

IN THE WALSALL COUNTY COURT

Claim No. 11R15091

Bridge House  
Bridge Street  
Walsall

Friday, 28<sup>th</sup> June 2013

Before:

HIS HONOUR JUDGE MITHANI QC

Between:

NEIL PREECE

Claimant

-v-

HS (OSL2) LIMITED

Defendant

Counsel for the Claimant:

MR. BRIAN GALLAGHER  
*Instructed by Wixted & Co., London, SW18 1NP*

Counsel for the Defendant:

MR. WILLIAM VANDYKE  
*Instructed by Keoghs LLP, Bolton, BL6 4SE*

JUDGMENT APPROVED BY THE COURT

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## JUDGMENT

A THE JUDGE:

- B 1. I give this short judgment to set out the reasons why I do not consider it appropriate for  
this matter to proceed before me today.
- C 2. The Defendant Company has been struck off the Register of Companies, and dissolved.  
It follows that it has no legal existence, and is unable either to conduct – and, therefore,  
defend – these proceedings or to be represented in them by those who purport to  
represent it today.
- D 3. The Defendant Company should have been restored to the Register of Companies prior  
to proceedings being issued. It was not. Nor has any application been made by the  
E Claimant’s solicitors to restore it to the Register of Companies. In spite of that, it is  
common ground between the parties that I should proceed with the determination of the  
F issue of limitation that I was directed by a previous order of this court to determine  
today (although the fact that the company was struck off and dissolved does not appear  
to have been noticed by the Judge who made that order). I can see the sense of that,  
G particularly given the modest amount of the claim. I am also told that a practice has  
developed whereby the parties to a claim such as this will agree – as the parties before  
me have – that issues such as the one I have to try today may be tried without a  
defendant company which has been struck off and dissolved being restored to the  
H Register of Companies. I can see the sense of that too. However, in spite of all that, I am  
afraid I can see no basis upon which I can disregard what is a fundamental principle of  
company law that a company that has been struck off the Register of Companies (and  
dissolved) does not have any legal existence, and cannot therefore sue or be sued

A without being restored to the Register of Companies. I cannot, therefore, proceed with  
the hearing today.

B 4. It is a fallacy to suggest that it is open for the parties in proceedings involving a claim  
such as this, if it is insured, not to take the point that a defendant company has been  
struck off and dissolved; and specifically that, because the Defendant's insurers do not  
take the point, it is possible for the matter to continue before me today. Whether the  
C Defendant Company lacks any legal basis to conduct a defence of these proceedings is a  
fundamental point that affects the validity of the proceedings brought by the Claimant,  
and is, therefore, one that must be raised by the court even if it is not relied upon by the  
D Defendant's insurers. It cannot be right for the court to disregard that point merely  
because the parties invite it to take that course of action. The plain fact is that the  
Defendant Company has no legal existence, and the proceedings taken against it by the  
E Claimant are a complete nullity. It would be an abuse of the process of the court to allow  
such proceedings to continue. [However, it should be noted that this point will largely be  
otiose when the Third Party (Rights against Insurers) Act 2010 comes into force].

F 5. I drew the attention of the parties to the decision in *Joddrell v Peaktone Ltd* [2012]  
EWCA Civ 1035 in which the Court of Appeal ruled that an order restoring a company  
G to the Register of Companies under s 1032(1) of the Companies Act 1986 had the effect  
of retrospectively validating an action that had purportedly been commenced against the  
company during the period when it was dissolved. The Claimant's solicitors have,  
H accordingly, indicated that they are prepared to give an undertaking to this court to make  
an application to restore the Defendant Company to the Register of Companies. They  
invite me, on that basis, to continue with the hearing. Clearly, if the Defendant Company  
is restored to the Register of Companies, then the order restoring it would have the

A effect of validating the proceedings retrospectively, including validating any  
determination I make today. However, I am unable to take that course of action. In the  
first place, the giving of that undertaking will not overcome the fundamental difficulty  
B to which I have made reference – which is that the company does not have any present  
standing to take any part in these proceedings, and that the proceedings issued against it  
are a complete nullity. It follows that any order I made would also be complete nullity  
until such time as the Defendant Company was restored to the Register of Companies.  
C In addition, it is by no means certain that the application to restore would be granted. It  
has to be remembered that the determination of an application to restore involves a  
judicial decision. Although unlikely, it is possible that the Registrar (if the application is  
D made in the Companies Court in London) or District Judge (if the application is made  
elsewhere) may refuse to make it or may make it subject to conditions which it may not  
be possible for the Claimant to comply with.

E 6. It is open to me to strike out the proceedings. However, I consider that the more  
appropriate course of action for me to take is to stay or adjourn the proceedings to await  
F the outcome of the application to restore the Defendant Company to the Register of  
Companies, and to relist this matter once the outcome of the application is known.

G 7. I only realised that the Defendant Company had been struck off the Register of  
Companies (and dissolved) after I heard evidence from the Claimant. That is  
unfortunate. However, the evidence he gave was not lengthy, and I have made a full  
H note of it. Accordingly, there is no question that I will have forgotten the evidence in the  
short period of time that it will take to make the application to restore and have it  
determined by the court.

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*(End of judgment)*

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*(Discussions as to permission to appeal and timetabling followed)*

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