Neutral Citation Number: [2026] EWHC 137 (Ch)

Case No: PT-2025-000363

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 29 January 2026

Before:
Deputy Master Valentine

- -

(1) LOUISE MARY HARRIS
(2) NATASHA DALEY

Claimants

and

(1) NEIL QUANTICK
(2) STROKE ASSOCIATION

Defendants

- -

Sophia Rogers (instructed by **Setfords**) for the **Claimants**
Neil Quantick, the **First Defendant** appeared in person
Aidan Briggs (instructed by **Foot Anstey**) for the **Second Defendant**

Hearing date: 13 November 2025

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Approved Judgment

This judgment was handed down remotely on 29 January 2026 by circulation to the parties or their representatives by email and by release to the National Archives.

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Deputy Master Valentine:

1. This is the court's judgment following a one day hearing on 13 November 2025 in respect of costs of an application to remove the Claimants as executors of the estate (the "**Estate**") of a Mr Ralph Lawday who died on 29 April 2022. The deceased left a will dated 15 August 2014 appointing the directors as at the date of his death of a law firm, Qlaw Legal Services Ltd ("**Qlaw**")[1] as his executors.

2. The Claimants, Louise Harris and Natasha Daley ("**Cs**"), were at the relevant time directors of Qlaw and took a grant of probate on 20 December 2022 with power reserved to the First Defendant, Mr Quantick ("**D1**"), who was the third director of Qlaw at the relevant date. D1 was then and is now also the sole shareholder of that firm.

3. The Second Defendant ("**D2**" or the "**Beneficiary**") is the Stroke Association, which is the beneficiary with the largest interest in the Estate.

BACKGROUND

History of s50 Application

4. This dispute arises from the Cs' own application under s50 of the Administration of Justice Act 1985 to have themselves removed as personal representatives of the Estate (the "**s50 Application**"). Before me there was significant evidence in relation to the history of the s50 Application. In summary:

   i) In 2022 Cs had been employed by D1's law firm Qlaw. They both left that employ relatively shortly after their application for the grant of probate, and not on good terms.

[1] The will actually appointed "directors at the date of my death in the company of Quanticks (a trading division of Qlaw Legal Services Ltd) of 40 Bell Street Reigate Surrey RH2 7BA or such other business that carries on its practice at that date" but it is common ground this means the directors on such date of Qlaw.

ii) Cs and D1 had differing views of the "capacity" in which Cs held the grant of probate. Cs say they were the executors, and they instructed Qlaw in the administration of the Estate. D1 claimed, and continues to claim, that Cs were "notional" executors on behalf of Qlaw the firm. He laid out a position as early as February 2023 that Cs were granted probate solely in their capacity as directors of Qlaw, that "*Qlaw has conduct of the estate (more particularly me)*" that "*you [Cs] should not purport to have conduct*" and "*all we need from you is your rubber stamp of any closure or sales forms*".

iii) Cs claim this was leading to the Estate being administered incorrectly (e.g. by listing D1, not Cs, as the vendor of the property that was the primary asset of the Estate in paperwork relating to its sale). In October 2024 they sought to disinstruct Qlaw in the administration. D1 would not cooperate in handing over administration to a different law firm, and he decided at that point to apply for a further grant of probate in his own name. He maintains this was appropriate, and it was improper for Cs to continue to act as executors after they had left Qlaw, and to attempt to instruct another law firm in the administration of the Estate.

iv) As the attempt to move the administration work had been unsuccessful, Cs sought to return to the position where Qlaw was again instructed in the administration. However, D1 would not cooperate with this either, asking that Cs first "*account for their actions*" and that any new terms of business must "*regularise (or not) the extraordinary recent events*". This is what D1 refers to as "the impasse" that was reached.

5. The second grant of probate that D1 had sought was granted on 7 February 2025, such that both Cs and D1 were all at that point executors of the Estate.

6. By around this point Cs and D1 could not work together to administer the Estate. Cs and D1 had both engaged with the Beneficiary to set out their concerns and seek guidance. D1 had a strong view that Cs needed to "step back". Cs were initially resistant to that plan, but became more flexible – they proposed continuing to work with Qlaw on the administration, then canvassed removal of D1, removal of Cs, and removal of all three and replacement with an independent administrator.

