present case. Thus, there are similarities in the statutory purpose, which involve the compulsory acquisition of freeholder rights and the importance of a simple process for tenants, while still giving those affected the right to object. Set against this, there are obvious differences in the precise nature and purpose of the legislation, and the statutory language is different (the 2002 Act phrase is “landlord under a lease” as compared to the 1993 Act phrase, which is “the person who owns the freehold”). There are also differences in the means by which a tenant may obtain information which are less extensive than the means available under section 11 of the 1993 Act and the fact that issues of registration did not arise. Nonetheless, in overall terms, I agree with Ms Cunningham’s submission that *Assethold* is consistent with and largely supportive of BCAL’s case.
92. The second case is *Avon Freehold Ltd v Cresta Court E RTM Ltd* [2025] EWCA Civ 1016 (“*Cresta Court*”), which I can take more shortly. The dispute also arose under the 2002 Act, but was concerned with the different question of whether the failure of the RTM company to give notice of invitation to participate to a tenant whose new lease had been granted but was not registered at the time the claim notice was served, invalidated the RTM company’s claim under section 79.
93. The Court of Appeal decided that, in circumstances in which there was no legal lessee, and the tenant only held an equitable lease, their status as a qualifying tenant was established. They were “a tenant of the flat under a long lease” within the meaning of section 75(2) of the 2002 Act. To that extent, Ms Gibbons can point to an equitable tenant being treated as a qualifying tenant, which supports BCL’s case.
94. However, the Court of Appeal went on to conclude that, where there was both a legal lease and an equitable lease, which would be the case where the equitable lease was held by a transferee during the registration gap, the legal lease would have primacy for

the purposes of identifying the qualifying tenant. That situation is more closely analogous to the present case (albeit from the perspective of lessee rather than lessor) and supports BCAL's position that the usual position is that the identity of the landlord should be ascertainable from a search of the register.

95. In my view, Ms Gibbons' submission that the Judge's findings in the present case ignore the nature and effect of section 74 of the LRA is difficult to reconcile with the weight of these authorities. If there were to be substance in that criticism, the same might be said of a number of these cases as well, but I do not think that is the right way of looking at the issue. Section 74 is concerned with the effective date of registration for priority purposes under the LRA. It is not concerned to treat the person whose title relates back to the time of the application for registration as the legal owner of the freehold for all purposes, irrespective of the context. For present purposes, the context is the giving of notice at a time before registration when by its very nature the terms of section 74 are not yet engaged, and indeed may never be engaged if for whatever reason registration is not granted.
96. Put another way, even though the Initial Notice was given to the person who is now treated by the entries on the register as having been the legal owner of the Premises from the time the transfer was registered, the authorities are consistent with BCAL's case that what matters is the identity of the legal owner at the time the Initial Notice was given. Indeed, it seems to me that any other approach would taint the giving of notice with inherent uncertainty. If the retrospective effect of section 74 were to influence the identity of the proper recipient of an initial notice in this context, insufficient regard would have been paid to the consequences of the potential that the application to register might fail.
97. The fact that section 74 does not have the impact for which Ms Gibbons contends is also apparent from the way in which Norris J expressed the position in *Pye v Stodday* at [22] in relation to a notice of quit, a principle which in my view has equal application in the current context:
- “22 In *Emmet & Farrand on Title* para 9.017 it is noted that under section 27(1) and 74 of the Land Registration Act 2002 the legal estate does not pass to the purchaser until the transfer is registered and that prior to that date the purchaser is unable to serve a valid notice to quit. Amongst the cases relied on is *Lever Finance Ltd v Needleman's Trustee* [1956] Ch 375 and *Lankester v Rennie* [2014] EWCA Civ 1515. To the same effect is a passage in *Property Notices: Validity and Service*, 2nd ed (2011), by Tom Weekes at paras 3.53–3.56.”
98. In that case there was no suggestion that section 74 had any effect on the validity of the giving of notice at the time it was served. In my judgment, the same can be said in relation to an initial notice given under section 13 of the 1993 Act. Retrospectivity in that sense does not apply. In my view, the Judge was not wrong not to have regard to the nature and effect of section 74 when construing the 1993 Act. Even if he had given section 74 the consideration which Ms Gibbons submitted he should have given it, I do not consider that it would or should have altered the conclusion he reached.

