

Estate Accounts – what is the test for inclusion of legal fees and other expenses?

John Dickinson, Barrister, St John's Chambers

Published December 2018

John Dickinson represented the claimants in the case of *Mussell v Patience*, in which he considers how the court approves expenses in estate accounts.



His Honour Judge Paul Matthews, sitting as a judge of the High Court, handed down judgment on 8 March 2018 in the Chancery Division of the Bristol District Registry in the case of *Mussell v Patience* [2018]. The court ruled on an issue that arose in the trial of the personal representative claimants' claim to have an estate administered, where there had been a position of deadlock arising from two of the beneficiaries refusing to approve the draft Estate Accounts.

Key issues addressed in the judgment

The ruling contains important guidance as to the legal test to be applied by the Court in deciding whether to allow and approve expenses of the personal representatives set out by them in their estate accounts. It is inevitable that personal representatives will incur expenses in the course of carrying out their tasks to administer the estate. The ability to recover those expenses and the amount or proportion of those expenses that they can recover will be of personal importance to them. In relation to legal expenses the court gives useful guidance as to the level of detail that is required in the solicitor's invoices in order to raise the prima facie case for those expenses are to be included in the Estate Account. In addition the judgment comments on the availability of the remedy for personal representatives of the court seeking an order for the taking an account of the Estate Accounts.

Background to the case

Mrs Louise Patience died on 7 April 1997 leaving a Will dated 26 September 1991 appointing the claimants as her personal representatives. Mrs Patience by her Will divided her Estate on terms between her four children. The first claimant is one of her four children. The second claimant is a former partner of the solicitor's firm that drafted the Will. There were various disputes between the beneficiaries over alleged debts due to the Estate and as to the proper construction of a life interest created by the Will. The second claimant brought the first set of legal proceedings to seek to resolve those disputes, which were settled at a mediation. Legal costs were incurred by the personal representatives. A second set of legal proceedings commenced between the beneficiaries as to the implementation of the mediation agreement.

Various legal and other expenses were incurred by the claimants as personal representatives in the two previous sets of legal proceedings and in the conduct of the administration of the Estate. Those legal costs were included in the draft Estate Accounts together with some property related expenses. The two defendants are beneficiaries under the Will and they declined to agree and sign the draft Estate Accounts. This resulted in an impasse and the third set of legal proceedings. To resolve the impasse the claimants sought a declaration from the court that the final Estate Accounts were correct and a direction that the Estate be administered. The claim came on for trial before HHJ Paul Matthews in the Chancery Division of the Bristol District Registry.

The Court, with the agreement of the parties, proceeded to take an account of the Estate Accounts. The defendants identified 26 entries in the invoices for the various legal expenses that were objected to. The defendants alleged that there was insufficient information contained in the invoices themselves or in the supporting documentation to enable the defendants to be advised as to whether the charges made by the personal representatives' solicitors in those invoices were or were not reasonable. The defendants' case was that without that level of detail each such entry in the Estate Accounts should be struck out. The disputed invoices for the legal costs span a 20 year period and the detail in the invoices vary. Some invoices merely name the Estate and refer to professional charges. The defendants also identified other expenses that were objected to, including a planning permission fee and the cost of an ecological report obtained as part of seeking planning permission on an estate property.

What did the court decide?

In relation to the court's jurisdiction to take an account of the Estate Accounts the judgment refers to examples of an account being taken by the court in the trust cases of *Chadwick v Heatley* [1845] and *Re Wright's Trusts* [1857]. The parties agreed that an account could be taken by the Court. The judgment provides some indications and guidance as to when the court may direct such an account to resolve an impasse where a beneficiary refuses to approve estate accounts.

The Court had to consider and rule on the legal test to be used to determine whether an entry in the Estate Accounts was to be approved or whether the entry was to be struck out of the Estate Accounts. In deciding that test the Court referred to the editors' comments in Williams, Mortimer and Sunnucks, *personal representatives, Administrators and Probate*, 20th edition at paragraph 63-26: "*the settled rule that whatever a trustee or representative has expended in the fair execution of his trust may be allowed him in passing his accounts*" as supported by case law and Daniell's Chancery Practice. The court cited the proposition in Williams, Mortimer and Sunnucks paragraph 63-27: "*The rule is that a representative is entitled to be allowed all expenses that have been properly incurred by him in the conduct of his office, except those that arise from his own default.*" The Court referred to this passage as being supported by case law as codified in section 31(1) of the Trustee Act 2000. Section 31(1) provides that: 'A trustee (a) is entitled to be reimbursed from the trust funds, or (b) may pay out of the trust funds, expenses properly incurred by him when acting on behalf of the trust'. Section 31(1) applies to personal representatives by reason of section 35 of that Act.

