

# Claiming against an estate which does not have a PR

Matthew Mills

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# The starting point

*"Subject to the provisions of this section, on the death of any person after the commencement of this Act all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate. Provided that this subsection shall not apply to causes of action for defamation."*

-- section 1(1) Law Reform (Miscellaneous Provisions)  
Act 1934

# 3 exceptions

1. Defamation claims
2. Claims based on the Deceased's personal obligations
3. Claims based on joint but not several liability (where other jointly-liable defendants survive)

# 4 options for suing the estate

1. Apply as a creditor for letters of administration
2. Bring a claim against "*the estate of*" the Deceased and apply for a representative to be appointed
3. Issue a citation to require a PR to take a grant
4. Remind an intermeddling PR of their personal liability in relation to the Deceased's debts

# Option #1: apply for a grant

- Rules 20(e) and 22(3) Non-Contentious Probate Rules 1987 and section 116 Senior Courts Act 1981
- Four warnings:
  1. A creditor must show why those with higher priority are not applying for a grant ('clearing off')
  2. A creditor who purchased an estate debt *after* the Deceased's death cannot apply for a grant: Baynes v Harrison (1856) 1 Dea & Sw 15
  3. The creditor will be subject to the duties of a PR
  4. If the creditor claims damages, this may put them in a position of conflict

# Option #2: sue 'the estate of'

- Rule 19.8(2)(b) CPR
- Four warnings:
  1. Application to appoint a representative must be made *before* the period for service expires: para 5.5 PD 7A
  2. The claim is stayed pending appointment: Piggott v Aulton [2003] EWCA Civ 24
  3. The court may direct the claimant to give notice of the application to anyone interested in the estate: rule 19.8(4) CPR
  4. The representative must consent: Pratt v London Passenger Transport Board [1937] 1 All ER 473

# Option #3: issue a citation

- Rule 47 Non-Contentious Probate Rules 1987
- A failure to appear to the citation means the PR loses their rights: s 5(ii) Administration of Estates Act 1925
- If the PR appears but does not apply for a grant "*with reasonable diligence*", the creditor can issue a summons for a grant in their name: rule 47(7) NCPR 1987
- Two warnings:
  1. Citation procedure will add further costs and delays
  2. If the PR will continue to delay the administration, it may be better to apply to court to pass over them: section 116 Senior Courts Act 1981

# Option #4: threaten a personal claim

- Re Tankard [1942] Ch 69: a PR must pay the Deceased's debts "*with due diligence*"
- Examples of PRs being held liable for not doing this:
  - Failing to pay debts before distribution: Ministry of Health v Simpson [1951] AC 251
  - Delaying the payment of an interest-bearing loan: Hall v Hallet (1784) 1 Cox Eq Cas 134
- Two warnings:
  1. Could jeopardise the creditor-PR relationship
  2. All joint claimants must be joined to a claim against the PR: Alexander v Mullins (1830) 2 Russ & M 568



# What to do when a defendant dies during litigation

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# 4 options to keep the claim alive

- A. Ask the court to substitute a representative of the estate as defendant
- B. Apply for the claim to proceed in the absence of a representative of the estate
- C. Apply for a grant of probate as creditor
- D. Issue a citation to compel a named executor to accept a grant

# Option A: substituting a representative

- *William's, Mortimer and Sunnucks*, paragraph 41-77:

*"Where a party to an action that is on foot dies, but the cause of action survives, the action does not abate and where the interest or liability of that party devolves upon some other person the court may substitute that person as a party."*

- Substitution allowed if *"the existing party's... liability has passed to the new party"*: rule 19.2(4)(a) CPR
- It is unlikely to matter if the limitation period expired after the claim was issued: rule 19.5(3)(c) CPR

## Option B: continue with no representative

- Rule 19.8(1)(a) CPR
- Judgment will bind the defendant's estate: r19.8(5) CPR
- Orders are uncommon, but may be made where:
  1. Beneficiaries of D's estate consent: PJSC Aeroflot v Leeds [2018] EWHC 1735 (Ch), at [42] (argued, not decided)
  2. D's wife / executor / beneficiary was already a co-D: Salekipour v Parmar [2016] EWHC 1466 (QB), at [6]
  3. The appeal brought by C was dismissed: Miller v Experience Hendrix [2014] EWHC 2695 (Ch), at [3]
  4. D died after trial but before judgment: Re Moorcroft Holdings Ltd [2019] EWHC 172 (Ch), at [2]

A photograph of the interior of Radcliffe Chambers, showing a long, vaulted hallway with a series of pointed arches supported by columns. The ceiling is a complex ribbed vault with decorative carved bosses. The floor is made of large stone tiles. The lighting is warm and comes from windows on the right side.

# Radcliffe Chambers

Matthew Mills

Radcliffe Chambers  
11 New Square  
Lincoln's Inn  
London  
WC2A 3QB

T: 020 7831 0081

F: 020 7405 2560

DX: 319 London

[clerks@radcliffechambers.com](mailto:clerks@radcliffechambers.com)

[www.radcliffechambers.com](http://www.radcliffechambers.com)