

## Summary of modern case law on applications to remove personal representatives

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	Case name	Application successful?	Comments
1.	<i>Thomas and Agnes Carvel Foundation v. Carvel</i> [2008] Ch 395	Yes – summary judgment	<ul style="list-style-type: none"> <li>• The beneficiary of a trust arising under the doctrine of mutual wills cannot apply to remove a PR under s.50 AJA 1985 because he is not a person beneficially interested in the estate “under the will of the deceased”</li> <li>• But such a person can apply under s.1 of the Judicial Trustees Act 1896</li> <li>• The principles applying to removal of trustees and PRs are the same.</li> <li>• Applying <i>Letterstedt v. Broers</i>, the overriding consideration is whether the trusts are being properly executed; or in other words, the welfare of the beneficiaries.</li> <li>• “Pamela’s every act has been calculated to promote her own personal interests and to prejudice those of the [beneficiary]. She is in a position of irreconcilable conflict with the [beneficiary] and her hostility towards [the beneficiary] renders it quite impossible for her to fulfil her fiduciary duties.”</li> </ul>
2.	<i>In re Loftus, decd</i> [2007] 1 WLR 591 (CA)	Yes	<ul style="list-style-type: none"> <li>• Successful claim to remove administrator 13 years after deceased’s death on basis that she had failed to provide accounts or complete the administration</li> <li>• Limitation defence failed – CA held that s.22(a) of the Limitation Act 1980 did not apply to claims against a PR in respect of real estate which remained unsold, or, as to claims in respect of personal estate, at a time when the administrator was not in a position to distribute assets in his hands because the costs, expenses and legacies had not been provided for.</li> </ul>
3.	<i>Dobson v. Heyman</i> [2010] WTLR 1151	Yes	<ul style="list-style-type: none"> <li>• Unsuccessful appeal against Master’s decision to remove PR</li> <li>• Criticisms of PR:               <ul style="list-style-type: none"> <li>○ PR failed to supply material to the beneficiaries</li> <li>○ PR was a beneficiary under a trust of the deceased’s property and as such was in competition with the residuary beneficiary</li> <li>○ There was conflict between PR and the residuary beneficiary’s mother</li> </ul> </li> </ul>
4.	<i>Jones v. Firkin-Flood</i> [2008] EWHC	Yes	<ul style="list-style-type: none"> <li>• Held that there was a total abdication by trustees of their duties, in particular for</li> </ul>

	2417 (Ch)		<p>failing to supervise Ian (one of the trustees and a potential beneficiary) in his management of the trust companies, and failing to prevent his breaches of self-dealing rule</p> <ul style="list-style-type: none"> <li>• Court rejected submission that trustees ought not to be removed for anything other than wilful (i.e. deliberate) default, applying <i>Letterstedt v. Broers</i></li> <li>• 3 of 4 trustees removed because: <ul style="list-style-type: none"> <li>○ There was still much to be done, including the decision as to how to distribute the trust fund among a discretionary class</li> <li>○ There was a breakdown of trust in the trustees, attributable to Ian's mis-use of his control of companies for his own benefit and without supervision by trustees</li> <li>○ Trustees had failed to pay income to other beneficiaries</li> </ul> </li> <li>• Fourth trustee remained in office (as had strong family connection) but with additional professional PR</li> </ul>
5.	<i>Re Steel decd; Angus v. Emmott</i> [2010] WTLR 531	Yes	<ul style="list-style-type: none"> <li>• Court's power to remove executors is not limited to misconduct</li> <li>• But "even without misconduct, a situation has been reached in which there is such a degree of animosity and distrust between the executors that the due administration of [the deceased]'s estate is unlikely to be achieved expeditiously in the interests of the beneficiaries unless some change is made."</li> <li>• Executors engaged in hostile litigation against each other twice; and 2 years had passed since deceased's death without any application being made for the compensation to which his estate was entitled</li> </ul>
6.	<i>Kershaw v. Micklethwaite</i> [2011] WTLR 413	No	<ul style="list-style-type: none"> <li>• Court rejected submission that court would remove executor more readily than trustee</li> <li>• Friction or hostility between executor and beneficiary is not a good reason to remove executor unless it is (or is capable of) obstructing the administration of the estate.</li> <li>• The testator's choice of executors is relevant</li> <li>• 7. On the facts: <ul style="list-style-type: none"> <li>○ Although executors had been slow in providing some documents to the beneficiaries, that did not justify their removal. It was not every mistake which would induce the court to remove an executor, as said in <i>Letterstedt v. Broers</i></li> </ul> </li> </ul>