Grounds of Appeal: Ground 3

99. This limb of Ms Gibbons argument was that the Judge failed to have proper regard to the fact that, if the Initial Notice were to have been given to LTR rather than BCFL, the rights of the participating tenants would not have been protected. What she meant by this was that any application to register the Initial Notice (made on or after 22 December 2022) would have post-dated the application to register the freehold transfer (6 October 2022) and so the freehold transfer would have ranked in priority to the Initial Notice.
100. This point was characterised by Ms Cunningham as a failure by the Judge to have regard to section 97(1) of the 1993 Act. The reason she put it this way was that section 97(1) provides that an initial notice given by participating tenants under section 13 may be the subject of a notice under the LRA as if it were an estate contract, but the consequences of that on the priorities as between the participating tenants and an equitable owner of the freehold whose application for registration was pending at the time of the initial notice was not taken into account by the Judge.
101. In assessing the impact of this issue, it is important to have regard to the effect of section 19(3) of the 1993 Act. It provides that, where there is a disposal by the owner of the freehold or a disposal of any interest by a relevant landlord after the registration of the initial notice, all parties are put in the same position as if the new owner (a) had become the owner of the freehold before the initial notice was given and (b) had been given the initial notice in fact given to the transferor. However, where the disposal occurs before the registration of the initial notice, this statutory fiction does not apply.
102. By way of background to her argument, Ms Gibbons again contended that the participating tenants had no interest in acquiring the bare legal title. It followed that it was the interest of the equitable owner, which they sought to acquire. She said that it was integral to the proper working of the 1993 Act that a person whose interest was to be acquired should receive notice of the claim made by the initial notice and be bound by it.
103. In support of her submission, Ms Gibbons cited *Curzon*, a case which was concerned with the rather different issue of whether an initial notice, which had not been protected by being noted on the register under section 97 of the 1993 Act, could be enforced against the original reversioner who had transferred the freehold to a third party and had then subsequently taken a transfer back. While accepting that, on the unusual facts of that case, the result was a harsh one, the Court of Appeal determined that the initial notice was not enforceable against the original reversioner once the freehold was re-transferred to him.
104. However, it was an essential foundation on which the court's reasoning was based (see paragraph [40] of Asplin J's judgment), that both parties accepted that the statutory rights created by the service of an initial notice are not binding on a transferee of the freehold reversion, unless the rights are protected in accordance with section 97. If they are protected by registration of the initial notice, section 19(3) will only operate the statutory fiction to protect those rights if registration occurred before the disposition was made. This opens up the possibility that registration of the Initial Notice will not assist the participating tenants if the disposition by the owner of the freehold, although not yet registered, has already occurred.

