

Neutral Citation Number: [2026] EWCA Civ 1412

Case No: CA-2025-003019

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)
Mr Justice Cawson
[2025] EWHC 2975 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 04/11/2026

Before:

LORD JUSTICE NEWEY
LADY JUSTICE FALK
and
LORD JUSTICE FANCOURT

- -

Between:

SMARTESTENERGY BUSINESS LIMITED	**Appellant/ Petitioner**
- and -	
ODEON ARCADE LIMITED	**Respondent**
- and -	
BRITISH GAS TRADING LIMITED	**Intervener**

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- -

Andrew Westwood KC and Eoin MacLachlan (instructed by **Wedlake Bell LLP**) for the **Appellant**
Clifford Darton KC and Andrew Shipley (instructed by **Whitmore Law Solicitors**) for the **Respondent**
Richard Howell (instructed by **Wedlake Bell LLP**) for the **Intervener** (written submissions only)

Hearing date: 20 October 2026

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Approved Judgment

This judgment was handed down remotely at 10.30am on 4 November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Lord Justice Newey:

1. This appeal turns on the correct interpretation of the "Electricity Code" set out in schedule 6 to the Electricity Act 1989 ("the 1989 Act") and, in particular, paragraph 3(1) of that Code.

2. The appellant, SmartestEnergy Business Limited ("Smartest"), is a licensed electricity supplier. On 2 April 2024, it presented a winding-up petition against the respondent, Odeon Arcade Limited ("Odeon"), on the basis that it was owed £106,914.25 for electricity it had supplied. The petition stated that that sum was due in respect of charges for Smartest's supply of electricity to Odeon "at Units 8a, 9a and 12 at Odeon Arcade, Leicester … in the period from 13 July 2021 to 30 April 2023 … and ongoing standing charges".

3. Mr Abdulaziz Saleh Almudaihesh, the sole director of Odeon, has explained that the company acquired 1-9 Odeon Arcade ("the Arcade") on 25 June 2021. The premises identified in the winding-up petition comprise three retail units within the Arcade. Each of them was the subject of a separate tenancy agreement when the debt on which the petition is founded is said to have accrued. According to Mr Almudaihesh, none of the units was vacant during that period.

4. The Arcade is evidently a shopping arcade with a walkway through the middle. Mr Jake Bell, a debt recovery and escalation manager with Smartest, has explained in a witness statement that Smartest supplied electricity through a single meter ("the Bulk Meter") located in a basement underneath the Arcade. Mr Bell described the basement as "unoccupied and undemised" and referred to the electricity supplied through the Bulk Meter serving Units 8a, 9a and 12 and also the basement and "the communal areas of the Arcade including supplies to its lighting, shutters and fire alarms".

5. According to Mr Bell, it was found during visits to the Arcade that there were sub-meters downstream of the Bulk Meter, markings on which indicated that they had been used to measure electricity supplied to each of Units 8a, 9a and 12 as well as the communal areas of the Arcade. Mr Bell explained that sub-meters "are installed privately, not by licensed suppliers, and are usually installed by landlords so that they may recover charges from tenants through a service charge mechanism". For his part, Mr Almudaihesh has said that Odeon did not install any sub-meters. Overall, therefore, the likelihood would appear to be that a previous owner of the Arcade fitted sub-meters, but we are in no position to make findings as to that.

6. The winding-up petition asserted that Odeon was liable to Smartest "pursuant to a contract deemed in the circumstances prescribed by paragraph 3(1) of Schedule 6 of the Electricity Act 1989 (as amended) by virtue of [Odeon] being an owner and/or occupier of the Supply Premises". On 10 April 2024, Odeon applied to restrain advertisement of the petition, and for its dismissal, on the basis that the debt was disputed. Odeon denied liability on, among others, the basis that Units 8a, 9a and 12 comprise the "Supply Premises" and they had all "been occupied by tenants under statutory periodic tenancies or written tenancies". That being so, Odeon maintained, it was not party to a deemed contract with Smartest.