			<ul style="list-style-type: none"> <li>○ Any conflict of interest was not of the executors' own making, and could be managed by para 9(2)(c) of the STEP Standard Provisions or an application to court</li> <li>○ Breakdown of relations should not prevent or impede substantially the administration of the estate</li> <li>○ The cost of appointing a new PR, and the fact that the deceased chose the existing executors, were factors weighing against removal</li> </ul>
7.	<i>Alkin v. Raymond</i> [2010] WTLR 1117	Yes	<ul style="list-style-type: none"> <li>● Executors removed for sanctioning payment of an invoice for £163,000 rendered by a company belonging to one of the executors to the estate, despite fact that invoice did not bear scrutiny and it was clearly not a properly calculated bill for money due to the estate</li> <li>● Court appointed 2 professionals as replacement PRS.</li> <li>● Court refused to appoint daughter, as she would not take an objective approach and had not been chosen as executor by her father</li> </ul>
8.	<i>Khan v. Crossland</i> [2012] WTLR 841	Yes	<ul style="list-style-type: none"> <li>● Application made under s.116 Senior Courts Act 1981</li> <li>● "Special circumstances" required by that provision could include the fact that the beneficiaries were of full age and mental capacity and were united in their request for the executor to renounce</li> <li>● The breakdown in relations was also to be taken into account</li> <li>● The fact that the deceased had chosen the executor carried less weight where his reasons for doing so were unknown and he had spent limited time in giving instructions for his will</li> </ul>
9.	<i>Scott v. Scott</i> [2012] EWHC 2397 (Ch)	Yes	<ul style="list-style-type: none"> <li>● One of two trustees of a will trust was removed because his hostility to the other trustee was having a deleterious effect on the administration of the trust</li> <li>● Provisional view was that additional professional trustee should be appointed to ensure that decisions are taken for the benefit of the beneficiaries as a whole</li> </ul>
10.	<i>Riley v. Seed</i> [2013] EWHC 4863 (Ch)	Yes	<ul style="list-style-type: none"> <li>● Friction and hostility justified removal where it had resulted in an impasse, notwithstanding that deceased had chosen executors</li> <li>● Best way to break the impasse was to appoint an independent professional PR</li> </ul>
11.	<i>In re Goodman, Goodman v. Goodman</i> [2014] Ch 186	N/A	<ul style="list-style-type: none"> <li>● Court has power to remove an executor under s.50 AJA 1985 before probate has been granted.</li> <li>● Reasons:</li> </ul>