105. It was also said by Asplin J at [41] of her judgment in *Curzon* that, once the freehold reversion had been transferred to a third party, the original reversioner who received the initial notice ceased to be the reversioner within the meaning of section 9 of the 1993 Act and could no longer be the relevant party with whom to engage in the enfranchisement process or against whom to make an application. The consequences of these findings in *Curzon* were then spelt out at [43], namely that it was implicit in section 19(3) that, where the statutory fiction does not apply in order to put the transferee in the position as if he had received the initial notice, the notice is of no effect (whether or not the reversion is subsequently re-transferred).
106. Ms Gibbons submitted that the effect of *Curzon* is (a) that section 19 does not have effect where the initial notice is served and registered under section 97 during the registration gap and (b) that a freehold owner is not bound by an initial notice unless it is served upon him or he takes a transfer of the freehold against which the initial notice has already been registered. Ms Gibbons said that it follows that if, in the present case, the giving of the Initial Notice by the participating tenants had been to LTR, and not BCFL, their rights would not have been protected because any application to register the Initial Notice would have post-dated the application to register the freehold transfer. The dual consequence of this would have been that the freehold transfer would have ranked in priority to the Initial Notice and LTR would not have been in a position to convey the freehold to the nominee purchaser because it had parted with beneficial ownership by the time the Initial Notice was given. It was said that, if that was the case, the 1993 Act would not have been effective to confer on the participating tenants the advantages which it intended to convey.
107. Ms Cunningham accepted some but by no means all of this analysis. She conceded that, if an initial notice was registered under section 97, but section 19 and its statutory fiction was not then engaged, the statutory rights to which the participating tenants would otherwise have been entitled under the initial notice could lose priority.
108. However, and addressing the question of whether the legal owner of the freehold was the reversioner as a matter of principle, Ms Cunningham submitted that, even if section 19 and its statutory fiction were not engaged, it did not follow that requiring the initial notice to be given to the legal owner would have the effect of removing from the participating tenants the advantages which the 1993 Act was intended to convey. In particular it was not necessarily the case that the initial notice would lose priority merely because there was an equitable owner of the freehold whose interest was unregistered, but who had completed on the transfer before the initial notice was given (whether or not an application for registration had then been made).
109. Whether or not that was the case would depend on whether the basic rule for which section 28 provides (priority in the order of creation) or the postponement provisions of section 29 apply. Thus, if a disposition made in consequence of an initial notice is registered before an equitable interest arising as a result of an earlier transfer of the freehold is protected, the priority in the orders of creation may not apply, but unless that is the case it will.

110. Ms Cunningham accepted that this gave rise to the possibility of injustice, but said that it would be a rare case, more particularly because it was always open to the participating tenants to notify their claim to any equitable owner of the freehold. That could be done as easily in the circumstances in which the legal owner was the reversioner on whom the initial notice was to be served, as it could if the equitable owner were to be treated as the reversioner in accordance with the principles for which BCL contends.
111. I also think it is important to bear in mind what Asplin J said in *Curzon* at [41] about the original reversioner ceasing to be the reversioner where the freehold is transferred to another. This finding, and the court's power to substitute a reversioner, reflect the fact that the legislation recognises that circumstances may change in such a way that the identity of the reversioner will change and, indeed, that even the legal owner of the freehold may not prove to have been the right person from the outset. The fact that A may be the legal owner of the freehold at the time of service of the initial notice does not mean that A will be the legal owner throughout the process, nor does it mean that the legal owner of the freehold, or even an equitable owner, will always be the right person to carry the process through to fruition (as the facts of this case show).
112. I accept that these kinds of consideration may affect the extent to which it seems more or less obvious on the facts of any particular case that the reversioner should be the legal owner of the freehold. However, given the plethora of different circumstances which may affect issues of priority, it seems to me that they are an unsure foundation for determining the question of whether the legislature intended the legal owner of the freehold or an equitable owner of the freehold to be the reversioner for the purposes of the 1993 Act.
113. It remains the case that if the question is asked: should it be the legal owner with the attendant certainty of identity or should it be the equitable owner, who is potentially difficult to identify and whose ability to transfer the freehold to the nominee purchaser is inchoate at the time the initial notice is given, the former is a more powerful reflection of the need for certainty in the operation of the processes for which the legislation provides than the latter. That is not outweighed by the possibility that, in some cases, the participating tenants may have to start again if they wish to ensure priority as against the new legal owner. But overall I do not consider that this potential impact on the effectiveness of the process for the benefit of participating tenants points to an interpretation of the word reversioner for which Ms Gibbons contends.

Grounds of Appeal: Ground 4

114. The final ground of appeal on this part of the case criticises the Judge for failing to weigh in the balance what Ms Gibbons called the ample means by which qualifying tenants were able to acquire information as to the sale by a landlord of its interest in the freehold against the ease with which tenants could identify the registered freeholder as the reversioner by a simple inspection of the register.
115. Ms Gibbons pointed out that any inspection would reveal the existence of a pending application, but she accepted that the register might not reveal the nature of the application and Ms Cunningham said that her understanding was that it would not do so. But Ms Gibbons also said that the provisions of section 11 of the 1993 Act permitted qualifying tenants to make inquiries of the registered proprietor as to the nature of any pending application. She contended that section 11 was designed precisely for this

purpose, although it is plain that there are also many other relevant matters for which the provisions could be used (the proper identification of other relevant landlords and other qualifying tenants are but two of them).

