Appeals to the Appointed Person by Dissolved Companies

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What happens to an appeal to the Appointed Person when the appellant company is struck off before the hearing? In Parabolica Ltd v Tesla, Inc (BL O/0875/26, 26 September 2026), Phillip Johnson, sitting as the Appointed Person, answered the question left open in Enerjo (O/1191/25). He held that dissolution renders an appeal irregular rather than a nullity, that no valid act can be done in the dissolved company's name, and that the tribunal's inherent power to regulate its own procedure permits dismissal where nobody steps into the appellant's shoes.

Introduction

Every practitioner who has prepared for an appeal hearing only to discover that the other side has quietly disappeared will recognise this problem. Many applicants for UK trade marks are small or single-purpose companies. Some fail to file accounts or confirmation statements and are struck off while their trade mark proceedings continue. The UKIPO register does not tell you; Companies House does, if anyone thinks to look.

Until now, there has been no reasoned answer from the Appointed Person on what follows. In *Enerjo* (O/1191/25), Thomas Mitcheson KC encountered the issue but did not decide it. *Parabolica* provides an answer and does so in fourteen paragraphs. The question was framed by the Appointed Person in these terms:

'*Does the appeal become a nullity on the dissolution of the Appellant? Or do the proceedings continue to exist and need to be concluded in some other way?*' at [4].

The answer is the latter: the proceedings survive, but in a form that only the tribunal, or a successor willing to step forward, can bring to an end. The route the Appointed Person took to that answer repays close reading, because it draws on company law, the general law of civil procedure and a distinctively trade mark conception of the public interest.

Brief Background

Tesla opposed a trade mark application filed by *Parabolica*. The Hearing Officer refused the application on the ground that it had been made in bad faith contrary to section 3(6) of the Trade Marks Act 1994 (O/106/26). *Parabolica* appealed to the Appointed Person.

By way of brief chronology:

Date	Event
11 February 2026	Hearing Officer refuses application
12 March 2026	Parabolica lodges appeal to the Appointed Person
7 April 2026	Parabolica struck off and dissolved
Shortly before 23 September 2026	Tesla and tribunal learn of the dissolution
23 September 2026	Hearing listed
26 September 2026	Appeal dismissed

Two points stand out from the chronology. First, the dissolution followed the appeal by fewer than four weeks, which suggests that the strike-off process was already well advanced when the notice of appeal was filed. Secondly, nearly five and a half months passed before anyone noticed. Throughout that period, the respondent was preparing for a contested hearing against a party that did not exist.

Irregularity, Not Nullity

The property survives the owner

The starting point is company law:

'*It is clear that any assets held by Parabolica Ltd at the point it dissolved became bona vacantia (Companies Act 2006, s 1012). This would include any trade mark applications it held at the time.*' at [3].

An application for a UK trade mark is personal property, capable of assignment, so this conclusion naturally follows. The consequence is that, on 7 April 2026, the application did not vanish; it vested in the Crown.

Starting versus continuing proceedings

The Appointed Person then drew the following distinction:

'*It is apparent that an appeal cannot be started by a company which does not exist, in the same way that proceedings cannot be brought by a deceased person*' at [5].

'*where a company dissolves during the pendency of civil proceedings this amounts to an irregularity, but it does not make those proceedings a nullity*' at [6], citing *In re NP Engineering and Security Products [1998] 1 BCLC 208*, 214.

The distinction matters. A notice of appeal filed after dissolution would be void from the outset. *Parabolica's* appeal, filed while it still existed, was valid when lodged and remained on foot as a matter of procedure.

The difficulty is that an irregularity is only curable by someone with standing to apply. The Appointed Person was explicit that the company itself could not:

'*the dissolved company cannot make such an application itself as it does not exist and, for the same reason, it cannot instruct anyone else to do so on its behalf*' at [6].

That leaves the Crown, as holder of bona vacantia, and any assignee from the Crown. In practice neither is likely to intervene in a bad faith appeal concerning a single application. The Crown's interest in defending an application already held to have been filed in bad faith will usually be nil.

The impossibility of a finding in favour of the dissolved company

'*I cannot go on to make any finding that a dissolved company (who remains the nominal appellant) owns any rights or that it can continue to prosecute the application because in law that is an impossibility*' at [8].