			<ul style="list-style-type: none"> <li>○ Executor derives title from the will, and so qualifies as a “personal representative” for purposes of s.50</li> <li>○ s.50 does not state that it only applies to executors who have taken a grant; nor defines “will” as limited to a document admitted to probate</li> <li>○ Overlap with s.116 SCA 1981 does not imply that Parliament intended s.50 to apply only post-grant</li> <li>○ If s.50 only applied post-grant, would need to show “special circumstances” to pass over an executor pre-grant but would not need to do so to remove an executor post-grant, which would be odd.</li> </ul>
12.	<i>Re Savile, decd</i> [2015] WTLR 635 (CA)	No	<ul style="list-style-type: none"> <li>● Unsuccessful appeal against first instance decision not to remove professional executors who had negotiated a scheme, and sought its approval by the court, to deal with PI claims against Jimmy Savile’s estate</li> <li>● Lack of confidence or mistrust not sufficient to justify removal unless it is likely to jeopardise the property administration of the estate: <i>Letterstedt v. Broers</i></li> <li>● Appointment of new PR would increase costs</li> </ul>
13.	<i>Flint v. Verma</i> [2015] EWHC 2224 (Ch)	N/A	<ul style="list-style-type: none"> <li>● Unsuccessful appeal against first instance decision that executors should pay majority of litigation costs</li> <li>● The executors “have preferred their own costs interests unreasonably over the need for this relatively small estate to be administered”</li> </ul>
14.	<i>In re Weetman decd, James v. Williams</i> [2015] WTLR 1745	Yes	<ul style="list-style-type: none"> <li>● A conflict of interest does not have to be established to merit removal; an outward appearance of or potential for conflict can result in removal</li> <li>● Will trust of company shares in favour of family members gave rise to potential conflict between interests of family and company.</li> <li>● One trustee had acted as de facto director of company, and so was not appropriate to represent interests of family. Other trustee had joined forces with him by taking out a joint grant.</li> </ul>
15.	<i>Harris v. Earwicker</i> [2015] EWHC 1915 (Ch)	No	<ul style="list-style-type: none"> <li>● Useful summary of principles by Chief Master Marsh at para 9.</li> <li>● Court refused to remove executors because: <ul style="list-style-type: none"> <li>○ The estate was largely wound up</li> <li>○ Inefficient at this late stage to appoint a new firm of solicitors</li> <li>○ The Deceased’s choice of beneficiaries carried great weight: he had thought carefully about who should act, having anticipated that their role would not</li> </ul> </li> </ul>

			<ul style="list-style-type: none"> <li>o be straightforward</li> <li>o No evidence to prove ability of proposed replacement PRs, who were not professionals</li> </ul>
16.	<i>Wilby v. Rigby</i> [2015] EWHC 2394 (Ch)	Yes	<ul style="list-style-type: none"> <li>• Brother and sister were removed as executors since neither had confidence in the other and they could not work together, evidenced by the fact that there had been no progress in administration of estate for over 3 years</li> </ul>
17.	<i>Jones v. Longley</i> [2016] WTLR 317	Yes	<ul style="list-style-type: none"> <li>• Claimant (a solicitor) had applied to remove his co-executor, but court ordered Claimant's removal because 3 adult beneficiaries all wanted Defendant to act.</li> <li>• Judgement deals solely with the issue of costs</li> <li>• CPR rule 46.3 and para 1 of PD 46 provide that a PR is generally entitled to be paid costs "properly incurred" out of estate on the indemnity basis; and whether costs have been "properly incurred" will depend upon all the circumstances of the case, including whether PR has acted in interests of estate or in substance for his own interests, and whether he has acted unreasonably in bringing, defending or conducting proceedings</li> <li>• Held: Claimant had acted reasonably in bringing claim to break the deadlock; Defendant had acted unreasonably in defending the claim</li> <li>• Held: (1) to the extent that Claimant cannot recover his costs from elsewhere, he should recover them from the estate, on the indemnity basis, but that the Defendant should not; and (2) the Defendant should pay the Claimant's costs on the standard basis if not agreed.</li> </ul>
18.	<i>Gibbs v. Pick</i> [2017] EWHC 1117 (Ch)	Yes	<ul style="list-style-type: none"> <li>• Court refused application permission to appeal against Master's decision to appoint professional PR in her place</li> <li>• Master had been entitled to appoint new PR because: <ul style="list-style-type: none"> <li>o 8 years had passed without any application for grant of probate</li> <li>o Applicant had claims against estate which put her in a position of conflict</li> <li>o Leaving applicant as executor was recipe for further trouble and delay</li> </ul> </li> </ul>
19.	<i>In re Folkes decd, Griffin v. Higgs</i> [2017] EWHC 2559 (Ch)	Yes	<ul style="list-style-type: none"> <li>• Useful review of case law at paras 14-29.</li> <li>• Executors removed because a number of lifetime transfers made by deceased, at a time when she was suffering dementia, and with the assistance of the executors, required investigation. The resulting conflict of interest meant that the executors could not conduct the investigations themselves.</li> </ul>