116. Ms Gibbons also relied on section 3 of the Landlord and Tenant Act 1985 and section 48 of the Landlord and Tenant Act 1987 both of which impose duties on the assignee of the reversion of residential premises to give notice in writing to the tenant of an assignment. It was said that information as to the existence of a new equitable owner would come to the notice of the qualifying tenants by that means.
117. I accept that these provisions go some way towards assisting the participating tenants (and the nominee purchaser) in their efforts to identify any equitable owner, but I do not accept that they are the panacea for which Ms Gibbons contends. In particular the times within and by which a landlord is required to give notices to tenants under section 3 of the Landlord and Tenant Act 1985 and section 48 of the Landlord and Tenant Act 1987 do not give tenants a sure basis for identifying their identity when they may wish to serve an initial notice. More generally, the process of investigating equitable interests, even if limited to a transferee's equitable ownership arising out of a contract for the acquisition of the entirety of the freehold, would render the whole process of collective enfranchisement materially more difficult and complex. I agree with Ms Cunningham's submission that this is both unnecessary and undesirable and would serve to undermine one of the basic purposes of the 1993 Act.
118. In particular, it is unnecessary because there is no good reason why it should not be commonplace for the transferor and transferee of a freehold interest in property such as the Premises to proceed as Falk LJ considered might be appropriate in *Assethold* at [47]:

“It is open to a buyer in *Assethold*'s position to mitigate the potential risks by ensuring that the terms of its acquisition make appropriate provision for the seller to pass on notices or take other steps in relation to leases, including acting as the buyer directs following completion and prior to registration. A properly drafted provision of that nature would not only have required Millcastle to pass on any claim notice but would have permitted *Assethold* to instruct Millcastle how to respond to it and to take other steps on its behalf.”
119. In these circumstances, I have reached the conclusion that the matters relied on by Ms Gibbons as matters to which the Judge failed to have regard in reaching the conclusion that he did on the true construction of the phrase “the person who owns the freehold of those premises” do not affect the answer that he gave. I accept Ms Cunningham's submission that the Judge's emphasis on the desirability that this part of the scheme for collective enfranchisement should be simple and straightforward for qualifying tenants to operate was well founded.
120. I also do not accept the emphasis which Ms Gibbons placed on the need for the initial notice to be given to the equitable owner because its interest was in economic terms more substantial and relevant than the economic interest of the legal owner. In my judgment, that would be to place too much weight and significance on an assumption that, where the equitable owner's interest arises out of an unregistered transfer, the value of that interest will be materially greater than that of the legal owner. Indeed, the facts of this case, in which the greater value appears to lie in the Airspace Lease, while there was no material distinction in the value of both the legal and the equitable interests

in the freehold, both of which were merely nominal, illustrates why an assumption to that effect is an unsure basis for construing the relevant phrase.

Consideration of whether the Initial Notice had in fact been given to LTR: Ground 5

