

All the king's horses and all the king's men, couldn't put a freehold together again: *Lulham v Crown Estate*

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KEY POINTS:

- *Lulham v Crown Estate* [2025] EWHC 1572 (Ch) highlights the Crown's ultimate ownership of all UK land. The claimant individuals lost their freehold interest in a property; it being escheated to the Crown Estate.
- While this case did not involve the trustee in bankruptcy, it did involve a freehold interest reverting to the Crown for failure to comply with basic obligations placed on a company. The subsequent failure of the Claimants to have the freehold restored to them is a reminder of the practical effects when land is disclaimed.
- The case serves as a warning to directors not to allow a company to dissolve without their knowledge, and once they become aware, to act within the six-year restoration period for the best chance of retaining their freehold.

INTRODUCTION

1. In the British National Anthem, it is declared that the King, living happily and gloriously, is "long to reign over us". It is a good reminder that on this little island we are the subjects of the King. While this has little practical effect in most people's lives, save for an inherent fondness for all things regalia and prancing horses, it does mean that the land we think we own is not ours; as Deputy Master Holden stated from the outset of the judgment in *Lulham v Crown Estate* [2025] EWHC 1572 (Ch), "[a]ll land in England belongs ultimately to the Crown".
2. The dramatic effect of everyone who owns a freehold estate being essentially a fancy tenant can be seen in the case of *Lulham v Crown Estate* where two individuals, the Lulhams (the Claimants), lost their freehold interest in a property, it being escheated to the Crown Estate (the Defendant).

THE ENDING OF FREEHOLD STATUS

3. The process of escheating is where freehold land effectively becomes ownerless, and it reverts to the Crown. Escheat itself was articulately defined by HHJ Cooke in *Re Fivestar Properties Ltd* [2015] EWHC 2782 (Ch), who stated:

“Escheat is an ancient term, denoting the principle that if the interest of an inferior tenant determines or is extinguished, the land reverts to the tenant’s immediate feudal lord. All land is ultimately held of the Crown, and a freehold interest is a tenancy for these purposes, so that if the freehold interest is extinguished the land reverts to the immediate lord, in practice nowadays being the Crown.”

4. But how can the escheating process start in the first place? It is often the case that a trustee or liquidator will disclaim freehold title. Sections 178-182 of the Insolvency Act 1986 (IA 1986) deal with disclaimer by a liquidator on the winding up of a company, and ss 315-321 of IA 1986 address disclaimer by a trustee in bankruptcy.
5. Logically, individuals will only disclaim freehold title where the financial obligations are likely to be detrimental to creditors; the property in question is onerous. Onerous property includes any unprofitable contract, unsaleable or not readily saleable or it requires onerous acts. For that reason, the trustee will “disclaim” the land and back it goes to the Crown.
6. The effect of the disclaimer is to determine the rights, liabilities and interests in respect of the subject property, from the date of such disclaimer. This process can, understandably, have serious consequences, especially when it turns out that there is value in some of the assets (as per *Sleight v The Crown Estate Commissioners* [2018] EWHC 3489).

BACKGROUND

7. In *Lulham v Crown Estate* the married Claimants purchased the freehold of 40 Kingsley Road, Maidston (the Property) through a Company, Matchmount Limited (Matchmount). The Property consisted of two flats, which the Claimants held in their personal capacities:

- Flat 1 was jointly owned; and
 - Flat 2 was in Mrs Lulham's sole name.
8. As Deputy Master Holden stated, the Claimants would have been forgiven for thinking that the Property was theirs as they clearly had significant control over the operations of the Property as directors, shareholders and leaseholders.
 9. Presumably, given their perceived ownership of the Property, repairs and the like were not channelled through Matchmount and just dealt with by the Claimants. This might explain why four years after purchasing the Property the annual returns for Matchmount were not filed. On 2 February 2010, Matchmount was struck off the Register of Companies.
 10. All would not have been lost at this stage, if, within six years the Claimants had applied for restoration of the Company to the Register under s 1024(1) or s 1029 of the Companies Act 2006 (CA 2006) However, it appears that the Claimants were unaware of the dissolution and took no further steps. Matchmount's dissolution became irrevocable and the freehold interest in the Property passed, under s 1012(1) of the CA 2006, to the Crown. The Crown thus owned the Property as *bona vacantia*.
 11. In March 2022 the Treasury Solicitor utilising s 1013 CA 2006, on behalf of the Crown, issued a notice of disclaimer of the Crown's interest in the Property. This terminated the freehold interest but as the Deputy Master noted, and citing *Scmlla Properties Limited v Gesso Properties (BVI)* [1995] BCC 793, the strange "boomerang effect" meant that the Crown's disclaimer of the freehold interest caused the freehold to be extinguished and the Property to vest in the Crown directly by escheat.
 12. The difference between escheat and bona vacantia is arguably a fine one but they are mutually exclusive legal principles. *Bona vacantia* vesting operates automatically upon the dissolution of a Company whereas escheat occurs when the disclaimer, discussed above, occurs. A practical difference is the different government departments that deal with the two, *bona vacantia* goes to the Treasury Solicitor whereas escheat is firmly within the remit of the Crown Estate.
 13. At all times, the leasehold interest continued to be held by the Claimants, s 1015(2) of the CA 2006, ensuring that disclaimer does not affect "... the rights or liabilities of any other person".

