

Executor removal

Where are the courts drawing the line on executor removal and loss of indemnity following the recent run of 2025 cases?

Alex Troup KC



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A typical case: *Hanson v. Coleman* [2025]

EWHC 116 (Ch)



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- Father dies leaving estate equally to daughter and 2 sons, and appointing sons as executors
- Daughter applies to remove sons
- Application successful due to sons' conflict of interest and delay
- Sons ordered to pay daughter's costs and deprived of their indemnity

More interestingly, where will the court draw the line?

When will court *refuse* to remove executor?

When will court remove executor but *not* deprive him/her of indemnity?



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Lots of recent case law

- ***Aslam v. Seeley* [2025] EWHC 24 (Ch)** (M. Brightwell)
- ***Hanson v. Coleman* [2025] EWHC 116 (Ch)** (M. Brightwell)
- ***Osborne v. Osborne* [2025] EWHC 116 (Ch)** (Leech J.)
- ***Seymour (Earl of Yarmouth) v. Ragley Trust Co Ltd* [2025] EWHC 1099 (Ch)** (M. Brightwell)
- ***Fernandez v. Fernandez* [2025] EWHC 2373 (Ch); [2025] EWHC 2530 (Ch) (Costs)** (HHJ Matthews)
- ***Pocza v. Chopra* [2025] EWHC 1668 (Ch)** (M. Marsh)
- ***Smith v. Campbell* [2025] EWHC 3011 (Ch); [2026] EWHC 144 (Ch) (Costs)** (D.M. Holden)
- ***Shufflebotham v. Shuff-Wentzel* [2025] EWHC 3321 (Ch)** (HHJ Charman)
- ***Harris v. Quantick* [2026] EWHC 137 (Ch)** (D.M. Valentine)
- ***House v. Helme* [2026] EWHC 75 (Ch)** (HHJ Matthews)



Pithy summary of test for determining whether to remove an executor



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The applicable test is whether the removal or replacement of one of more of the trustees would be in the interests of the beneficiaries of the trust as a whole, with a view to securing the proper administration of the trust in their favour

Smith v. Campbell at §52, applying ***Letterstedt v. Broers*** (1884) 9 App Cas 371



Conflict of interest: the law

- *“...the law is not simply that a fiduciary must avoid actual conflicts...but also that he or she must avoid putting him- or herself in a position of potential conflict.”*
- *“...a trustee or executor may be put in a position of potential conflict by the settlor or testator appointing a beneficiary as such trustee or executor. This amounts to an implied authorization by the creator of the fiduciary relationship to exercise fiduciary powers in his or her own favour.”*
- *“...the trust instrument may go further, and expressly authorise the exercise of fiduciary powers in favour of the trustee or PR.”*

Fernandez v. Fernandez at §64ff.



Conflict of interest: an example

- Clause 19.3.1 of the will: the Trustees may *“bring about join in or accept the appointment of one or more of themselves as directors or other officers or as employees of the company and any trustee so appointed may keep for himself any reasonable remuneration...”*
- *“I do not think it can be said that Paddy’s role as one of the directors of the company created an irreconcilable conflict that was not authorized by the terms of [the testator’s] will.”*

***Smith v. Campbell* at §124ff.**

Breakdown in relations



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*“...it is clear that removal claims are capable of being **dismissed** in the face of hostility, at least coming from a beneficiary, where the trustees are suitable and willing to administer the trusts in the interests of all the beneficiaries”*
(emphasis supplied)

Seymour (Earl of Yarmouth) v. Ragley Trust Co Ltd at §201

Breakdown in relations: trustees nearly successful



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“...the fundamental cause of the breakdown in the relationship has been the complete falling out between the Cs and the other directors of [the company], and in particular Paddy, culminating in the Cs’ removal as directors of the company.... Were the matter left there, I do not consider that any of the foregoing grounds of removal ... would have justified the court’s intervention ... However, the matter is not left there....”

Smith v. Campbell at §144-6

Minor/historic/unsubstantiated breaches



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Smith v. Campbell

- Trustees' failure to notify beneficiaries of their interest: §92 (c.f. *House v. Helme* at §40ff. on whether executors have same duty)
- Trustees overlooking single request for accounts: §100
- A procedural defect in removal of beneficiaries as company directors: §118(b)
- Other allegations against trustees not made out on facts – slavish adherence to letter of wishes, failure to act unanimously, allowing non-beneficiary to occupy trust property

Resolving factual disputes



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***Smith v. Campbell* at §75-80**

- Court cannot resolve disputes involving evidence of witnesses of fact without XX: ***Tui v. Griffiths* [2023] UKSC 48**
- Court can remove trustees on basis that a good arguable case has been established that trustees have committed a breach of duty or misconduct
- Would court permit XX in trustee removal claim? (c.f. administration of estate being a “*time-limited process*”)

Indemnity for costs – the legal framework



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House v. Helme at §50ff.

- s.31 Trustee Act 2000
- CPR 46.3 and PD46 §1
- ***Price v. Saundry* [2019] EWCA Civ 2261**
- (1) “The test for whether the indemnity is available or has been lost or curtailed ... is best expressed in the form of two questions: were the expenses properly incurred? And were the expenses incurred by the trustee when acting on behalf of the trust?”



The legal framework (2)

- (2) “...‘properly incurred’ should be interpreted to mean ‘not improperly incurred’” – reverses burden of proof: ***House v. Helme*** at §53.
- (3) “...if a breach of trust causing loss to the trust fund or other misconduct is established against the trustee, the trustee may be deprived of his indemnity depending upon all the circumstances. Misconduct in this context should be construed widely to include not only misconduct in the sense of dishonesty but also conduct which is unreasonable in the circumstances.”



The legal framework (3)

- “...a trustee loses her right to the indemnity in respect of costs and expenses which are improperly incurred. An example of such improperly incurred costs is those incurred by a trustee acting for her own benefit or for the benefit of some beneficiaries against others...”
Shufflebotham v. Shuff-Wentzel at §20
- HHJ Matthews applies a 2-stage test: (1) is the executor entitled to an indemnity at all? (2) if so, should the executor be deprived of that indemnity? ***House v. Helme*** at §74ff. Is this right?

1st example of executor *not* being deprived of indemnity



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Shufflebotham v. Shuff-Wentzel

- Executors A&B seek to remove executor C
- Claim fails; A&B retire and replaced by professional PR
- C entitled to her costs against A&B
- But A&B entitled to indemnity for own costs and for costs payable to C – *“The bringing of the application was a reasonable step by [A&B]”*: §29

2nd example of executor *not* being deprived of indemnity



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Smith v. Campbell

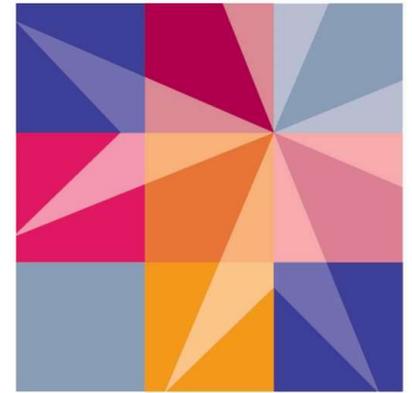
- Executors not deprived of indemnity
- *“Overall, I consider that the Trustees reasonably and properly resisted the numerous allegations of breach of trust and misconduct made against them, and made an early, good faith and reasonable attempt to address Cs’ legitimate concerns about the breakdown of the relationship.”*

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