7. Odeon's application came before Deputy Insolvency and Companies Judge Agnello KC ("the ICC Judge") on 16 January 2025. In the course of the hearing, Mr Kwok, who appeared for Odeon, accepted that the company owned and had control of the basement mentioned in Mr Bell's evidence, but he said that there was "nothing there", that it was "not occupied by anyone" and that in any event the petition identified just Units 8a, 9a and 12 as the "Supply Premises", adding that "there should be no attempt to effectively shift the goalposts from the petitioner". During his submissions, Mr Eoin MacLachlan, who was appearing for Smartest, expressed willingness to amend the petition in such a way that the "Supply Premises" would not be limited to Units 8a, 9a and 12. The offer was not taken up, however.

8. Giving judgment on 19 March 2025, the ICC Judge observed in paragraph 7 of her judgment that the petition claimed charges for the supply of electricity "in relation to Units 8A, 9A and 12 of the Arcade"; that there was "one meter for the supply of electricity at the Arcade, at least in relation to Units 8A, 9A and 12, despite the Arcade being divided into various units"; and that according to Odeon "those three units were occupied by commercial tenants during the supply period". The ICC Judge distinguished in paragraph 16 between the "entire premises" and "the premises which are the subject of the lease and the tenant's occupation". In paragraph 19, she explained that she saw "no justification to seek to read premises as having to relate to the entire premises over which an owner is the freeholder" and she instead took "premises" to refer to "the premises which are occupied by the relevant occupier". Having noted in paragraph 19 that an owner "is only liable under a deemed contract if the premises are unoccupied", the ICC Judge concluded in paragraph 21 that "no deemed contract arose between the owner [viz. Odeon] and the supplier [viz. Smartest]" because "[t]he premises were occupied at all the relevant times". Accordingly, the ICC Judge made an order restraining advertisement of the winding-up petition and dismissing it.

9. Smartest appealed, but without success. In a judgment dated 14 November 2025 ("the Judgment"), Cawson J ("the Judge") agreed with the ICC Judge that Odeon had not become liable under a deemed contract pursuant to paragraph 3(1) of the Electricity Code and so was not liable to pay for the electricity supply which was the subject matter of the petition. He therefore dismissed the appeal.

10. Smartest now challenges the decisions of the Judge and the ICC Judge in this Court.

11. I should perhaps add that Smartest disconnected its supply to the Bulk Meter on 20 February 2023.

The statutory framework

12. Section 4 of the 1989 Act makes it an offence for a person to supply electricity to any "premises" unless authorised to do so by a licence granted under section 6. However, section 5 empowers the Secretary of State to grant exemption from that prohibition, and the Electricity (Class Exemptions from the Requirement for a Licence) Order 2001 exempts among others, under Class B, persons who "do not supply any electricity except … electricity which is supplied to their premises by … a licensed supplier [i.e. the holder of a licence under section 6]". Section 64 explains that the term "premises" "includes any land, building or structure".

13. In 2020, the Department for Business, Energy & Industrial Strategy ("BEIS") launched a call for evidence in relation to exemptions from section 4. In *"Exemptions from the Requirement for an Electricity Licence, Call for Evidence"*, published on 30 October 2020, the Department said that it was its understanding that the exemptions were mainly used by "stakeholders supplying various types of development, both domestic and commercial, including shopping centres, residential developments, student accommodation, mobile home parks, ports, airports, industrial sites including energy intensives" and that the Class B exemption is used "in the resale of electricity via tenancy agreements by landlords and others". In *"Reselling Gas and Electricity, Call for input"*, published on 9 October 2025, the Office of Gas and Electricity Markets, Ofgem, noted that "Energy resale occurs when an intermediary, such as a landlord, park-home owner or marina operator, purchases electricity or gas from a licensed supplier and then resells it to consumers".

14. Such arrangements came before the Upper Tribunal (Lands Chamber) in *East Tower Apartments Ltd v No.1 West India Quay (Residential) Ltd* [2016] UKUT 553 (LC) and *King v Residential Marine Ltd* [2021] UKUT 0309 (LC). The former case concerned a building of 32 floors containing a hotel and 158 residential apartments. As was explained in paragraphs 16 and 17 of the decision, electricity was supplied to the building as a whole, metered by two bulk meters, and sub-meters had been installed to measure consumption in different areas, including the hotel, the common parts, the car park and the individual apartments. The latter case involved a marina which included a mobile home park. Electricity was supplied to the marina under a contract with its owner and resold to occupants of mobile home pitches.