121. The Judge found not only that the Initial Notice was given to BCFL, but also that a copy was sent to both RG and BCAL, as relevant landlords, at the same address at Southend on Sea. However, he found that BCL had not proved that LTR was provided with a copy of the Initial Notice.
122. BCL submitted that this finding did not pay sufficient regard to the fact that this address was also the registered office for LTR. It was also submitted by Ms Gibbons that the Judge should have had regard to the fact that paragraph 13 of Schedule 3 of the 1993 Act provides that a recipient of the initial notice (or a copy of it) must forthwith give a copy to any person who is known or believed by him to be a relevant landlord, but is not stated in the recipient's copy to have received a copy.
123. On BCAL's own case, LTR was then the reversioner and therefore a relevant landlord to whom the Initial Notice should have been given (section 9(2)(b) of the 1993 Act). If that is what it had then believed, it would have been under a duty under paragraph 13 to give a copy to LTR, because LTR was not stated on BCAL's copy of the Initial Notice to have received a copy. It was said that, if the Judge had had proper regard to these matters, he would have concluded that it was more likely than not that LTR had also received a copy of the Initial Notice, either from RG or BCAL or from some other source of which RG and BCAL were aware.
124. In my view there are two difficulties with this submission. The first is that the Judge made a finding of fact that BCL had not proved that LTR had received a copy. He pointed out that the Initial Notice made no reference to LTR indicating that it was an intended recipient, was not addressed to LTR and that BCL called no evidence to support its case that the Initial Notice was brought to LTR's attention.
125. I can understand why Ms Gibbons contended that it is appropriate to be sceptical about this finding, not least because of the association of the companies concerned and the fact that they shared the same address. But it is clear to me that it is one which, on the evidence before him, it was open to the Judge to make. Apart from anything else, everybody seems to have been proceeding at that stage on the basis that LTR was not the reversioner and therefore could not have been a relevant landlord. Indeed this continued to be BCAL's position up to and beyond the hearing before Judge Saggerson.
126. An appeal court will not interfere with a finding of fact made by a trial judge unless his conclusion is plainly wrong or, if said to be unbalanced in its consideration of the evidence, is not rationally supportable (for a very recent summary of the law see *Sukhwinder Singh v (1) Makhan Singh Bains (2) GB Retail Limited* [2026] EWCA Civ 408 at [114] to [118]). In my view, BCL's challenge to the Judge's conclusion on this aspect of the case falls well short of satisfying this test.
127. The second difficulty is that, even if LTR was provided with a copy of the Initial Notice, there is an important question as to whether it was "given" the Initial Notice so as to satisfy the requirements of section 13(2)(a)(i). Ms Cunningham submitted that, even if LTR received a copy of the Initial Notice, it was not given to LTR "by" the necessary

number of qualifying tenants so as to satisfy the requirements of section 13(2)(b) of the 1993 Act. LTR was not named on the Initial Notice as a recipient and, on BCL's case, if it received it at all, it only received a copy of it from RG or BCAL, not by the participating tenants and there is no evidence as to when it was received.

128. In making that submission, she relied on the judgment of Nugee LJ in *Khan v D'Aubigny* [2025] EWCA Civ 11 at [31], in which he cited the decision of the Supreme Court in *UKI (Kingsway) Ltd v Westminster City Council* [2019] 1 WLR 104 ("*UKI*") at [15] as authority for the proposition that "give" is an ordinary English word and, on its natural and ordinary meaning, if A is required to give a document to B, that simply means that A must cause B to receive it. She said that it followed that there must therefore be a link between the transmission of the giver and the receipt of the recipient. Merely because the initial notice might come into the hands of B by some other means does not mean that it was given to B by A.
129. I accept that the purpose underlying the notice and service provisions is to ensure that those with an interest in the outcome of the claim for collective enfranchisement are given sufficient notice to enable them to participate in the process should they wish to do so. However, it is also clear from the imperative language used throughout Chapter 1 of the 1993 Act that Parliament intended the formalities to be complied with. They are an important part of the manner in which the legislature determined that the balance was to be struck between the rights of the qualifying tenants on the one hand and those of the relevant landlords on the other.
130. Equally important in my view are the formalities of how and when the notice was given to the reversioner by the participating tenants. As Ms Cunningham pointed out, the timing of the giving of the notice is an important part of the process. It is defined in the legislation as the "relevant date" to which a number of aspects of the process are tied, including such points as the identity of the qualifying tenants at the relevant date and the nature of the property and rights enjoyed on the relevant date (see section 1 of the 1993 Act). The certainty bred from formality is a significant part of the process.
131. Likewise, formality as to the means by which the initial notice is to be given injects an appropriate level of certainty into the ascertainment of what occurred. While not determinative, the intention of the participating tenants as the givers of the notice also points against LTR having been given the Initial Notice by them. It was not addressed to LTR (a distinguishing feature from *UKI*) and, if received by LTR, was not received by it through a process of transmission which was contemplated by the legislation. This seems to me to count against Ms Gibbons' argument in circumstances in which clear identification of the person with whom the participating tenants were required to deal was a necessary part of the enfranchisement process.
132. It is also the case that the 1993 Act draws a clear distinction between the initial notice, which must be given to the reversioner by the participating tenants, and a copy of the initial notice which any recipient is obliged to give to any other previously unidentified relevant landlord under paragraph 13 of Schedule 3. In the present case, BCFL is the only entity named in the Initial Notice as the person to whom it is being given, and therefore the only person identified by BCL as the nominee purchaser as having the powers and duties of the reversioner. Merely because a copy of the Initial Notice may have come into the hands of another entity (LTR), which is subsequently determined to be the reversioner does not in my view mean that the formalities can be treated as having

been complied with. If they have not the statutory process will not have been properly initiated.

