

## ***Replacing personal representatives***

***“You have sat too long here for any good you have been doing lately... Depart, I say; and let us have done with you.***

***In the name of God, go!”***

**Oliver Cromwell addressing the Rump Parliament, April 1653**

**Edward Cumming QC**  
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# The legal framework



# The legal framework

*First things first...*

*...do you need to remove the PR?*



# Removal by the court

Two bases on which jurisdiction may arise:

- Section 50 of the Administration of Justice Act 1985
- Section 116 of the Senior Courts Act 1981
- ~~The court's inherent jurisdiction~~

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# The court's approach to removing fiduciaries



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# The court's approach to removing fiduciaries

- **Touchstone: interests of the beneficiaries**
- ***Uvedale v Ettrick* (1682) 2 Ch Cas 130**
- ***Letterstedt v Broers* (1884) 9 App Cas 371**

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# ***Letterstedt v Broers* (1884) 9 App Cas 371**

- Are the trusts likely to be properly executed in the interests of the beneficiaries?
- Mere friction / hostility between trustee and beneficiary not enough *without more*.
- Does friction / hostility arises from breaches of trust or the way in which the trustee has been administering the trust?



# Beyond *Letterstedt*

- Removing PRs is a drastic step: *Isaac v Isaac* [2005] EWHC 435 (Ch) at §66
- *Letterstedt* principles remain the bedrock: *Thomas and Agnes Carvel Foundation v Carvel* [2008] Ch 395 at §§44-47
- *Kershaw v Micklethwaite* [2010] EWHC 506 (Ch), [2011] WTLR 413
- *Brudenell-Bruce v Moore* [2014] EWHC 3679 (Ch), [2015] WTLR 373
- *In the matter of the K Trust* (14 July 2015, unreported) – Guernsey



**What about permanent hostility or a  
breakdown in relations?**



# Advising about removal proceedings



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# Advising about removal proceedings



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# Advising about removal proceedings

- **What is the full picture?**
- **Is court the best course?**
  - Do you need to replace the PR?
  - Powers of removal? Remember s.36, Trustee Act 1925 & s.19, TLATA 1996
  - *Jones v Longley* [2015] EWHC 3362 (Ch)
- **Cogent grounds need good evidence**
- **Are there matters other than hostility that can be relied on?**



# Advising about removal proceedings

*“Forward, not back”*



# Advising about removal proceedings

- What comes next?



- What does correspondence suggest?

**Be imaginative**



**Any questions?**

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