15. Section 44 of the 1989 Act empowers the Gas and Electricity Markets Authority ("GEMA"), by which Ofgem is governed, to set maximum prices at which electricity may be resold. On 14 March 2014, GEMA directed pursuant to section 44 that, where electricity is resold for domestic use, or for use in any form of accommodation, "the maximum price at which each unit ... of electricity may be resold shall be the same as that paid to the authorised supplier by the person reselling it". Where metering equipment facilitating resale of electricity on that basis is not available, "the maximum resale price shall be estimated with the objective that each person to whom … electricity is being resold by a particular reseller will pay a fair proportion of the overall costs incurred by the reseller, including any standing charge, but excluding a fair proportion of the costs representing electricity … consumed in relation to common parts".

16. Schedule 7 to the 1989 Act is concerned with meters. By paragraph 1(1), where a customer of either a licensed supplier or a person with the benefit of an exemption is to be charged for his supply wholly or partly by reference to the quantity of electricity supplied, the supply "shall be given through, and the quantity of electricity shall be ascertained by, an appropriate meter". Paragraph 1(3) states that such a meter "shall be installed on the customer's premises in a position determined by the authorised supplier, unless in all the circumstances it is more reasonable to place it outside those premises or in some other position".

17. Paragraph 1(1A) of schedule 7 derogates from paragraph 1(1), providing that a supply may be given otherwise than through an appropriate meter in such circumstances as may be prescribed. The Electricity (Unmetered Supply) Regulations 2001, made pursuant to paragraph 1(1A), allow an unmetered supply to be given if "the electrical

load is of a predictable nature" and either the load is less than 500W or "it is not practical for a supply of electricity to be given through an appropriate meter at the premises" for one of the reasons specified in paragraph 3(1)(b)(ii).

18. Provision for deemed contracts was introduced into the 1989 Act by the Utilities Act 2000 as part of the Electricity Code. *"A Fair Deal for Consumers, Modernising the Framework for Utility Regulation"*, published by the Department for Trade and Industry in 1999, explained that it was "intended to provide in electricity for deemed contracts based on the Gas Act model" with the purpose of "address[ing] the situation where a supply is taken without there being an express contract in place for that supply and a supplier is responsible for the cost of that supply, by virtue of the organisation of the wholesale market for electricity". The reference to the "Gas Act model" related to the Gas Act 1986, which provided for deemed contracts for the supply of gas. As amended in 2000, the 1989 Act can be seen to have been inspired by the Gas Act 1986 although the relevant provisions do not correspond precisely.

19. As its heading ("Deemed contracts in certain cases") indicates, paragraph 3 of the Electricity Code deals with deemed contracts. Paragraph 3(1), which is central to the present appeal, states:

> "Where an electricity supplier supplies electricity to any premises otherwise than in pursuance of a contract, the supplier shall be deemed to have contracted with the occupier (or the owner if the premises are unoccupied) for the supply of electricity as from the time ("the relevant time") when he began so to supply electricity."

20. An Ofgem workgroup commented in a 2006 report (*"Deemed Contracts – Final report from Duty to Supply, Contracts and Information workgroup"*):

> "deemed contracts play a vital role in the energy market. The nature of supply is such that it would be inefficient, given current metering technology, to disconnect premises when a customer had moved out and reconnect the premises upon application for a contract by a new occupant. In addition, suppliers may not always be aware of customer movements until a period of time has elapsed after the event. A deemed contract therefore seeks to provide a sound and binding basis upon which suppliers will supply customers where a contract has not been expressly agreed. It also provides suppliers with a clear basis upon which to charge for that supply."

21. Elsewhere in the Electricity Code provision is made for, among other things, circumstances in which an electricity supplier may install a pre-payment meter, disconnect premises or enter premises.

The Judgment

22. The Judge identified the key issue as "whether Odeon, as an 'owner' of 'premises' is subject to a deemed contract because the 'premises' are to be regarded as

'unoccupied' for the purposes of paragraph 3(1) of Schedule 6 to the 1989 Act" (paragraph 45 of the Judgment), explaining in paragraph 46:

> "As to the interpretation of 'unoccupied', the issue is as to whether it is limited to meaning unoccupied in the ordinary sense of nobody occupying the whole or any part thereof, or whether the meaning also extends to include, as contended by [Smartest], the situation in the present case where the whole is not occupied as a whole, but individual units making up the whole are occupied by individual occupants."