133. In these circumstances, I have reached the conclusion that, on the basis of the Judge's conclusion that LTR was the reversioner:
- i) He was not wrong to conclude (as he did in paragraph 51 of his judgment) that BCL had not proved as a fact that a copy of the Initial Notice was provided by BCL to LTR; and
 - ii) that, even if it had, he was not wrong to conclude that the Initial Notice had not been given to LTR as the reversioner in respect of the Premises and that the requirements of section 13(2)(a)(i) of the 1993 Act were mandatory and had not been complied with.

The Significance of BCAL's later appointment as reversioner: Ground 6

134. BCL also relied on two different arguments relating to the order which was made by Judge Saggerson appointing RG and BCAL as reversioner under the power granted by paragraph 3(a) of Schedule 1 to the 1993 Act. The first was that the Judge failed to consider whether the Initial Notice had been served on the reversioner because it was served on RG and BCAL both of whom were subsequently appointed to be reversioner. The second was that the Judge was wrong to reject BCL's argument that BCAL was estopped from asserting that the Initial Notice was not validly given because of the manner in which the matter was argued by BCAL before Judge Saggerson.
135. The way that the first of these arguments was advanced was that, although in a case to which section 9(2) applies, the reversioner in respect of any premises is the person who owns the freehold of those premises, this provision is subject to paragraphs 2 to 4 (i.e., including paragraph 3(a)). It was said that this proviso means that, where the reversioner is substituted, the person so substituted is to be treated for all purposes as if they had always been the reversioner and in particular, as Ms Gibbons put it, they are to be treated as having been substituted with retrospective effect for the purposes of receiving the Initial Notice.
136. Ms Gibbons submitted that paragraph 3(a) makes no reference to the time at which, and the purpose for which, a person appointed under its provisions should be treated as reversioner. She said that there is nothing in the wording of the 1993 Act (or the policy which underpins this part of the 1993 Act) as to why service on a person subsequently appointed the reversioner should not be good service for the purposes of serving an initial notice under section 13(2)(a). Indeed she said that the contrary is the case, because the statutory scheme provides for service on the reversioner as the person most likely to have the greatest monetary interest in the outcome. In circumstances in which RG and BCAL were substituted as successive reversioners, because their interest was likely to be of greater monetary value than BCFL's reversion, it was appropriate to substitute them not just as reversioner, but also as reversioner for the purposes of receiving the Initial Notice at the outset.
137. This argument was not referred to in the Judge's judgment, although it was included at paragraph 2(2) of the List of Issues he was asked to decide. Ms Gibbons said that it ought to have been dealt with by the Judge and decided in her client's favour.