The Court held that the rules on the detailed assessment of costs are not applicable in settling an account between the personal representatives and the beneficiaries, as the court is not conducting a detailed assessment of those legal costs. CPR PD 40A paragraph 4 provides '*In taking any account all just allowances shall be made without any express direction to that effect*'. The court determined that 'just allowances' are '*whatever a trustee or representative has expended in the fair execution of his trust*', adopting the words used by Williams, Mortimer & Sunnucks. The court explained that in relation to accounting to his or her beneficiaries for what has been done with the estate, a personal representative / executor has only to show (1)

that the sum concerned was indeed spent, and (2) that it was spent in the fair execution of the estate administration. As to the first limb, that the sum was spent, this can be shown by a document evidencing the payment or receipt. As to the second limb, that it was spent in the fair execution of the estate administration, the court held that would normally be demonstrated by a document or voucher such as an invoice referring to the personal representative as such, to administration of the estate or to some good or service having a connection with the estate, such as the repairs to the estate's property.

The court explained that it would be open to the beneficiaries to rebut the inference that the sum concerned had been spent and that the sum was spent in the fair execution of the estate administration. The court held that unless and until some other evidence was adduced by the beneficiaries to that end, the personal representatives need do nothing more. This is a situation where the evidential burden of proof moves over on to the beneficiary who seeks to challenge an entry for an expense in the Estate Accounts.

The court in effect rejected the defendants' submission that they were entitled to sufficient information in the invoices themselves or in the supporting documentation to enable the defendants to be advised as to whether the charges made by the personal representatives' solicitors in those invoices were or were not reasonable. The court instead held that the personal representatives are not required at the outset to prove by their documentation and vouchers that the expense charges made in the Estate Account are reasonably incurred or reasonable in amount. The court pointed out that those were issues that arose on the assessment of a solicitor's costs. Either the direct client or the third party who in substance is to pay the costs can seek an assessment of the solicitor's costs. Neither the personal representatives nor a beneficiary had sought such an assessment. The court pointed out that it would be wasteful if, in every case, for their own protection, the personal representatives were to be obliged to engage the costs' assessment system before being able to enter the sum concerned in their Estate Accounts for the beneficiaries.

The court held that the information required to be provided by way of "voucher" to support an entry in the personal representatives' account need not exceed the basic information contained in the solicitors' invoice that the charges are professional charges to the personal representative, as personal representative, in relation to the administration of a particular estate. The invoice need not disclose the number of hours worked or the hourly rate used to arrive at the total charged, or give a detailed breakdown of exactly what work was done. The personal representatives need only show that they have spent the estate's money on proper estate business. That is the heart of the decision in the judgment as to the correct legal test and its application to the disputed legal invoices.

By way of further clarification the court commented that in a case where the estate administration was being carried on through solicitors, there would be no real difference in the information conveyed to the client between (i) an invoice stating that the charge made consisted of professional charges and (ii) one which added words to the effect that the charges were incurred in the administration of the estate; as that would be obvious to all concerned.

The court directed the defendants to apply the test that the court had determined for the legal and other expenses and to set out the objections that the defendants still wished to persist in.

Significance for practitioners

The judgment for the first time sets out the legal test to be applied by the court when it has to decide whether or not to strike out an entry for an expense in the Estate Accounts. It is surprising that there was no previous authority on this point. The court clarifies what information is required to be provided, by way of voucher or other information, to support an

expense item that is entered into the personal representatives' Estate Accounts presented to the beneficiaries for their approval.

Personal representatives administering an Estate may find themselves facing an impasse if a beneficiary declines to agree and sign the Estate Accounts. If the personal representatives were to make the final distributions without the Estate Accounts being accepted then they would face the risk of a claim against them that expenses were not properly incurred and they would be without a trust fund to cover their costs of defending any such claim. The unfortunate facts in the *Mussell v Patience* case show an administration that has continued for nearly 21 years, due to various family rifts. Personal representatives need suitable legal remedies to be able to bring an administration of an estate to a conclusion. The judgment gives a useful reminder of the availability to personal representatives of the remedy of asking the court for an order for the taking an account of the Estate Accounts and explaining how this will work in terms of resolving disputed expense items.

Where a beneficiary refuses to sign the Estate Accounts, a route forward in that difficult situation is for the personal representatives to bring a claim for the court to take an account. The result of such an account is that the court provides its approval of the Estate Accounts in place of the approval of the beneficiaries and those accounts are binding upon the beneficiaries and can be relied upon in making final distributions. The availability of the remedy of the court taking an account of the Estate Accounts can be used to seek to persuade a beneficiary, who has been unreasonably refusing to sign the Estate Accounts, to change his or her position and sign. The likely adverse costs consequences in that claim for such a beneficiary are a good motivating factor to bring about a resolution without the need for such a claim to be issued.

For a beneficiary who wishes to challenge expense entries in Estate Accounts the legal test set out in the *Mussell v Patience* case puts a real burden upon the beneficiary to establish and evidence their challenge.

Cases:

Mussell v Patience [2018] EWHC 430 (Ch)
Chadwick v Heatley (1845) 2 Coll 137
Re Wright's Trusts (1857) 3 K & J 419.