7. In this period, D1 proposed that instead of any party being removed by court process, the parties could "at least try" to have the Probate Registry remove Cs as executors, which he called the "informal route". Cs' solicitors responded more than once that this was not legally possible given how Cs had intermeddled in the Estate, yet D1 continued to argue and press this proposal right up until the s50 Application.

8. It is clear from the correspondence that the Beneficiary was somewhat unwillingly dragged into what they saw as wrangling between executors, and their concern was only really to ensure that costs related to it should not impact the Estate. They came down on the side of removal of Cs, it seems as the easiest course of action with minimum disruption to the administration of the Estate. Cs submitted the s50 Application on April 10, 2025.

9. The correspondence which I have been shown from this period is quite extraordinary. D1 sent a large number, Cs describe a "tirade", of emails to Cs, to Cs' solicitors, to the Beneficiary and even, very surprisingly, to the second law firm that Cs attempted to instruct in the administration of the Estate, demanding confirmation of his own view of the history of events, and explanations and justifications from everyone else of their actions and positions.

S50 Application to s50 Order

10. When the s50 Application was made, it was clear that it sought only removal of Cs. However:

    i) the supporting witness statements go into some of the history of the parties' engagement with the Estate and Cs' concerns that D1 is not a fit and proper executor of this Estate. The cover letter with which it was served on D1 expressed that Cs continued to think that "*the interests of the beneficiaries would be best served by and [sic.] independent administrator being appointed*" but that in the circumstances "*my clients do not seek your removal as well*" and "*I hope that you will not seek to contest the removal of Louise and Natasha as executors. If you do agree to their removal I will send over a consent order for approval*", and

ii) in the version of the application filed at court, the Second Claimant's supporting witness statement says she would "*support the request that the Defendant be removed*". This was not a request that had actually been made to the court, and Cs say it appears in the statement filed due to an error, as they accidentally filed the draft rather than final version of that statement. I understand the version served on D1 did not contain the reference to such a request and D1 became aware of it only just prior to today's hearing.

11. The s50 Application prompted D1 to respond with outrage, and he threatened to file what he referred to as a Part 18 Request, but was in essence a demand, which D1 intended to pursue through the court, that the Cs retract their critical statements relating to D1. He claimed that he could not understand the s50 Application as being purely a claim to remove Cs and seems to have treated it as something like a veiled application to remove him, perhaps an application which obliquely invited the Court to do so of its own motion. He filed an Acknowledgement of Service that stated he both did, and did not, intend to contest the claim – indicating that he agreed to the relief but sought to contest it "*insofar as it appears to seek relief beyond that set out in the claim form itself*." He reacted in very much the same way as he had when his law firm was disinstructed, and began an effort to "set the record straight" or defend his own honour.

12. The Beneficiary submits that this was an entirely predictable (though they do not say warranted) reaction to the s50 Application including any reference at all to what Cs considered D1's misconduct. From my brief acquaintance with the correspondence bundle in this case, I tend to agree with this characterisation. Cs say nonetheless they were right to raise their concerns in their supporting statements as it was accurate background to the application and appropriate to inform the court's decision on the application.

13. I will not rehearse the lengthy correspondence that again mounted up between all of the parties and at this point also the Court. I do note, however, consent orders were proposed on both sides to put an end to matters:

i) D1 proposed a consent order on 17 April 2025. His draft removed Cs as executors, included language that the principal beneficiary supports the

removal of Cs and continuation of D1 as executor, that no finding of "blame or guilt" has been made and that each party bear their own costs save that:

"*In the event that any such concern, complaint, or costs dispute is raised by a residuary beneficiary and cannot be resolved informally, the parties agree that there shall be an independent costs assessment of all professional time incurred from the outset of the administration. This assessment shall include consideration of any potentially wasted costs and where responsibility for such costs (if any) should lie. The outcome of any such independent costs assessment shall be binding as to the attribution of any wasted costs between the parties, and (if relevant) as to what shall be reimbursed to the Estate*."

