

## HOW TO SERVE NOTICE TO QUIT AFTER A DEATH

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### INTRODUCTION

Serving notice to quit after the death of a tenant involves serving the Personal Representative at the property and serving of a copy notice on the Public Trustee.

This will lead to difficulties because each recipient needs to know that the other was validly served before he knows that valid notice has been given.

There are conflicting, lower-court authorities on the technical requirements of giving valid notice to quit in these circumstances. This article explores how it might be done.

### BACKGROUND

When a tenant dies and his tenancy forms part of his real and personal estate it vests in the Public Trustee until the grant of administration or representation: Administration of Estates Act 1925, s.9; Law of Property (Miscellaneous Provisions) Act 1994, s.14.

The vesting of real or personal estate in the Public Trustee does not confer on the Public Trustee any beneficial interest in, or impose on him any duty, obligation or liability in respect of the property: 1994 Act, s.14(1).

The Public Trustee merely receives and records information.

The 1994 Act, s.18 provides for a method of service after death of notices affecting land:

*(1) A notice affecting land which would have been authorised or required to be served on a person but for his death shall be sufficiently served before a grant of representation has been filed if—*

*(a) it is addressed to “The Personal Representatives of” the deceased (naming him) and left at or sent by post to his last known place of residence or business in the United Kingdom, and*

*(b) a copy of it, similarly addressed, is served on the Public Trustee.*

Service is probably incomplete until both have received valid notice.

## CONFLICTING CASES

In *Pavey v LB Hackney*, 21 November 2017, HHJ Luba held at [31]: “it is important that in both notices there is set out the same date for termination of the tenancy, or the same rubric for determining the date. It cannot have been envisaged by the Law Commission, or by Parliament in enacting the 1994 Act, that the date for determination of the tenancy could or should be understood to be a different date in the hands of two recipients...”

The Public Trustee was not served until five months after the Personal Representative at the property. On the date of expiry stated on the face of the notice, service was incomplete because the Public Trustee had not been served. This would invalidate the notice on the property.

The discrepancy between the two recipients’ calculations of the expiry date rendered notice void for uncertainty. The issue was the operation of the saving clause.

*Pavey* was distinguished in *London Borough of Sutton v Dolan*, Central London County Court, 17 July 2018, unreported. The Claimants served notice to quit on the property on 17 March 2017, which purported to expire on 17 April 2017. They served a copy on the Public Trustee and relied upon

a letter of acknowledgement from the Public Trustee which stated that the notice had been entered on the register on 12 April 2017. Notice was held to be valid because the Claimants had served the Public Trustee prior to the expiry date stated in the notice. The notice had included a saving clause but the implication was that that was not relevant.

## SAVINGS CLAUSES

A notice will state a date when the notice is to expire but added to this are words such as “or at the end of the period of the tenancy expiring next [four weeks] [one month] [other period] after the service of this notice upon you” - see *Hussain v Bradford Community Housing Ltd* [2009] EWCA Civ 763; [2010] HLR 16.

The two recipients may not know that they have calculated different dates. Prima facie, notice to quit served on the Personal Representative at the property should include the date upon which the Public Trustee was deemed served, otherwise the recipient at the property cannot be sure that their notice is valid.

## IMPLICATIONS

The court in *Dolan* distinguished *Pavey* on the basis that notice was valid because it was served on the Public Trustee within the month between the two dates stated on the face of the notice, *i.e.* before notice expired. This essentially allows for short notice on the Public Trustee – can this be right?

Furthermore, can it be argued that the Public Trustee did not need to determine the date upon which the notice expired, it being only a copy that was served on him and his functions in respect of such notices being limited to recording the details described in the Public Trustee (Notices Affecting Land) (Title on Death) Regulations 1995/1330.



If we follow *Dolan*, the landlord can prove that he served the copy notice on the Public Trustee on any date before the date stated on the face of the notice.

The implication of *Pavey* is that, in the case of a notice that includes a saving clause, the property and the Public Trustee must be served in time for the same date of expiry to apply. Furthermore, notice at the property is logically only valid if it includes sufficient information for the recipient at the property to assess the date, method and validity of the other limb of service. An aspect of one solution may be to cease the use of saving clauses in these circumstances.

Can you serve a new notice and apply to amend?

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