



## THE REMOVAL OF PERSONAL REPRESENTATIVES AND ASSOCIATED CLAIMS

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1. Problems or disputes arising in the course of administration are a common source of litigation. These cases broadly fall into two categories:
  - (i) Where representatives themselves do not know how to act and require the assistance of the court ie. the factual or legal position is unclear, or where there is disagreement between beneficiaries, who hold conflicting views on what is to be done; and
  - (ii) Where the beneficiaries are dissatisfied with the representative's conduct, either because he is not administering the estate diligently, or is failing to supply the beneficiaries with proper information and accounts, or the beneficiaries consider the representative has been guilty of maladministration. The dissatisfied beneficiaries will themselves then bring proceedings for relief against the representatives.
2. All such claims are commonly called administration claims and are regulated by CPR 57/64 and the Practice Directions supplementing them.
3. This note is primarily concerned with the second category of claims ie. claims against personal representatives by beneficiaries, and specifically with applications for the removal of personal representatives. Nevertheless, it will also touch upon the frequent issue of the recalcitrant 'live in' trustee/executor.

### The Initial Steps

4. Removing a personal representative can often be a very blunt instrument to achieve a goal achievable in other more cost-effective ways. Applications to remove a personal representative can themselves be costly, drawn-out and messy (particularly where family members are on opposing sides).
5. A common cause of dissatisfaction between beneficiaries and trustees relates to an apparent failure by the latter to provide information in respect of his administration of the estate or his refusal or failure to provide accounts. In that instance there are a number of ways in which you can minimise costs or the client's exposure to costs eg. by:
  - (i) sending a detailed (non-aggressive) pre-action letter;



- (ii) making a simple application under Part 64 seeking an order that the personal representative supply accounts or the information sought;
  - (iii) contemporaneously seeking other alternatives orders (ie. the removal of the personal representative) - whilst making it clear on the face of the claim form that those order are sought in the alternative and are dependent upon the outcome of the information/accounts supplied (or not).
6. All claims so far will be brought by way of Part 8 claim form, thus preventing any substantial dispute arising.
7. If those preliminary steps fail then the following relief can be applied for:
- (i) The substitution or removal of a personal representative pursuant to the High Court's discretionary power under *s.50 of the Administration of Justice Act 1985* (NB. The section does not contain a stand-alone power to appoint a new personal representative); or
  - (ii) The appointment of a Judicial Trustee under *s.1 of the Judicial Trustee Act 1896*.
- NB. The court does *not* have an inherent jurisdiction to remove a personal representative.
8. The procedure is set out in CPR 57.13 and PD57 para 12-14 applies.
9. Applications under s.50 must be brought in the High Court and are assigned to the Chancery Division (see CPR 57.13(2)). On the hearing of the application itself, the personal representative must produce to the court the grant of representation. If an order is made substituting or removing a personal representative, the grant with a sealed copy of the order is sent to and will remain in the custody of the Principal Registry of the Family Division until the memorandum of the order has been endorsed on or permanently annexed to the grant.
10. In most cases it is likely to be more cost-effective to suggest retirement to the unsatisfactory representative, rather than compel him to complete the administration. In those circumstances a s.50 application can be made which is not inherently hostile followed by the filing of orders of consent.



11. Since 1985 it is no longer necessary to appoint a Judicial Trustee to continue the administration of an estate. Accordingly, the *Judicial Trustee Act 1896* has largely fallen into disuse. However, the Official Solicitor often prefers to be appointed as a Judicial Trustee, so as to be able to make informal applications to the court for directions (see *Judicial Trustee Rules 1983 r8*). In fact the powers of a Judicial Trustee are wider than a personal representative, so where the estate is complicated, a Judicial Trustee may be a better choice (see *Re Ridsdel* [1947] Ch 597).

### **The Applicable Principles where the Removal of a Representative is Sought**

12. Where an application is made under s.50, the personal representative *may* (ie. in the exercise of the court's discretion) be removed by the court. The seminal authority is *Letterstedt v Broers* (1884) 9 App Cas 371, but there are a number of recent authorities that have reconsidered and applied the relevant principles.

13. The important practical points to be drawn from those authorities are: (i) friction and hostility will not (despite common misconceptions) be sufficient on their own to succeed in an application to remove a personal representative; (ii) the court will instead be concerned with what (if any) affect the personal representative's conduct has had on the administration of the estate or the welfare of the beneficiaries; (iii) the fact the personal representatives were chosen by the testator is important; and (iv) it is *always* more cost-effective to reach an agreement than issue proceedings for removal.

14. Finally, it is also important to mention the jurisdiction to remove and/or substitute executors, before they have taken a grant and been formally confirmed in their office. That jurisdiction is contained in s.116 of the *Senior Courts Act 1981*<sup>1</sup>, which provides:

*'116. Power of court to pass over prior claims to grant.*

(1) *If by reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this section, would in accordance with probate rules have been entitled to the grant, the court may in its discretion appoint as administrator such person as it thinks expedient.*

(2) *Any grant of administration under this section may be limited in any way the court thinks fit.'*

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<sup>1</sup> see also r.27(6) N-CPR 1987 which provides that "a dispute between persons entitled to a grant in the same degree shall be brought by summons before a district judge or registrar" – but it has been suggested that this applies only with regard to grants of administration.



15. Where a testator has chosen a person as his executor then in general the courts are rightly reluctant to interfere with that choice. However, there is no limitation on what constitutes 'special circumstances' making it 'necessary or expedient' to appoint someone other than the person otherwise entitled to a grant.

#### **An Executor/Trustee who Refuses to Vacate the Deceased's Dwelling-House**

16. In my experience this is a common difficulty faced by solicitors acting on behalf of third party executors or residuary beneficiaries. What should they do when the sole or joint executor/trustee - who is also a residuary beneficiary - refuses to vacate the deceased's former home, in circumstances in which that property forms part of that residuary estate? The other beneficiaries (excluding the executor/trustee in question) are likely to want to sell the property as soon as possible, whilst the executor/trustee is likely to want to retain it (for obvious reasons).
17. It is well-established that a residuary legatee has no interest in a defined part of the estate unless and until the residue has been ascertained. Similarly, whilst an executor has all of the powers of an absolute owner, those are only exercisable for the purposes of administering the estate. Therefore, once an executor has been removed from office, it should, without more, be possible to seek an immediate order for possession as against the individual qua beneficiary. However, one authority - *Williams v Holland* [1965] 1 WLR 739 – has been construed by some as suggesting otherwise. The implications of that decision will need to be considered.

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