Mick McCarthy, Miss Marple and the Art of Statutory Interpretation

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The Court of Appeal decision in Lowe v Governors of Sutton's Hospital in Charterhouse [2025] EWCA Civ 857 is the most recent but—for reasons which will become apparent—I sincerely hope not the last instalment in the saga of Mr Lowe's attempt to persuade the courts that his landlord did not properly protect his tenancy deposit. His complaint has been multi-pronged. This article is concerned with only one aspect of it, namely, whether the declaration provided by Charterhouse for the purposes of the statutory requirements should have been found to pass muster.

Mick McCarthy is, or at least was, a football manager. He hales from Yorkshire. He looks out at you from under his eyebrows. He is a man of few words. Post-match interviews—those I have seen—were humourless and uninspiring. Still, he managed many squads including the Irish national team. In February 2023, Mick was the manager of Blackpool FC, a team facing the prospect of relegation from the Championship. In a clip that has gained a measure of online attention most judges can only dream of (Lady Hale and her spider brooch being the obvious likely exception), a Radio Lancashire reporter said with some confidence: "In terms of results, Mick, that's one win in 17. It can't go on like this, can it?" It was not really a question. Its very form invited agreement and gave the manager a chance to reassure fans that their faith in their team was not misplaced. There was a pause, and a slight smile, before Mick—faced with a statement which, to the speaker, had seemed wholly incontrovertible—replied with complete certainty, "It can."

Relevant law

And so to the Court of Appeal decision in *Lowe v Governors of Sutton's Hospital in Charterhouse* [2025] EWCA Civ 857, handed down on 10 July 2025. The relevant statutory provisions are found in Pt 6, Ch.4 of the Housing Act 2004 (the 2004 Act) and the Housing (Tenancy Deposits) (Prescribed Information) Order 2007 (SI 2007/797). In particular:

- section 213(5) of the Act provides that:

> "[a] landlord who has received […] a tenancy deposit must give the tenant […] such information relating to-
> (a) the authorised scheme applying to the deposit,
> (b) compliance by the landlord with the initial requirements of the scheme in relation to the deposit, and
> (c) the operation of provisions of this Chapter in relation to the deposit,

as may be prescribed"

and

- section 213(6) sets out how and when such information (the prescribed information) must be provided:

> "(a) in the prescribed form or in a form substantially to the same effect, and
> (b) within the period of 30 days beginning with the date on which the deposit is received by the landlord."

The Explanatory Note to the 2004 Act explains that tenancy deposit schemes will "protect tenants' deposits in the private rented sector and help to ensure that they are not misappropriated by landlords or their agents." This is the mischief addressed by the provisions: see also, s.212(2) of the 2004 Act. Paragraph 7.2 of the Explanatory Memorandum to the 2007 Order prepared by the Department of Communities and Local Government (DCLG) and paras 6 and 7 of the Full Impact Assessment (FIA) attached to it confirm that mischief, detailing that around 20% of tenants who paid a deposit considered that, in the previous three years, their landlords had unlawfully withheld some or all of it and that, conversely, landlords often faced the prospect of a tenant withholding the last month's rent where a deposit had been paid.

Article 2(1) of the 2007 Order sets out the information a deposit-receiving landlord must give his tenant in a list running from (a) to (g). It is written in clear, untechnical language. Paragraph 32 of the FIA explains that there needs to be tenancy-specific information because the purpose of the deposit will vary. Sub-paragraph (g) of the 2007 Order covers this. The information specified seeks to ensure that, when the deposit falls to be released, the process is smooth and the scheme administrator knows who may agree the release: FIA, para.45. Further, "[t]he timely return of deposits to tenants prevents them from being short of funds for a significant period of time. Increased labour mobility is in line with government policy, which aims to achieve sustainability and flexibility in the housing market": FIA, para.72.

The first six sub-paras of art.2(1)(g) list discrete pieces of information relating to the tenancy being granted: the amount of the deposit; the property address; contact details for the landlord, anyone providing the deposit on the tenant's behalf and the tenant including details to be used at the end of the tenancy; and the circumstances when all or part of the deposit may be retained by reference to the tenancy agreement.

In considering what information should be given, DCLG endeavoured to ensure that the requirements would not place undue burdens on landlords: FIA, para.49. Accordingly, the information is "basic information that landlords and agents should have at their disposal as a matter of course when entering in a lettings arrangement with a tenant" and "therefore should not be onerous to obtain": FIA, para.50. "Should" here clearly means "will", not "must".