D1 was unclear in his submissions what he meant by this proposal. To me it reads as an indication by D1 that he intended to preserve a claim against the Cs that they should bear costs he intended to otherwise charge to the Estate relating to management of the issues between executors.

ii) Cs refused D1's proposal, but on April 25, 2025 suggested a consent order whose only substantive provisions were that Cs be removed as executors of the Estate, and their costs in an amount of £1800 plus VAT and the Court fee in the sum of £646 be paid by D1 as personal representative of the Estate.

14. D1 refused this proposal. He objected to the lack of language reflecting an absence of blame, and also to the language regulating costs which he said neither he nor the Estate should be bearing. He also seems to have been hopeful that the s50 process could be used to obtain court approval of the entirety of the Estate administration costs. In response he said by email "*As I have suggested, if agreement cannot be reached – let's just leave it to the court. My own suggestion would be to ask for assessment back to day dot to ensure that estate has the comfort of that thorough and total assessment*."

15. With the intermediation of the Court, which entertained a higher than average level of correspondence from these parties, a form of order was eventually mutually proposed for consideration, and was approved by Master Brightwell on the papers on 27 May 2025 (the "**Order**"). The Order provided as follows:

"1. The appointment of the Claimant, Louise Mary Harris and Natasha Daley, as personal representatives of the estate of Ralph Lawday Deceased, shall be terminated with effect from the date of this order, to the effect that the Defendant, Neil Quantick, shall remain as the sole continuing personal representative of the estate.

2. Stroke Association be joined to the claim as second defendant for the purposes of making submissions as to costs.

3. A hearing will be listed to determine:

(a) the costs of the claim;

(b) whether any order for delivery up of documents should be made against the Claimants; and

(c) whether any representation order is required.

4. The Claimants and the Defendants shall, at least 21 days before the hearing, file and serve a costs schedule in form N260, together with a document setting out:

(i) the basis upon which those costs are claimed (standard or indemnity);

(ii) whether costs are claimed from the deceased's estate and/or inter partes; and

(iii) any other matters they wish the Court to take into account.

5. Stroke Association shall file and serve their submissions in response at least 7 days before the hearing, accompanied by a costs schedule in form N260.

6. By 4pm on 9 June 2025, the Defendant shall file a combined list of the parties' dates to avoid for the listing of a hearing, in the months of August to October 2025, together with an estimated length of hearing.

7. This order shall be served by the Defendant on the Claimants and on Stroke Association."

16. Before the Order was made, there was further correspondence in respect of costs, with Cs indicating their costs had increased to some £8,000 and proposing initially that they be borne by the Estate (which D1 and D2 refused) or by D1 personally (which D1 refused). Costs, therefore, were a matter preventing the application being entirely disposed of by agreement.

17. The Beneficiary had been involved informally by both parties up until this point, and its views communicated by the parties to the Court. As set out in the Order, Master Brightwell joined the Beneficiary to the proceedings for the purpose of directly hearing from the largest beneficiary in the final resolution of the matter.

Matters Following Making of the Order

18. The remaining matter in contention at this point was therefore who should bear each party's costs of the s50 Application, and on what basis.

19. There is further voluminous correspondence, mostly one-way correspondence from D1, between the date of the Order and today's hearing. The content goes far beyond matters relevant to these remaining questions.

20. For example, in this period D1 made repeated individual and uninvited submissions to the Court that it was unnecessary to list a day's hearing in respect of costs. After being directed that the Court had made its decision on the time to be allocated to the matter and that agreed directions to the hearing should be provided, it appears that D1 in July unilaterally filed his own proposed directions providing for exchange of costs statements and submissions (in September, well in advance of the November hearing date) without first agreeing them with the other parties, and indeed over their explicit objection to this way forward. D1 then wrote several more times to the Court indicating that the other parties had refused to engage with the directions, though as far as I can see from the bundle of correspondence, the other parties had in fact laid out their position as to directions, but D1's voluminous correspondence is wide-ranging and unclear, returning repeatedly to a demand that Cs in particular articulate (again and in more and better detail) their "justifications" for seeking their costs at all, and seeking agreement on his own understanding of the history of the proceedings.