The Judge considered that, "as a matter of ordinary parlance, it does … strain the language, if not contradict it, to describe premises that are occupied by a number of tenants, enjoying separate demised premises, as unoccupied" (paragraph 49) and he was "not persuaded that the interpretation as found by the [ICC] Judge to be the correct interpretation does produce such an absurd or unworkable result that one is required to adopt an interpretation of the word 'unoccupied' that at best strains the ordinary meaning of that word, and at the worst contradicts it" (paragraph 51).

23. The Judge went on in paragraphs 53 and 54:

> "53. The other keywords within paragraph 3(1) are 'premises' and 'occupier'. If the interpretation contended for by [Smartest] is rejected, then there are, as I see it, three possibilities:
>
> i) Firstly, the position as found by the Judge, namely that 'premises' means the individual premises or units demised to the tenants who were, respectively, the occupiers thereof and liable as such for the electricity supplied to their premises;
>
> ii) Secondly, that the 'premises' are the whole of the premises served by the relevant electricity meter, with the consequence that there was only one deemed contract with all three tenants that had the effect of making them jointly and severally liable to [Smartest] for the electricity supplied to the premises as a whole; or
>
> iii) Thirdly, a possibility not covered in submissions, namely the 'premises' are the whole of the premises served by the relevant electricity meter there and was one deemed contract was with the three tenants, but it was an implied term of that deemed contract that the tenants should only be personally liable to [Smartest] for the electricity that they actually used. This would be on the basis that such a term of the deemed contract was to be implied by necessary implication.

> 54. Each of these scenarios … does give rise to potentially difficult apportionment exercises as between the respective tenants, but does not, I consider, produce an absurd result or an unworkable one. As pointed out by Mr Shipley [who was appearing for Odeon], the courts are used to having to apportion liability where necessary to do so."

24. After observing that he would have "thought it unlikely, in the real world, that problems regarding the operation of paragraph 3(1) would often arise" (paragraph 59), the Judge said in paragraph 60:

> "In short, I consider that the practical considerations that are said by [Smartest] to support its interpretation of paragraph 3(1) of Schedule 6 are overstated, and that they are insufficient to lead to the conclusion that the court should adopt a construction of the word 'unoccupied' that does, frankly, do significant violence to the language of paragraph 3(1)."

25. The Judge added that "other provisions of Schedule 6 to the 1989 Act and elsewhere in the 1989 Act do, if anything, support the [ICC] Judge's interpretation" (paragraph 61).

The rival cases

26. Mr Andrew Westwood KC, who appeared for Smartest with Mr MacLachlan, contended that premises are "unoccupied" within the meaning of paragraph 3(1) of the Electricity Code unless the entire premises supplied have a single occupier. More specifically, premises are "unoccupied" where parts of them have multiple, unrelated occupiers. That, he said, was the position in the present case and so Smartest was deemed to have contracted with Odeon as the premises' owner.

27. In contrast, Mr Clifford Darton KC, who appeared for Odeon with Mr Andrew Shipley, supported the decisions of the ICC Judge and the Judge. Where there are multiple, unconnected occupiers of premises, he argued, it is they and not the owner who are liable under paragraph 3(1) of the Electricity Code.

28. British Gas Trading Limited ("British Gas") was given permission to intervene in the appeal by way of written submissions prepared by Mr Richard Howell. It, too, took issue with the Judge's understanding of paragraph 3(1) of the Electricity Code, but it adopted Smartest's case as a fallback to a third approach of its own. It submitted that in many cases (of which, it said, the present appears to be an example), the correct analysis is as follows:

> "(1) The landlord … remains in occupation of the premises to which electricity is supplied by the licensed supplier through a bulk meter (for example, by retaining control over the common parts or a part of the premises to which tenants do not have access). Under the statutory scheme, the licensed supplier provides supply to the

> landlord through that bulk meter point, and then has no further involvement once that supply has been made.
>
> (2) The landlord (and not the licensed supplier) then re-supplies electricity (with which it was supplied by the licenser supplier) to its tenants pursuant to the statutory supply exemption regime. For the purposes of Part I of the 1989 Act, tenants occupy their own separate premises and, as such, are entitled to a number of statutory protections vis-à-vis their supplier (i.e. their landlord) when taking supply from it. These include (subject to defined exceptions) that supplies must be made through and charged by reference to a sub-meter. Such tenants are not supplied by, and have no direct relationship with a licensed supplier.
>
> (3) It follows that when supply is made to the premises occupied by the landlord and served by a bulk meter in the absence of a contract with a licensed supplier, the landlord alone is party to a deemed contract with the supplier as the occupier of premises served by the licensed supplier, but may recoup its costs of resupplying its tenants with electricity, subject to complying with its regulatory obligations (including statutory price controls)."