138. Ms Cunningham's answer was a short one. She said that no reasonable person would interpret the word "reversioner" in section 9(2) of the 1993 Act to mean some entity who may become a reversioner in the future, whether by some provision under the statute (such as by exercise of the power granted by paragraph 3(a) of Schedule 1 to the 1993 Act), or by acquiring an interest in the premises which caused that to happen.
139. I agree with Ms Cunningham on this point, although I would express it slightly differently. The giving to the reversioner of an initial notice under section 13(2)(a)(i) of the 1993 Act is the means, and the only means, by which the claim to exercise the right to collective enfranchisement can be made in a case to which section 9(2) applies. For this, and indeed for all purposes of Chapter 1 of the 1993 Act, the reversioner where section 9(2) applies is the person identified as such in Part I of Schedule 1 to the 1993 Act.
140. This contemplates that the identity of the reversioner may change because, although the starting point under paragraph 1 of Schedule 1 is that "the reversioner in respect of any premises is the person who owns the freehold of those premises", this is expressly subject to paragraphs 2 to 4. Those paragraphs make specific provision for another person (who must be a relevant landlord) to act as the reversioner in respect of the premises, as indeed happened in the present case when Judge Saggerson made the order he did on 21 February 2023.
141. Ms Gibbons' construction would mean that a person who was not the reversioner at the time of the giving of the Initial Notice was to be treated as if they had been, so as to validate *ex post facto* the making of a claim which up until that moment had not been made by the giving of a valid initial notice under section 13. I accept that a validation of that sort is conceptually possible, but I do not think that the language of section 13 provides for that to be the meaning of the word "reversioner" in this context. The only natural meaning of the phrase "the reversioner in respect of those premises" where it appears in section 13(2)(a)(i) is the person who is the reversioner at the time the initial notice is given. This is made clear by the mandatory language used in section 9(2)(a) (the word is "shall") and section 13(2)(a)(i) (the word is "must") and also by the fact that the description of the reversioner in Schedule 1 is expressed in the present tense.
142. In the absence of language making provision for retrospectivity either in relation to the giving of the initial notice, or indeed the deemed carrying out of any other steps by the reversioner where a substitution has occurred, I do not think that substitution for the purposes of receiving the initial notice is something for which the 1993 Act provides. That is not surprising because, in the case of a substitution in which the initial notice was validly given at the time to the correct reversioner but not the substitute, a pure application of Ms Gibbons' suggestion that substitution should be for the purposes of receiving an initial notice could not possibly be right. Whether Judge Saggerson could have made an order under paragraph 5(b) of the 1993 Act which had one effect or the other is not a matter on which I heard argument or on which I express a view; in any event it does not matter because he did not do so.

Estoppel: Ground 7

143. Ground 7 of the appeal relates to the Judge's decision that BCAL was not estopped from asserting that the Initial Notice was not validly served. It was said by BCL that he had misread or misunderstood the decision of the Court of Appeal in *Free Grammar School of John Lyon v Mayhew* (1999) 29 HLR 719 ("*Mayhew*"). This was a case in which landlords had served a notice under section 25 of the Landlord and Tenant Act 1954, which was not in the prescribed form. The tenant (Mr Mayhew) served a counter-notice requesting a new tenancy under section 26. The Court of Appeal held that, while the section 25 notice was invalid, the judge had been entitled to find that, by serving the counter-notice, the tenant had accepted the validity of the notice, on which the landlords had relied to their detriment. The tenant was therefore estopped from denying the validity of the original notice under section 25.

144. In his judgment in *Mayhew*, Henry LJ explained how it could be said that conduct of this sort could amount to a sufficient representation by a party that he would not insist on his strict legal rights. He said at p.726:

“An ineffective notice clearly does not require a response, but the tenant would then risk losing his chance of a new tenancy by a court finding the notice to be effective. Accordingly, the prudent course for a tenant so placed is to serve the counter-notice without prejudice to the contention that (on the basis of the appellant's submissions in this case) the section 25 notice was ineffective ... What the tenant in fact did was to take no point as to the efficacy of the section 25 notice, but to proceed in all respects as if that notice was valid and effective, and only to take the point after the property had come within the scope of the enfranchisement provisions ... There is no shortage of authorities in many branches of the law to the effect that failure to object to a recognised defect or omission or to take an obvious defence may be objectively construed as that party's unequivocal indication of his intention not to insist on his strict legal rights (see for example, *Bremen v. Varden* (1978) 2 LIR 109). In such cases, the main question is whether the party against whom the point has been taken has reasonably inferred that the notice in question has been accepted as a valid and effective notice. So in all such cases, it is ultimately a question of fact to be determined by the trial judge.”