			<ul style="list-style-type: none"> <li>• The appropriate test to be applied to each allegation was “whether there appears to be on the evidence before the court, or with such evidence that appears likely to be obtained at proportionate cost, the basis for a claim which has reasonable prospects of success, subject to consideration of potential defences. Such a claim must enhance the value of the estate relative to the costs of pursuing it.” (para 41)</li> <li>• Deceased made will before disputed lifetime transfers and so did not take them into consideration when choosing her executors; thus her choice of executors, whilst a factor, could be disregarded (para 216).</li> <li>• Other factors in support of removal were: majority of beneficiaries supported removal; the costs of replacement were warranted; the inevitable duplication from 3 professional executors would be reduced by a single replacement.</li> <li>• Executors were also removed as trustees of discretionary will trust.</li> </ul>
20.	<i>Griffin v. Higgs</i> [2018] 4 WLR 139	N/A	<ul style="list-style-type: none"> <li>• An appeal against the costs order made at first instance</li> <li>• Executors had initially resisted claim, but had subsequently abandoned their defence and taken a neutral stance, leaving it to the beneficiaries to defend the claim</li> <li>• There was no basis for interfering with the Master’s assessment that the executors had acted unreasonably in defending the claim initially, and that as a result they should pay the claimant’s costs for the period during which they defended the claim and were not entitled to an indemnity out of the estate</li> <li>• But after the executors had changed their position, the Master was wrong to deprive them of their indemnity out of the estate.</li> </ul>
21.	<i>Heath v. Heath</i> [2018] EWHC 779 (Ch)	Yes	<ul style="list-style-type: none"> <li>• One of 3 executors removed because his potential claim that there had been an agreement that he should receive the entire estate as compensation for caring for the deceased for many years gave rise to a conflict of interest</li> <li>• His interest’s would be protected by appointing independent professional trustee to act with the remaining 2 executors</li> </ul>
22.	<i>Haynes v. Andre</i> (Lawtel, 24/4/2018)	No	<ul style="list-style-type: none"> <li>• Friction and hostility between executor and beneficiary was not of itself a good reason for removing the executor; it is a factor to be taken into account if it was obstructing the administration of the estate.</li> <li>• There may be cases where the potential for future strife persuades the court not to appoint a person as a substituted PR but for that to be warranted the court must be persuaded that the breakdown in relations has the potential to cause difficulty in the</li> </ul>

			<p>administration of the estate.</p> <ul style="list-style-type: none"> <li>• Executor would not be removed because: <ul style="list-style-type: none"> <li>○ As residuary beneficiary she had obvious interest in administering estate efficiently</li> <li>○ No evidence that she had been impeding the estate administration</li> <li>○ She was advised by experienced solicitors</li> <li>○ No money on account to pay for professional PR</li> </ul> </li> <li>• Claimant's concerns could best be met by directing that the conduct of the sale of the deceased's property should take place under the direction of the court.</li> </ul>
23.	<i>Nwosu v. Nwosu</i> [2018] EWHC 1529 (Ch)	Yes	<ul style="list-style-type: none"> <li>• The court was satisfied that there was a sufficient breakdown of trust that directly impeded the administration of the estate that executors should be replaced by professional PR</li> <li>• 5 years since probate granted, estate consisted of properties which need to be sold but had not been.</li> </ul>
24.	<i>Perry v. Neupert</i> [2018] EWHC 1788 (Ch)	N/A	<ul style="list-style-type: none"> <li>• Master had been wrong to grant summary judgment on claim to remove an executor, where the executor, having been accused of dishonesty, should have the opportunity to vindicate herself during cross-examination at trial</li> </ul>
25.	<i>Perry v. Neupert</i> (Lawtel, 20/7/2018)	N/A	<ul style="list-style-type: none"> <li>• Trustees of will trust were added as parties to claim by beneficiaries to remove executors</li> <li>• The trustees had a sufficient interest in the proceedings and should be able to put their contentions about the beneficiaries' lack of independence at the hearing</li> </ul>