THE CLAIMANTS' APPLICATIONS

14. Given that the Claimants had “lost” the freehold, they applied for a vesting order in respect of the Property, in the hope of obtaining the same *personally*. The application was made primarily under s 1017 of the CA 2006 and in the alternative, under s 181 of the Law of Property Act 1925 (LPA 1925).
15. The Claimants did not contend that Matchmount held the Property for them on trust and therefore s 44 of the Trustee Act 1925 could not be utilised. Had they contended the same, the result may have been different. A different Claimant had success with such an application in the case of *Dixon and another v Crown Estate Commissioners* [2022] EWHC 3256 (Ch). But alas, that was not the fact pattern here, and the Claimant’s ploughed on under CA 2006 and LPA 1925.

Companies Act application

16. Section 1017 of the Companies Act provides that:

- “(1) 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.
- (2) 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).”

17. The Claimants sought two routes to vest the freehold back into their control. Route 1 was to say under s 1017(1)(a) and (2)(a) that a vesting order should be made in their favour because they were directors and shareholders of Matchmount. This was easily dismissed by the court, applying *Leon v Attorney General* [2019] EWCA Civ 2047, the fact that they were previously shareholders of a company did not give them an interest in the Property. The court placed significant emphasis on Matchmount’s ownership of the freehold, and for good reason, any other outcome would be seen as piercing the corporate veil that separates the Claimants from their now dissolved company.

18. The Claimants also contended that by virtue of the landlord's covenant, they had a contractual entitlement to insist on the maintenance and management of the Property, such that, they had a sufficient interest for the purpose of a vesting order. The court disagreed, stating that such an argument simply did not follow; a tenant with the benefit of a covenant cannot in any sense be entitled to a freehold.

19. Route 2 was to say that under s 1017(1)(b) a vesting order should be made because the Claimant's owed liabilities given their status as leaseholders of the Flats and the requirement to perform their covenants in those leases. The court however noted that their position of having liabilities as *leaseholders* was not a "liability in respect of the disclaimed property", that being the freehold interest which had been disclaimed. The court separated out the role of a leaseholder who has liabilities to the landlord and those of the disclaimed property, in this case, the freehold.

20. The court went on to say that Route 2 would not be available in any event because s 1017(3) would not be satisfied. Section 1017(3) states:

"(3) An order under subsection (2)(b) may only be made where it appears to the court that it would be just to do so for the purpose of compensating the person subject to the liability in respect of the disclaimer."

21. This provision is there to stop any applicant gaining a windfall. In *Leon v Attorney General* the court declined to make a vesting order because of s 1017(3), stating at [39]-[40], that:

"Compensation in section 1017(3) seems to be used in the sense that a vesting order will counter-balance the liability. It is not necessary that the benefit of the vesting order directly matches the liability, but it seems to me there must be a reasonable relationship between the liability and the benefit to be obtained from the making of a vesting order. If there is a substantial mis-match, the court might consider it is not just to make the order."

22. In *Leon v Attorney General* the court noted that liabilities Mr Leon had in terms of a mortgage of circa £400,000.00 were not balanced against the value of the lease which was at a minimum value of £800,000.00.

23. In the present case the Claimants attempted to circumvent any hiccups by arguing that the actual value of the freehold was low, and it was therefore a “reasonable relationship” between the liabilities and the cost.

24. The court strongly refuted such a suggestion.

- Firstly, declining to adduce late evidence of the value of the freehold; both because it was too late and thus not in line with the overriding objective but also because the evidence simply would not show what the Claimant was attempting to suggest.
- Secondly, by taking a commercially realistic view, the Deputy Master noted that the freehold had been bought in 2005 for £60,000.00 and would have inevitably increased since then.
- Thirdly, this sum contrasted against small liabilities on the Claimants for rent – a rent of £25 per year for Flat 1 and £200 per year for Flat 2, and service charge.

25. The court held, unsurprisingly, that it was impossible to conclude that the Claimant’s liabilities were of “a sufficiently proportionate relationship to the value of the freehold interest” and it would not be just to vest the freehold. The focus was rightly on whether the vesting order would be just to *compensate* for the disclaimer, not to compensate an applicant for the loss that has taken place to another entity (in this case Matchmount).

LPA Application

26. Finally, the Application tried to use s 181 of the LPA 1925. Section 181 states:

- “(1) Where, by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the court may by order create a corresponding estate and vest the same **in the person who would have been entitled to the estate** which determined had it remained a subsisting estate.”

27. This was always going to be an uphill challenge. The simple reading of s 181, supported, as the court found, by case law, is that the Claimants themselves did not have a subsisting right to Matchmount’s property; their role as directors gave them power to control the company, and their status as shareholders gave them rights to wind up the company or have surplus assets paid to them. It was only Matchmount that had an interest in the Property and the court, again, refused to pierce the corporate veil to infer an interest.

CONCLUSION

28. Ultimately, the Claimants were unable to revive the freehold. This goes to show the importance of managing these, often small, property companies in an effective manner. It further highlights how a single individual, as leaseholder, director and shareholder can have a variety of roles often without fully appreciating that the law can construe them very narrowly and separately. It should go without saying that owning a freehold property in a capacity as a director of a company is not the same as owning a property freehold as an individual.

29. Freehold assets are precarious when not dealt with properly, ownership can fall to the Crown, and revival will be a hardpressed event. The most practical takeaway for company directors in this case is not to allow your company to dissolve without your knowledge, and once you become aware, act within the six years for the best chance of retaining your freehold.

30. All the King's soldiers could not remake the wall. Better not to destroy a freehold in the first place!

FURTHER READING:

- Lexis+ practice note: Escheat, *bona vacantia* and disclaimer by the Crown.
- Lexis+ practice note: Dissolution and *bona vacantia* – dealing with the Treasury Solicitor.
- The Law of Property Act 1925 turns 100 this year: Happy Birthday! (2025) 6 JIBFL 388.