This is a decisive step. Even if the Appointed Person had concluded that the Hearing Officer erred in finding bad faith, he could not have allowed the appeal in *Parabolica's* favour. Lord Ellenborough's rhetorical question in *Maxwell v King (1815) 4 Camp 272*, approved in *Kimathi v Foreign and Commonwealth Office [2016] EWHC 3055 (QB), [2017] 1 WLR 1081* at [5], was quoted to that effect: '*How can a valid act be done in the name of a dead man*' at

[8]. An appellate tribunal cannot grant relief to a non-existent party, and a decision on the merits would be academic unless someone could take the benefit of it.

The Public Interest Asymmetry

The most interesting passage, doctrinally, is paragraph 9:

'*A trade mark application, as a moveable property, exists independently of the original applicant*'

'*This might arise, for instance, where a trade mark would otherwise be registered in breach of the absolute grounds of refusal in section 3 of the 1994 Act*', citing by analogy *MOSOTECH* (O/211/25)

'*There is no public interest engaged where an otherwise valid mark is kept off the register*'

To see why the public interest operates in one direction only, it helps to recall that the 1994 Act contains two different types of objections to registration, and that they protect different people.

Absolute grounds (section 3 of the 1994 Act) are objections to the mark or the application itself, whoever owns it: for example, that the mark is descriptive, deceptive or contrary to public policy. Bad faith, the ground on which *Parabolica's* application failed, is one of them: '*A trade mark shall not be registered if or to the extent that the application is made in bad faith*'. The interest protected is that of the public at large.

Relative grounds (section 5 of the 1994 Act) are objections that arise only because someone else holds an earlier conflicting mark or right. The interest protected is the private interest of that earlier rights holder.

The consequence of bringing an appeal to an end without deciding it depends on which way the decision at first instance went:

Scenario A: dismissal would let a mark onto the register. Suppose an opponent argues that a mark offends an absolute ground, loses before the Hearing Officer, appeals and then dissolves. If the appeal is simply dismissed, the decision at first instance stands and the mark proceeds to registration. If the Hearing Officer is wrong, the public is left with a registration that should never have been granted, and others lose the freedom to use the sign. The public has a stake in that outcome, which is why the Appointed Person indicated

in *Parabolica* that such an appeal might need to be determined even with nobody left to argue it.

Scenario B: dismissal keeps a mark off the register. This was *Parabolica's* case. The application had been refused, and the party that disappeared was the applicant. If the appeal is dismissed and the Hearing Officer was wrong, the worst outcome is that a mark which deserved registration is not registered. No member of the public is prejudiced by that: the sign remains free for anyone to use. The loss, if there is one, falls only on the owner of the application, which after dissolution was the Crown, and the Crown did not step forward to defend it.

Put simply, a registration wrongly granted takes something away from the public; a registration wrongly refused does not. That is why the Appointed Person held that the principle '*does not apply in reverse*'.

Two qualifications should be kept in mind. First, the decision says no more than that an appeal 'might' or 'should' be continued in a Scenario A case; it does not hold that the tribunal is obliged to continue. Secondly, the absence of any public harm in Scenario B does not mean the absence of all harm. The owner of the application, or anyone who acquires it from the Crown, loses its filing date. Any fresh application would take a later date, would be exposed to intervening third-party filings, and would itself have to be made in good faith.

Inherent Jurisdiction and the Written Submissions Qualification

Having concluded that the appeal survived but could not succeed, the Appointed Person needed a procedural basis to bring it to an end. He relied on the tribunal's inherent jurisdiction to dismiss an appeal where a party does not participate in proceedings, at [11]. However, he was careful to limit the reach of that power to dismiss: for example, '*I do not think a party relying on written submissions alone is a ground to dismiss that party's case*' at [12].

This is an important safeguard. Proceedings before the registrar and Appointed Person are designed to be accessible to unrepresented and modestly resourced parties. Many appellants, particularly small businesses, sensibly elect to rely on written submissions to save the cost of attending a hearing. To treat that choice as non-participation would penalise exactly the users the tribunal is meant to serve.

The decision leaves a spectrum, which may be summarised as follows:

(a) **Written submissions only**: the party participates; no ground for dismissal.

(b) **Live party wholly silent**: the tribunal has power to dismiss for non-participation, although the decision does not say how readily that power will be exercised against an existing appellant.

(c) **Dissolved party, nobody in its place**: the party no longer exists; dismissal is the only appropriate course of action absent a public interest in continuing.

As to category (b), a respondent faced with an appellant who has gone silent and has not dissolved may rely on *Parabolica* for the existence of the power to dismiss for non-participation. Such an application however could be resisted on the basis that paragraph 12 signals a generous approach to participation and paragraph 13 turns on non-existence.

