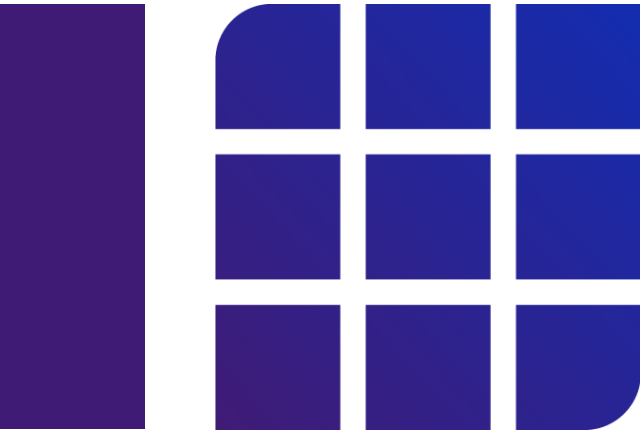




Junior Litigation Series 2026

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Vesting Orders under section 44 Trustees Act 1925

An analysis of vesting orders under section 44 Trustees Act - where can they be used, what can they achieve, and how do they differ from vesting orders under the Companies Act and Insolvency Act

Dissolution of a Company

- Involuntary Strike Off
 - *“reasonable cause to believe that the company is not carrying on business or in operation”*
 - Section 1001 Companies Act 2006
 - Failure to file accounts
 - Failure to file confirmation statements
- Voluntary Strike Off
 - Directors decide to no longer trade; liquidator dissolves after liquidation

Company's Property

- Involuntary strike off
- Voluntary strike off
 - Inadequate records
 - Liquidator missed something
 - Failure to properly dispose of property

Bona Vacantia

“When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property, but not including property held by the company on trust for another person) are deemed to be bona vacantia”

Section 1012 Companies Act 2006



The Crown / The Duchy of Lancaster / The Duchy of Cornwall

What will the Crown do?

- Sell?
- Disclaim
 - *“Where property vests in the Crown under section 1012, the Crown's title to it under that section may be disclaimed by a notice signed by the Crown representative, that is to say the Treasury Solicitor”*
 - Section 1013 Companies Act 2006
 - *“The Crown's disclaimer operates so as to terminate, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed.”*
 - Section 1015

Vesting after disclaimer?

- Section 1017 Companies Act 2006

“The court may on application by a person who—

(a) claims an interest in the disclaimed property, or

(b) is under a liability in respect of the disclaimed property that is not discharged by the disclaimer,

make an order under this section in respect of the property.

An order under this section is an order for the vesting of the disclaimed property in, or its delivery to—

(a) a person entitled to it (or a trustee for such a person), or

(b) a person subject to such a liability as is mentioned in subsection (1)(b) (or a trustee for such a person).”

What if it was trust property?

- Remember, section 1012:

*“When a company is dissolved, all property and rights whatsoever vested in or held on trust for the company immediately before its dissolution (including leasehold property, **but not including property held by the company on trust for another person**) are deemed to be bona vacantia”*

What if it was trust property?

- Section 44 Trustee Act 1925:

*“Where a trustee entitled to or possessed of any land or interest therein, whether by way of mortgage or otherwise, or entitled to a contingent right therein, either solely or jointly with any other person—
[...]*

(d) being a corporation, has been dissolved;

the court may make an order (in this Act called a vesting order) vesting the land or interest therein in any such person in any such manner and for any such estate or interest as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct.”

Why might a Company hold property on trust?

- Purchased and legal title held by company for development
- “any land or interest therein” – does not need to be freehold title, could be an interest, e.g. a charge

Section 44 Applications

- *Hamilton v Attorney-General* [2022] EWHC 2132 (Ch) [45-49]:
 - The Court has a very broad discretion.
 - The Court will usually vest property in the person beneficially entitled to it.
 - But the Court must do justice in all the circumstances.

Procedure

- Part 8 claim form
- Detailed witness statement
- Name HM Attorney General as Respondent, serve Treasury Solicitor

Other types of vesting order?