Sub-paragraph (g)(vii), is different. It requires:

> "confirmation (in the form of a certificate signed by the landlord) that—
> (aa) the information he provides under this sub-paragraph is accurate to the best of his knowledge and belief; and
> (bb) he has given the tenant the opportunity to sign any document containing the information provided by the landlord under this article by way of confirmation that the information is accurate to the best of his knowledge and belief."

There are, then, two separate things for the landlord to confirm: first, that he believes that what he has said for the purposes of sub-para.(g) is right, secondly, that his tenant has had an opportunity to confirm the accuracy of the information in any document provided under art.2.

The FIA, at paras 48–51, notes that signed confirmation can only properly be required from the landlord. This makes absolute sense because it is the landlord who will be in breach if a required item (including the certification) is missed and a landlord cannot *make* his tenant sign. But—says the FIA, at para.48—"it would also make sense for the landlord to be required to ask the tenant to sign the information, to verify those aspects they have provided …. This would help to ensure that this document is a true and accurate record of the deposit-taking process".

Ultimately, the certification required by art.2(1)(g)(vii)(bb) did not go that far. A landlord must certify that he has given the tenant an opportunity to sign. He will know if he has done this; it is a binary question: either he has, or he has not. A tenant given such opportunity may or may not take advantage of it; this is—for the purposes of the certification—irrelevant. The effectiveness of Parliament's scheme depends, though, upon the tenant being given the opportunity to check *before* finally being given the prescribed information so the certification is important. Nothing else affords proper confidence that the information held is correct, promoting a smooth process when the tenancy ends.

Lowe v Charterhouse—background and appellate history

Charterhouse granted Meyrick Lowe a tenancy of 2 Preacher's Court, Charterhouse Square in London, commencing on 24 January 2010. He paid a deposit of £3,300 which did not require protection because his rent was higher than the upper threshold for an assured tenancy at that time. On 1 October 2010, however, the Assured Tenancies (Amendment) (England) Order 2010 (SI 2010/908), raised the maximum rent threshold so that Mr Lowe's tenancy became an assured shorthold. This meant Charterhouse was obliged to protect the deposit.

On 28 September 2010, Charterhouse sent Mr Lowe a signed letter confirming that the deposit had been protected and enclosing, amongst other things, a document setting out prescribed information concluding with an unsigned certificate for the purposes of art.2(1)(g)(vii) which the letter invited him to sign and return.

In June 2021, Charterhouse served Mr Lowe with a notice of seeking possession. This prompted Mr Lowe to commence a claim for very substantial damages from Charterhouse for breaches of the deposit protection provisions. Amongst other things, he alleged that the requirements of art.2(1)(g)(vii) of the 2007 Order had not been met.

Until the hearing before the Court of Appeal, that challenge focused on the lack of a signed certificate. Charterhouse relied upon the signed letter which had accompanied the certificate to say that, considered in the round, it had satisfied the requirements. In the County Court, Judge Luba KC found that the logic of events as envisaged by the letter was that the tenant would sign, and only then would the landlord do so, so that it was Mr Lowe's fault that the certificate was not signed: see, *Lowe v Governors of Sutton's Hospital in Charterhouse* [2022] 10 WLUK 447 at [128]. I struggle with this logic but, in any event, the judge found that the combined effect of the letter and the certificate was that Charterhouse had done enough. He dismissed Mr Lowe's claim.

Adam Johnson J, hearing the first appeal, upheld that decision. He dealt with both limbs of the confirmation requirement at [43] to [52] of his judgment (*Lowe v Governors of Sutton's Hospital in Charterhouse* [2024] EWHC 646 (Ch); [2024] H.L.R. 29) and found that both were satisfied by the combined effect of the unsigned certificate and the signed letter.

Court of Appeal decision

In the Court of the Appeal, the argument on art.2(1)(g)(vii)(bb) was framed differently. It focused on the words of the provision. What sub-para.(bb) requires a landlord to do is confirm that he *has given* the tenant the opportunity to sign any document containing the prescribed information by way of confirmation that the information is accurate to the best of his knowledge and belief.

I have pleaded the point many times. Most often landlords in the cases I have dealt with have signed the certificate after their agent has received the deposit but before the prospective tenant has "come in to sign" so that (they would say) everything is ready to go. This is not on all fours with Mr Lowe's case factually, but that matters not; the implication is the same. Those landlords cannot possibly "have given" their tenants the opportunity to sign any document provided at the point they signed their certificates (ostensibly confirming that they had done so) because, at the time they signed, their tenants had not been given the information at all. Charterhouse was in the same position.

