

**Neutral Citation No: [2024] NICA 5**

**Ref: KEE12401**

*Judgment: approved by the court for handing down  
(subject to editorial corrections)\**

**ICOS No: 17/108557/A01**

**Delivered: 19/01/2024**

**IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND**

\_\_\_\_\_  
**THE KING**

**v**

**CULLEN ASBESTOS LIMITED**

\_\_\_\_\_  
**The Applicant appeared as a Litigant in Person  
Mr Steer (instructed by the Public Prosecution Service) for the Crown**

\_\_\_\_\_  
**Before: Keegan LCJ and Treacy LJ**

*Ex Tempore*

**KEEGAN LCJ** (*delivering the judgment of the court*)

*Introduction*

[1] This court has before it a notice of appeal which is dated 25 July 2022. It is an appeal brought by Cullen Asbestos Limited against a conviction following trial before the Crown Court in respect of various different health and safety offences relating to the handling of asbestos. The conviction resulted in a fine of £15,000.

*Discussion*

[2] The matter has been case managed for a short period of time and was listed today on a preliminary issue as to whether or not this court has jurisdiction to deal with the appeal given that the appellant is a company which is now dissolved.

[3] We are very grateful to Mr Steer for the helpful written argument dealing with this area of law and the clarification that has been provided by Companies House.

[4] This is a clarification, rather than fresh evidence. In any event it is not disputed that the relevant company was struck off the register on 24 January 2023 and dissolved on 31 January 2023. Mr Cullen accepts that.

[5] The foregoing has a consequence for this appeal as follows. Although the appeal was constituted before this court when the company was a legal entity, it is now no longer a legal entity. In law a company which is dissolved, or not a legal entity, cannot prosecute or defend a case. That principle appears to us to be uncontroversial in these proceedings.

[6] The question is how to proceed with the case? The point raised by Mr Cullen is that he wants to reinstate the company. It appears, given what Mr Steer has said, that notwithstanding he is not a director at present anyway, he has the ability as an interested person under section 1024 of the Companies Act 2006 to make an application to reinstate Cullen Asbestos Limited. Section 1024 of the Companies Act provides:

**“1024 Application for administrative restoration to the register**

(1) An application may be made to the registrar to restore to the register a company that has been struck off the register under section 1000 or 1001 (power of registrar to strike off defunct company) -

- (a) section 1000 or 1001 (power of registrar to strike off defunct company), or
- (b) section 1002A (power of registrar to strike off company registered on false basis)

(2) An application under this section may be made whether or not the company has in consequence been dissolved.

(3) An application under this section may only be made by a former director or former member of the company.

(4) An application under this section may not be made after the end of the period of six years from the date of the dissolution of the company.

For this purpose an application is made when it is received by the registrar.”

There are further requirements to be complied with by any person seeking restoration under section 1025 of the Act which we simply flag at this stage for the benefit of Mr Cullen and his advisors.

[7] We take Mr Cullen's submission at face value today. In addition, we note that Companies House has confirmed that Cullen Asbestos was struck off under section 1000 Companies Act. We therefore see that there is an option open to Mr Cullen as an interested person to apply for reinstatement. He says that he has this process in train with the assistance of an accountant called William Gould and that he wants to reinstate the company. If that occurred, it would lead to the court having to look at other procedural and substantive aspects of the appeal.

[8] The authority of *Peaktone v Joddrell* [2012] EWCA Civ 1035 that has been opened to us and upon which Mr Steer relies is very helpful in this regard. It says:

"The right course in these types of circumstances, it seems to us, is to look not to dismissal but potentially stay of a case pending reconstitution of a company."

### *Conclusion*

[8] We have considered, the law ably set out by Mr Steer, and the submissions of Mr Cullen that he wants to go down the route of reinstating the company which we take in good faith today. Therefore, we are going to allow some further time for certain steps to be completed to the satisfaction of the court. This decision should not be taken as a green light for an indefinite stay of this appeal. It simply means that we will not dismiss this appeal today because of the jurisdictional issue. Rather, we will look again at the appeal in a reasonable timeframe once the following is undertaken.

[9] First, Mr Cullen must within two weeks of today file with the court his proposed grounds of appeal. Lest there is any confusion about this, the notice of appeal that has been filed of 25 July 2022 does not actually contain grounds of appeal and they must, therefore, be lodged within two weeks.

[10] Second, within eight weeks of today we require Mr Cullen to lodge with the court all relevant documentation about the steps taken to reinstate the company on the Companies Register. That should at least include the application to reinstate which is going to be filed, we are told, by William Gould Accountants, and any other subsidiary documentation. We would hope that a date for the hearing of the reinstatement will also be available within the next eight weeks.

[11] That brings us to March 2024. We will therefore review the case just after Easter on the first week back, when we will consider further the progress, or otherwise, of this appeal. We will review the case on 9 April 2024. We are effectively staying the appeal with those directions, and we will review that decision on 9 April.