29. It is thus British Gas' position that an owner such as Odeon will typically be the party deemed to contract with the supplier because it will be the occupier of the premises at the point the supply reaches them. Elaborating on this, Mr Howell submitted:

> "The act of supplying to a particular premises, which is foundational to the operation of the statutory scheme, is complete when the electricity reaches those premises, which will usually be at the meter point. For example, the bulk meter in the apartment block may be located in a locked room in the basement to which the tenants have no right of access and cannot be said to occupy. In such cases, the landlord is undoubtedly the occupier of the premises to which all of the electricity is supplied by the licensed supplier, namely the undemised part of the building reserved for his exclusive use (alternatively he is owner of the premises if unoccupied). In the same way, if electricity supplied by a licensed supplier is supplied to the common parts of a large building (where the bulk meter is located), it is no abuse of language to say that the landlord (and not the tenants) is the occupier of those parts …."

Discussion

30. Statutory interpretation involves "seeking to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision": *Darwall v Dartmoor National Park Authority* [2025] UKSC 20, [2025] AC 1292, at

paragraph 15, per Lords Sales and Stephens. As Lord Hodge observed in *R (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department* [2022] UKSC 3, [2023] AC 255, at paragraph 29, "Words and passages in a statute derive their meaning from their context". There are, moreover, "numerous authoritative statements in modern case law which emphasise the central importance in interpreting any legislation of identifying its purpose": *Rossendale BC v Hurstwood Properties (A) Ltd* [2021] UKSC 16, [2022] AC 690, at paragraph 10, per Lords Briggs and Leggatt. "The purpose and scheme of an Act of Parliament provide the basic frame of orientation for the use of the language employed in it": *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] UKSC 28, [2023] 1 WLR 2594, at paragraph 41, per Lord Sales.

31. The present appeal raises a question as to the impact of paragraph 3(1) of the Electricity Code where electricity supplied via a single bulk meter is used in distinct areas with different occupiers. As *East Tower Apartments Ltd v No.1 West India Quay (Residential) Ltd* and *King v Residential Marine Ltd* show, examples can include a block containing numerous flats and a mobile home park. When considering how paragraph 3(1) works in such cases, it needs to be borne in mind that a bulk meter can potentially be in a place to which the owner alone has access; in the common parts of a building or complex; in somewhere the subject of a demise or licence in favour of a person other than a landlord (say, a particular flat in a converted house); attached to the outside of a relevant building; or situated away from anywhere using the electricity (say, in an outbuilding or even, perhaps, on land owned by a highway authority). As already mentioned, paragraph 1(3) of schedule 7 to the 1989 Act allows a meter to be placed "outside [the customer's] premises or in some other position". To complicate matters further, it is possible to envisage cases in which management functions are being exercised by an RTM company pursuant to the Commonhold and Leasehold Reform Act 2002.

32. The meaning of the words "premises", "occupier" and "unoccupied", as used in paragraph 3(1) of the Electricity Code, is of key importance. With regard to the first of these, I have already mentioned that a person who "supplies electricity to any premises" needs to be licensed unless an exemption applies and that "premises" include "any land, building or structure". Linkage to "premises" can also be seen in section 4(4) of the 1989 Act, which defines "supply" by reference to "supply to premises".

33. Paragraph 3(1) of the Electricity Code speaks of an electricity supplier "suppl[ying] electricity to any premises". As I understand the ICC Judge's judgment, she took the "premises" in the present case to be the individual units receiving electricity, not their totality. For its part, British Gas also proceeds on the basis that, in the case of a building or complex in which a number of units receive electricity via a bulk meter, there are multiple "premises". It appears to view the relevant "premises" as those including the particular place in which a bulk meter is sited (or, perhaps, the area immediately around the point where electricity supply enters the relevant building or complex).