It follows that the declaration (in my cases and in Mr Lowe's) must have been a false declaration and I would have said, indeed I *have* said (with the confidence of a Radio Lancashire reporter addressing a hapless football manager on the question of a string of defeats), a false declaration *cannot* be a confirmation for the purposes of art.2(1)(g)(vii)(bb). "Ah no," said the Court of Appeal in *Lowe*, "It can." In the words of Asplin LJ at [69]:

> "[I]f the provision is construed purposively in the light of the statutory purpose and context, I consider that it is not necessary for a landlord, in effect, to send out draft information, request the tenant's approval and then send out certified confirmation in order to satisfy (bb). It is sufficient, as in this case, that the tenant has been given the opportunity to check the details. It is not necessary that that precedes the landlord's confirmation. Such an interpretation is consistent with the statutory purpose of the requirements. They are intended to safeguard deposits and facilitate the resolution of disputes arising in connection with such deposits. If [counsel for Mr Lowe] were correct, the requirements would have the potential to increase disputes rather than to avoid them and facilitate their resolution."

I do see, just about, how the combination of the signed letter and the unsigned certificate could satisfy the requirement for certification in art.2(1)(g)(vii)(aa). It is possible that Charterhouse was saying by way of the letter, "… as far as we are concerned everything is in order and we are happy to give the certificate the 2007 Order requires" as found by Adam Johnson J (his judgment at [47]) and I understand how this could pass the "substantially to the same effect" test.

It is also possible (although in my view, it is a bit of leap) that, in sending the letter and the prescribed information, Charterhouse was effectively saying, "[w]e are happy to give the certificate in this form, but one thing we need to do is to give you the opportunity to review what we are sending you, so please do so and let us know when it is done": again, Adam Johnson J at [47]. The trouble with that, is that—at best—it shows Charterhouse *giving* Mr Lowe an opportunity to review the information at the same time as giving him the letter. There is no way that the judge's paraphrase can mean such an opportunity *has been given*, and so the letter and the certificate, even taken together, cannot be substantially to the same effect as the confirmation required by sub-para.(bb).

A purposive approach to interpretation of the statutory provisions takes the matter no further. Such an approach is increasingly the norm; it reflects the attention that the courts have always paid to statutory context; it is not a get out of jail free card or a licence for a court to interpret clear words it has decided it does not like into something it finds more palatable.

In a talk given to the Office of Parliamentary Counsel on 20 March 2025, ("Statutory Interpretation in Theory and Practice") Lord Sales referred to his decision in *R. (on the application of PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28; [2023] 1 W.L.R. 2594 at [41]: "the purpose and scheme of an Act of Parliament provide the basic frame of orientation for the use of the language employed in it". Lord Hodge, in *R. (on the application of O (A Child)) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] A.C. 255 at [29]–[30], stressed that Parliament has chosen the language of the statutory text and this should be the primary guide to what it intended to say.

In another lecture ("The Significance of Purpose in Purposive Construction of Legislation", The Renton Lecture given to the Statute Law Society Conference on 6 June 2025), Lord Sales used history to show that, far from involving judicial over-reach as its critics worried, a purposive approach to interpretation had emerged in order to give better effect to Parliament's intention in legislating and to accord proper recognition to Parliament's central role in the political and legal system. He said that:

> "[t]his modern approach to purposive interpretation properly focuses on the particular words used by Parliament as a primary reference point, which is a feature of interpretive practice which it shares with the old-style literalist approach. The words chosen provide the most direct evidence of what Parliament intended, since the primary activity of parliamentarians as a collective body creating a statute is to vote on whether the text containing those words should become law or not. But while focusing on the words, the modern approach also takes proper account of the surrounding context for the choice of those words and what that context reveals about the purpose or purposes for which they are being used. This is justified by the connection between meaning and purpose in the use of language. It is also justified by the practical constraints on Parliament being able to legislate at a level of detail which would make reference to context unnecessary and by the constitutional context in which Parliament operates as legislator to further the common good in a state which respects the rule of law."

This is all undoubtedly right. Lord Sales, as much as anyone and more than most, knows a thing or two about statutory interpretation. Something has gone very wrong in Mr Lowe's case.

My own experience is that judges in the County Court are resistant both to what the combination of s.213(5) and art.2(1) requires and to their obligation to award damages in the event that those requirements are not met. Most memorably, I recall a district judge looking at a defence (which included the sub-para.(bb) challenge), declaring that the claim had been issued under the accelerated procedure and that the landlords were *entitled* to have it dealt with quickly, closely followed by the grant of a possession order. Yes, we were granted permission to appeal but, like so many claims of this ilk, with a defence funded by legal aid, the matter settled, and so the issue was not tested.