145. However, the reason that this conduct was sufficient in that case not just to amount to a representation but also to give rise to an estoppel was explained in the judgment of Leggatt LJ in *Mayhew* at p.724:

“But in my judgment it is indisputable that the landlords relied on the section 25 notice, and that they relied on nothing else. They do not have to go further and show what they would have relied on if there had been no representation that its validity was not disputed. By incurring lawyers' and surveyors' fees the landlords suffered obvious detriment, despite Mr Driscoll's ingenious argument that by an award of costs they might be reimbursed at least in part. They also refrained from serving another section 25 notice in the correct form. Since the landlords refrained from doing so on the faith of Mr Mayhew's representation that he was treating the section 25 notice as valid, it would plainly be unconscionable for Mr Mayhew to take the point thereafter that the section 25 notice was defective. Since Mr Mayhew knew that the wrong form had been served, while it is evident that the landlords

did not, there is no unfairness in Mr Mayhew being bound by the consequence of treating it as valid.”

146. BCL argued that the bringing of proceedings by RG and BCAL to be appointed as reversioners in place of BCFL, and the consequential service of the counter-notice by BCAL on 3 March 2023, were all predicated on BCFL being the reversioner. It followed that BCAL was then representing that the Initial Notice was validly given. Ms Gibbons also pointed out that there were numerous occasions on which, at the hearing before Judge Saggerson, this was said to be BCAL’s position. Thus she gave one example where Mr Radevsky, then acting for BCAL, said the following when explaining to Judge Saggerson the background to why BCAL (and RG) should be substituted as the reversioner:

“So that is how the claim is exercised, by giving a notice to the reversioner. And that was done here. The tenants gave notice to the reversioner which was their nominee purchaser who had acquired the freehold previously.”

147. Another was where Mr Radevsky said the following:

“... just to explain to your Honour and remind you of something I think I have said already, the lessees of the flats in this case made a claim in 2021 to buy the freehold. They did not claim the Roof Space lease. They did acquire the freehold and through their nominee company they hold the freehold of the block. So they are the freeholder through that company and that freehold company is the reversioner by virtue of paragraph 1 of Schedule 1. That is subject, as you see, to paragraphs 2 to 4.”

148. Ms Gibbons also relied on the fact that, when BCAL served a counter-notice under section 21 of the 1993 Act, it did not reserve its position as to the validity of the Initial Notice. This was the course that Henry LJ said in *Mayhew* that a person in the position of BCAL should take if it wishes to preserve an argument that the service of a counter-notice does not amount to a representation that the original notice was valid.
149. The Judge considered *Mayhew*, but seems to have concluded that none of the requirements for establishing an estoppel were made out. The judgment is not wholly clear on this point, but in so far as the Judge concluded that the steps taken by BCAL were insufficient to demonstrate an unequivocal indication of its intention not to insist on its strict legal rights, I do not think that the Judge was correct. I agree with Ms Gibbons that it is very clear that the whole process by which BCAL became the reversioner, and then served the counter-notice, was predicated on the original validity of the Initial Notice. Objectively there can be no other explanation for its conduct and Ms Cunningham did not seek to put forward any positive arguments to the contrary.
150. However, I think that the Judge was correct to decide that it was not open to him to find that an estoppel had arisen, because there was no evidence from which he could have concluded that BCL acted to its detriment in reliance on BCAL’s conduct. Reliance and detriment are both matters of fact which must be proved and established on the balance of probabilities. Of course, the court may be able to draw appropriate inferences from all the surrounding circumstances, but as Ms Cunningham submitted by reference to the judgment of Morgan J in *Poets Chase Freehold Co Ltd v Sinclair Gardens Investments (Kensington) Ltd* [2007] EWHC 1776 (Ch), [2008] 1 W.L.R. 768

at [68] to [75], reliance to the detriment of BCL cannot be assumed in this context as in many others.

151. In particular, the Judge was entitled to point to the deficiencies in BCL's evidence on this point (assumptions are not good enough), and I accept that there is no obvious reason why BCL would have relied on BCAL's assertion that the Initial Notice was valid, as opposed to relying on its own legal advice as to the position. In the current case BCL was represented by lawyers with expertise in the area. There is no reason to think that that is not what BCL did.
152. In those circumstances, and in light of the fact that the Judge makes no findings from which this court could conclude that detrimental reliance was in fact established, the ground of appeal based on the submission that the Judge was wrong not to find an estoppel fails.
153. This also means that I have determined that the Judge was not wrong in any of the conclusions that he reached. The appeal is therefore dismissed.