34. My own view is that neither the ICC Judge's approach nor that of British Gas is correct. It seems to me that, read naturally, "premises" refers to the whole of the "land, building or structure" receiving electricity via a bulk meter. Take a case in which electricity supplied by a licensed supplier through a bulk meter located in the

common parts of a block of flats is used by the various occupiers of the flats as well as in the common parts. The licensed supplier would, I think, fairly and ordinarily be seen as supplying electricity to the whole building, not just the spot where the bulk meter happened to have been placed or individual flats. It is to be remembered in this connection that paragraph 1(1) of schedule 7 refers to supply being given "through" a meter rather than "to" one and that, as is apparent from paragraph 1(3), a meter can potentially be placed "outside [the customer's] premises or in some other position", confirming that the location of a bulk meter cannot be equated with the "premises" supplied. Given, moreover, the general requirement on licensed suppliers to supply through, and ascertain consumption by, a meter, there can surely be no question of Parliament having intended paragraph 3(1) of the Electricity Code to bring into being multiple deemed contracts between a supplier and individual occupiers. Where there is no more than one approved meter (viz. a bulk meter), a licensed supplier can measure only total usage, not consumption by particular occupiers.

35. Turning to "occupier" and "unoccupied", there must be many contexts in which it would not be appropriate to conclude that a building or complex of which at least parts had occupiers was "unoccupied". However, in *Graysim Holdings Ltd v P & O Property Holdings Ltd* [1996] AC 329, Lord Nicholls explained at 334 that "the concept of occupation is not a legal term of art, with one single and precise legal meaning applicable in all circumstances" and that "[i]ts meaning varies according to the subject matter". In *Cornerstone Telecommunications Infrastructure Ltd v Compton Beauchamp Estates Ltd* [2022] UKSC 18, [2022] 1 WLR 3360, which involved an issue as to the meaning of "occupier" in the Electronic Communications Code, Lady Rose went so far as to say in paragraph 106:

> "the starting point here is not to try to define the word 'occupier' and then allow that definition to mandate how the regime established by the code works. The correct approach is to work out how the regime is intended to work and then consider what meaning should be given to the word 'occupier' so as best to achieve that goal."

36. How, then, was the regime relating to deemed contracts intended to work in a case in which electricity is supplied via a bulk meter to a building or complex with multiple occupiers? Where, say, a bulk meter serves a block containing a number of flats leased to individual occupiers, who will Parliament have intended to be liable for electricity charges?

37. The Judge identified three possibilities in the paragraphs of the Judgment quoted in paragraph 23 above. The first was that individual occupiers are liable for the electricity supplied to their particular premises on the basis that those are the "premises" within the meaning of paragraph 3(1) of the Electricity Code. As, however, I have already said, it seems to me that the relevant "premises" are the entirety of the property served by a bulk meter.

38. The third possibility canvassed by the Judge would involve a single deemed contract with all occupiers but with an implied term limiting liability to each individual's personal consumption. Not only, however, might such a scenario give rise to "potentially difficult apportionment exercises", but it would, as it seems to me, be inconsistent with the overall statutory scheme. Licensed suppliers are supposed to use

appropriate meters to determine usage, but no such meter would be available to measure the electricity consumption of different occupiers. On top of that, it is difficult to see on what basis the suggested implication would be proper. If it were on the footing that it was required to avoid absurdity, then, as Mr Westwood pointed out, that would indicate that the interpretation of the statute necessitating the implication was wrong, not that a term fell to be implied.

39. That leaves the Judge's second possibility: a single deemed contract with all occupiers making them jointly and severally liable for all the electricity supplied to the whole building or complex. I understood Mr Darton to accept that this would be the position on the basis of his construction of paragraph 3(1) of the Electricity Code, and I agree that that would be the consequence. However, I find it very difficult to see how Parliament can have intended that. Take the block of flats whose electricity is supplied through a single bulk meter. Tenants would surely be horrified were they told that they were liable to the licensed supplier not merely for their own usage but for what everyone else in the block had consumed. They could justifiably complain, moreover, that the legislation had not made it at all plain that they could incur such a liability.

40. On Smartest's case, it would be the owner of the building or complex who would be liable to pay for all the consumption recorded by a bulk meter. Mr Darton submitted that that would be both unjust and absurd. The 1989 Act, he argued, seeks to place liability on those who consume electricity, and an owner need not have consumed any, let alone that of the entire building or complex. An owner could also say with reason that the 1989 Act does not make it obvious that owners can be liable for the usage of an entire building or complex notwithstanding that some or all of it has occupiers.