- Section 1017 Companies Act 2006
 - Where property disclaimed by the Crown (after dissolution and bona vacantia)
- Section 181 Insolvency Act 1986
 - Where property disclaimed by a liquidator (before dissolution)
- Section 181 Law of Property Act 1925
 - Where property has *escheated* to the Crown – the estate has been determined

Other alternatives?

- Restoration of the Company?
 - Administrative restoration (section 1024 Companies Act 2006)
 - Court-ordered restoration (section 1029 Companies Act 2006)

Things to think about

- Making sure all property is dealt with before dissolution
- Making sure we know whether property was held on trust or has become bona vacantia
- Which type of vesting order to use
- Restoration?



Bad PR: Applications to Remove Personal Representatives

Overview

- Role and duties of PRs
- Courts power and relevant factors under s.50 AJA 1985
- Procedural requirements

What is a Personal Representative?

- Umbrella term for executors and administrators

Executors vs Administrators

- Executor: authority from will (from death)
- Administrator: authority from grant

Likely Candidates

- Relatives (old appointments?)
- Professionals
- Volunteers

Duties of Personal Representatives

- Statutory duties: s.25 Administration of Estates Act 1925
- Duty of care: s.21 Trustee Act 2000
- Duty of due diligence in administration (*Re Tankard* [1942] Ch 69)
- Fiduciary duties?

Court's Power to Remove PRs

- No inherent jurisdiction
- Statutory power only: s.50 AJA 1985

Where an application relating to the estate of a deceased person is made to the High Court under this subsection by or on behalf of a personal representative of the deceased or a beneficiary of the estate, the court may in its discretion appoint a person (in this section called a substituted personal representative) to act as personal representative of the deceased in place of the existing personal representative or representatives of the deceased or any of them

- s.50(1)(b) → removal without replacement *if one remaining*

Who Can Apply?

- A Personal Representative (including own removal)
 - *Riley v Seed* [2013] EWHC 4863 (Ch)

- A beneficiary: s.50(4) AJA 1985

Typical Grounds for Removal

- **Delay** in progressing the administration
- **Mismanagement** of estate assets or paperwork
- **Conflict** between personal representatives or with beneficiaries
- **Unfitness** to carry out the role in practice
 - *Connell v Connell* [2024] EWHC 2646 (Ch)
- **Deadlock** preventing decisions being made
- **Doubt** thrown on will by PR

The Governing Principles

Harris v Earwicker [2015] EWHC 1915 (Ch)

- Welfare of beneficiaries paramount
- No need to prove wrongdoing
- Testator's choice relevant but not decisive
- Beneficiaries' views – no right to elect
- Prospect of administration of estate
- Cost of replacement

Sources of Procedural Authority

- S.50 AJA 1985.
- CPR r.57.13
- PD 57, §12-§14
- Chancery Guide

Where and how?

- High Court (Chancery Division)
- Part 8 → claim
- Part 23 → application in existing proceedings
- Join all PRs

Evidence and Hearing

- Front-loaded written evidence
 - **Must** comply with PD 57
 - Will or grant of probate
 - Specific details of estate & beneficiaries
 - Details of Proposed Substitute
 - Name and address
 - Consent to act
 - **Independent** evidence of fitness
- Oral evidence and cross-examination rare

Top Tips

- If making the claim:
 - Well prepared evidence
 - Think through the proposed substitute
- If opposing the claim:
 - Consider if claim can be characterised as motivated by familial politics, rather than out of concern for the estate or administration of it.

Key Authorities

- Statutes:

- AJA 1985 s.50;
- AEA 1925 s.25;
- Trustee Act 2000

- Cases:

- *Re Tankard* [1942];
- *Riley v Seed* [2013];
- ***Harris v Earwicker* [2015];**
- *Connell v Connell* [2024]

- Procedure:

- CPR r.57.13;
- PD 57 §§12–14;
- Chancery Guide

Any Questions?

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