Perhaps it is the lack of any real discretion as to damages and a concern that unscrupulous tenants stand to gain large windfalls that sticks in the judicial craw. Mr Lowe's claim was for damages of over £100,000 in respect of failures which—even if accepted as such (which to date they have not been)—were comparatively small. But this is a technical jurisdiction; defaults are likely to be technical. If the rules consistently produce unjust results, the answer is to lobby Parliament, not to interpret the self-evidently clear meaning of the statutory language out of existence.

In my early teens, I read a lot of Agatha Christie. In "The Moving Finger", Mrs Symmington leaves what is taken to be a suicide note on a scrap of paper. "I can't go on," it says. Miss Marple,

sceptical as ever, looked to the possibility that the note, a fragment from a telephone pad, indicated not that Mrs Symmington had lost the will to live, but rather than she could not honour an appointment (the difference between "I can't go on" and "I can't go on Saturday"). It seems unlikely that this novel was on the essential reading list for the Court of Appeal, but it might have been useful. Twice in her judgment (at [10] and [38]), Asplin LJ cites FIA para.50 as stating that the provision of the prescribed information "should not be onerous" and true it is that those words are there, but—as Miss Marple understood—context is everything. Paragraph 50 wants to reassure that the required information will be within a landlord's knowledge and "therefore should not be onerous to obtain". The statement is descriptive not directive and the judge's reliance on it is misplaced. It does not support Charterhouse's case; if anything it assists Mr Lowe and certainly cannot be used to undermine his argument that Charterhouse had not complied: see at [38] and [69]). Whilst Asplin LJ's reference to para.50 strictly pertains to a different ground of appeal, the idea that the Mr Lowe's argument would over-burden a landlord informs the whole.

Summarising his views on difficulties with the purposive approach, such as how to identify purpose and what materials are properly admissible to do so, Lord Sales (in the Renton Lecture) suggests that the solution is based on "a primary focus on the words used by Parliament, on rigour with respect to the evidence of purpose which is admissible, and on a highly constrained form of legal reasoning in the field of statutory interpretation with pronounced affinities with common law reasoning which are often overlooked."

As he had explained in the *PACCAR* case at [42], explanatory notes and the like are "publicly available documents produced specifically to assist Parliament in its consideration of a Bill and Parliament can therefore be presumed to have knowledge of and to have relied on them." For this reason, they may—as Lord Hodge says in *O (A Child)*—cast light on the meaning of particular statutory provisions but they must still play a secondary role to the words used by Parliament.

Conclusion

It is not difficult to find examples of statutory provisions which have taken years of judicial time and whole rainforests of paper to interpret. The words of art.2 do not fall into this class. They are beautifully clear. They present a checklist for a landlord, and with it a scheme which promotes Parliament's wish for any disputes at the end of a tenancy to be dealt with efficiently.

Parliament did not want to secure confirmation from a landlord that he might give, or would (at some undetermined point in the future) give, or even that he was (at the moment of the declaration) giving his tenant the opportunity to review the details. If it had, it could easily have done so. The tenant's opportunity to check the details *must* precede the landlord's confirmation so that everyone may be confident that the details are right; nothing else works. The present perfect ("has given") is necessary to support the Parliamentary intention. If the obvious and natural meaning of the words chosen by Parliament is not respected, the system breaks down. It follows that it is simply not right (as the Court of Appeal stated at [70]), that counsel for Mr Lowe sought to give too much weight to the word "given". All he did was draw attention to the statutory words and their obvious, natural meaning.

Notwithstanding assured shorthold tenancies being destined for an imminent scrap heap (by way of the Righters Rights Act when it passes into law), the decision in *Lowe* will have ongoing significance. With things as they stand at present, the Act will amend ss.212–215C of the 2004 Act so that the 2007 Order applies to assured (rather than assured shorthold) tenancies and a landlord will be unable to gain possession if those provisions have not been complied with. The argument is, therefore, far from sterile.

All things considered, I very much hope this is not the end of the road for Mr Lowe's argument. Words are important. I understand that Mr Lowe and his team have sought permission to appeal to the Supreme Court. I hope that permission is granted and then I hope that, asked whether a statutory provision which says, in terms, that a landlord must provide confirmation that he "has given" his tenant the opportunity to sign a document can mean anything other than what it says, the Supreme Court will pause slightly, look up from under its collective eyebrow, reject its inner Mick McCarthy, and say with conviction, "No, it can't."

The law is stated as at 15 August 2025.