41. Where, however, a building or complex served by a bulk meter has more than one occupier, a rational case can be made for throwing the deemed liability onto the owner. The owner can typically be expected to know whether the whole building or complex is served by the bulk meter and, if not, which parts of it are so served; to be aware of who is in occupation and on what basis; and to be in a position to establish arrangements under which different occupiers pay for their individual usage. An owner might, for example, choose to install sub-meters. The fact that sub-meters appear to have been found in the Arcade suggests that a predecessor of Odeon may have done just that.

42. A further point is that, as can be seen from the Ofgem workgroup report quoted in paragraph 20 above, a deemed contract such as paragraph 3 of the Electricity Code provides for is intended to take the place of an actual contract when, say, a customer has moved out. Where such a situation arises with, for example, a block of flats, the only plausible contracting party would be the landlord: no individual tenant is going to be willing to take on liability for the supply to the whole block. That tends to suggest that a substitute under paragraph 3 should similarly be with the landlord.

43. As I have mentioned, the Judge considered that support for his interpretation of paragraph 3(1) of the Electricity Code might possibly be found in other provisions of the Code. In that connection, he referred to paragraphs 2, 6 and 7.

44. Taking those in reverse order, paragraph 7(5) of the Electricity Code provides that "[a] power of entry for the purpose of removing or installing an electricity meter may not be exercised unless at least two working days' notice has been given to the occupier (or the owner of the premises if they are unoccupied)". Mr Westwood's approach to paragraph 3(1) would imply that, where there is a bulk meter serving a block of flats, notice need be given only to the landlord. However, that does not strike me as an absurd outcome. It is far from evident that Parliament would have wanted a licensed supplier wishing to replace a bulk meter to have to give notice to every occupier of every flat, especially since (a) the meter might well be in an area controlled by the landlord and (b) the supplier would not necessarily know how the building was divided up or occupied.

45. Turning to paragraph 6 of the Electricity Code, sub-paragraph (1) makes it an offence to damage (or allow to be damaged) an electric line, plant or meter intentionally or by culpable negligence and sub-paragraphs (2) and (3) state as follows:

> "(2) Where an offence has been committed under sub-paragraph (1) by the occupier of any premises (or by the owner of the premises if they are unoccupied when the offence is committed) in relation to any electric line or electrical plant provided by an electricity distributor for making or maintaining a connection to the premises, the distributor may disconnect the premises.
>
> (3) Where an offence has been committed under sub-paragraph (1) in relation to an electricity meter provided by an electricity supplier which is situated on any premises, by the occupier (or by the owner of the premises if they are unoccupied when the offence is committed), the supplier may disconnect the premises and may remove the meter."

The Judge commented in paragraph 62 of the Judgment that Smartest's interpretation of paragraph 3(1) "would mean that if a tenant committed the relevant offence, the powers under paragraphs 6(2) and (3) would not arise, which does not make a great deal of sense". As, however, Mr Westwood pointed out, it is not clear why a supplier should be permitted to disconnect the whole of a building or complex just because an occupier of one part has committed an offence.

46. With regard to paragraph 2 of the Electricity Code, sub-paragraph (1) entitles a supplier to install a pre-payment meter or disconnect the premises if a "customer" has not paid and sub-paragraph (2) provides:

> "The power of a supplier under sub-paragraph (1)(a) or (b) may not be exercised—
>
> …
>
> (b) unless not less than seven working days' notice has been given to the occupier of the premises (or the

> owner of the premises if they are unoccupied) of his intention to exercise it."

The Judge observed in paragraph 61 of the Judgment that "one would logically expect the legislation to be designed to ensure that notice was given to the parties most directly affected by the disconnection of supply, namely the party in occupation actually using the electricity". While, however, there is some force in this point, it is not so powerful as to cause me to reject Mr Westwood's interpretation of paragraph 3(1). Apart from anything else, it might be thought sensible that a supplier should merely have to notify the party with the legal liability and, very possibly, control of the relevant meter rather than having to attempt to give notice to numerous, and potentially unidentifiable, occupiers of particular parts of the premises.