Costs: The Empty Chair Problem

For a successful respondent, the result is bittersweet:

'*As there is no person against whom a costs order can be made, I make no such order*' at [14].

The point is unanswerable as a matter of law: an order against a non-existent company would offend the same principle as Lord Ellenborough's dictum in *Maxwell v King*. Commercially, however, *Tesla* instructed leading counsel for an appeal it won without argument on the merits of appeal and recovered nothing.

The sting is sharpened by paragraph 13:

'*Indeed, this is something I could have done at any time following the Appellant's dissolution on 7 April 2026 upon an application being made*'

That sentence, in substance, is a direction to practitioners. Costs incurred after dissolution were avoidable by anyone who checked the Companies House register. Although scale costs before the UKIPO are modest, the expense of preparing for an appeal hearing is not, and the lesson is the respondent's own diligence is its only protection.

Two further points arise from a costs perspective:

(a) **First-instance costs**: if the Hearing Officer awarded costs to *Tesla* and they remained unpaid by 7 April 2026, the sum became the debt of a dissolved company. Recovery would require restoration of the company. Whether a creditor in *Tesla's* position has standing to apply for restoration under Part 31, Chapter 3 of the Companies Act 2006, and whether it is worth doing, should be considered.

(b) **No route to the directors**: nothing in the decision suggests any mechanism for fixing directors or controllers of a dissolved appellant with costs. Absent a separate basis, the respondent bears its own costs.

Unanswered Questions

The decision is careful to decide only what it needed to. Three questions are left open.

When will the irregularity be cured?

'*I need not consider when, if at all, the Appointed Person should cure such an irregularity as it does not arise in this case*' at [7].

The words '*if at all*' are notable. They leave open the possibility that, even where a successor applies, the Appointed Person might decline to substitute it. Relevant factors are likely to include the delay, the prejudice to the respondent and whether the successor's title is clear.

Restoration after dismissal

'*the dissolution could be undone retrospectively by applying to restore the company to the register*' at [7].

This is the most significant residual risk. If *Parabolica's* former directors or members restore the company, its existence is treated as continuous. Does the dismissal stand, or can the restored company apply to set it aside on the footing that it was, retrospectively, a party all along? The decision does not say. It could be suggested that a court or tribunal would be slow to reopen a final dismissal obtained regularly, on notice via the register, but the point is undecided.

The Crown as successor

The application vested in the Crown as bona vacantia. The decision does not address whether the Crown, or its bona vacantia function, should be notified when a dissolved party's application is before the Appointed Person. A cautious respondent may consider whether notification is prudent before seeking dismissal, to reduce the risk of later complaint.

Practical Considerations

Acting for the respondent:

(a) **Check Companies House at the outset and before each step**: consider any overdue accounts or confirmation statements and any First Gazette notice of proposed strike-off. These are the earliest warnings.

(b) **Apply promptly to dismiss:** paragraph 13 confirms that an application can be made at any time after dissolution. There is no need to wait for a hearing.

(c) **Consider objecting to any strike-off**: where first-instance costs are unpaid, a creditor may be able to object to a proposed strike-off, preserving the company as a debtor. Whether this is worthwhile depends on the sums involved.

Acting for the appellant or its successors:

(a) **Keep the company alive**: ensure filings are up to date for the life of the proceedings. A strike-off during an appeal is fatal unless reversed.

(b) **Assign before dissolving**: where a voluntary dissolution is planned, assign the application (and record the assignment at the UKIPO) before the company is removed from the register. The assignee can then apply to be substituted.

Conclusion

'*Bringing this all together, Parabolica Ltd is no longer a party to this appeal because it no longer exists. There is no public interest in my continuing to determine the appeal. Therefore, the only appropriate course of action is for me to dismiss it*' at [13].

Parabolica v Tesla is a short decision of real practical value. It settles that dissolution does not nullify a pending appeal, that the tribunal cannot rule in favour of a party that no longer

exists, and that the Appointed Person may dismiss such an appeal in the exercise of its inherent jurisdiction. Its public interest analysis, anchored in the distinction between absolute and relative grounds, gives a principled basis for continuing an appeal in the converse case.

The decision's limits are equally clear. A respondent that does not monitor the Companies House register risks funding an appeal it cannot lose and whose costs it cannot recover. The effect of a later restoration remains open. Until the questions above are tested, the safest course for a respondent is to remain vigilant; for an appellant, it is to ensure that the company stays on the register until the last order is made.

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