47. It is fair to say that adopting Mr Westwood's interpretation of paragraph 3(1) of the Electricity Code may not provide a clear answer to every question which could arise in relation to the provision. There could, for example, be issues as to who is an "owner" or what the position is where different parts of a complex served by a bulk meter have different owners. I would guess, though, that bulk meters are far more likely to be used where there is only one owner.

48. It is not difficult to understand how the Judge considered his interpretation of paragraph 3(1) of the Electricity Code to be supported by its wording. "Unoccupied" would commonly mean what the Judge took it to signify. However, construing the words used in the light of their specific context and purpose, I have concluded that premises are "unoccupied" within the meaning of paragraph 3(1) if there is no single occupier of the entirety. It follows that Odeon is indebted to Smartest as alleged in the winding-up petition.

49. While the point is irrelevant to my decision, it is perhaps worth adding that it is highly likely that Odeon would have been indebted to Smartest even if the interpretations of paragraph 3(1) of the Electricity Code espoused by Mr Darton and British Gas had been correct. The evidence suggests that the Bulk Meter was in a part of the premises which it served (viz. the basement) and that Odeon occupied that area. If that is right, Odeon would be liable as one of the occupiers of the premises on Mr Darton's case and as the occupier of the site of the Bulk Meter on British Gas'. On top of that, it seems very possible that Odeon occupied the walkway at the Arcade and that that area, too, was served by the Bulk Meter.

Conclusion

50. I would allow the appeal and set aside both the order made by the Judge and that made by the ICC Judge.

Lady Justice Falk:

51. I agree.

Lord Justice Fancourt:

52. I also agree. I initially had sympathy with the conclusion of Cawson J that for premises that were "occupied" in the normal usage of the word to be described as

"unoccupied" was such a stretch of meaning that it could not be achieved as a matter of statutory construction. That conclusion would, however, require a persuasive answer to the question as to which of the three possible results set out in [53] of Cawson J's judgment (set out at [23] above) was the right consequence, in terms of liability. For the reasons given by Newey LJ in his judgment, which I gratefully adopt, none of them is satisfactory when considering a building in multiple occupation with one licensed supply.

53. An indication of how paragraph 3(1) of the Electricity Code applies to such a building is in my view to be found by considering its purpose, the circumstances in which the deemed contract will come into existence, and how it works in a paradigm case of a metered supply to premises in single occupation, such as a dwelling-house, shop or small office building.

54. The purpose is explained in the Ofgem workgroup 2006 Report, cited at [20] above, namely to provide continuity of supply, in the interests of efficiency, and a sound basis for the supplier to recover a fair price for the electricity consumed. A deemed contract will arise at the exact moment ("the relevant time" as defined in paragraph 3(1)) that a previous contract of supply, whether deemed or express, is terminated. In most cases this will be at the time when an occupier vacates or an owner sells. What happens thereafter does not affect the identity of the parties to the deemed contract. Often, the premises supplied will be empty at this moment, so the deemed contract is with the owner, who will pay for any electricity consumed by them in the interim, until a new occupier enters into a new supply contract. If the new occupier is already in situ when the previous contract ends, the deemed contract will be with the occupier, who will be using the electricity supplied. In both cases, it is the person who is using the *entire supply*, in the interim, who is liable.

55. For blocks of flats, multi-occupied commercial buildings, holiday parks and other premises, there will often be a single licensed supply to the whole premises, which is then sub-metered by the landlord and charged to individual occupiers, or alternatively paid by them through a service charge. In either case, it makes good sense that, on termination of an existing contract for such a supply, it is the landlord or new landlord, as the case may be, who is deemed liable to pay for any interim supply, pending a new express contract. This mirrors the arrangement that would be made if a new express contract were made without any interim deemed contract, because it would only be made by the landlord (or its management company). For the reasons given by Newey LJ, it would be bizarre in such cases for the individual occupiers to be jointly and severally liable for the whole licensed supply instead of or in addition to their sub-metered account or their service charge.

56. The meaning of paragraph 3(1) can in my view provide a sensible result in this perfectly common arrangement, just as it does with the paradigm case that I first considered. That is achieved by giving the word "unoccupied" in this context the meaning of premises being unoccupied by a person who will be using the entire supply, as would be the case if there were a single occupier of the premises supplied. In respectful disagreement with Cawson J, I therefore consider that "unoccupied" has, by reason of its context, the particular meaning that Newey and Falk LJJ agree that it has.