21. I suspect that D1 viewed his own behaviour at that point as reasonably aimed at pushing the matter forward towards conclusion, but objectively it was not. D1's engagement with the other parties is constant, wide-ranging and aggressive. D1 repeatedly asks Cs to provide to him a full argument with supporting law and evidence for their position. He again and again urges both Cs and D2 to provide him with a "meaningful explanation" of their positions (both in advance of and after the submissions that were filed by all the parties in September in accordance with the directions proposed by D1 which were ultimately approved by the Court). He suggested that the two law firms engaged on behalf of Cs and D2 would themselves be asked to bear the costs of the proceedings. He proposed or rather threatened to "*update the beneficiaries*" "*as I see fit*" on progress.

22. On 11 September 2025, Cs made an application for an order with a penal notice attached directing D1 not to contact them except through solicitors. This was after numerous requests which were explicitly refused by D1 that he cease contacting them directly as they were legally represented. This application was not listed for hearing today and as the business between Cs and D1 should be concluded by judgment in this matter, it is no longer pursued. However, the application does appear to have added "fuel to the fire" of D1's outrage and antagonism towards Cs and he says the proposed penal notice on the directions elevated the seriousness of the matter and increased costs.

Pre-Hearing Offers

23. Various offers were made prior to the hearing to settle the matter and avoid the hearing. Cs set out in their skeleton argument a full chronology of 21 such offers and responses, 13 made after the date of the Order.

24. Cs costs had increased by the time of the Order to around £8,000, and had increased by mid-August to £10,000. Their offers to settle the matter were on the basis that these costs would be paid, and after their first offer in April the offers were on the basis that they would be paid by D1 personally. Separately I am told on August 21 2025 they suggested Cs and D1 should both undertake to the Court not to seek recovery of costs from the Estate in order to avoid D2 having to attend

the hearing. D2 was enthusiastic, but D1 rejected each of these offers, calling the proposal that the executors waive any right of indemnity "*wholly improper*".

25. D1's stated position was initially that there should be no order as to costs and he made several suggestions that there be a "neutral" or "drop hands" resolution of costs, on at least one occasion specifying clearly that this involved no party seeking indemnification of their costs from the Estate. From early September, his position changed and he made a series of short-dated offers to accept amounts ranging from £45,000-85,000, for Cs and the Beneficiary to decide how to apportion those costs among them. These latter offers are out of step with the offers being made by the other parties and I do not consider they were reasonably aimed at settling the litigation.

26. D2 also made offers seeking to avoid further litigation – firstly offering in August to accept 80% of its costs from Cs and D1 among them so long as no costs were borne by the Estate, and in September offering to claim no costs for itself if no costs are charged to the Estate.

THE COSTS

27. Although on 25 April 2025 Cs had indicated in a draft consent order sent to D1 that their request was that their costs be paid from the Estate on the indemnity basis in an amount of £1800 plus VAT and Court fees of £646, by the time of the hearing the statement of costs shows Cs' costs standing at £49,443.69.

28. D1's costs are set out in his statement of costs at £193,060. I note that all of D1's costs are in respect of his own time, at his charge out rate as a solicitor, and Cs take objection to this. The time incurred is largely attributable to nearly 500 hours spent by him on email.

29. D1 confirmed in the hearing that he seeks recovery of the whole amount of his "costs", both £96,390 "*for the proceedings period (April 2025 onwards)*" and also his "*pre-application costs*", being a further £96,670 incurred between January 2023 and April 2025. He further subdivides "pre-application costs" into:

i) £21,700 for the period January 23 – October 24 - "*Post-departure [of Cs as directors of Qlaw] to impasse*". In respect of this figure he writes in submissions that this "*covers a period already billed to the Estate, with fees of approximate £52,000 agreed by the Stroke Association. The £21,700 claimed here reflects additional correspondence and activity which the Court may consider was driven by Claimant grievance rather than Estate need. Any such determination would result in a credit back to the Estate*." It is unclear if this includes amounts that have already been charged to the Estate, but in any event it is hard to see how this amount could be attributable to the s50 Application.

ii) £74,970 for October 24- April 25 - "*Impasse to application.*"

30. D2's costs are £54,388.20.

31. The costs of each of the parties relating to this fundamentally uncontentious application to remove Cs as executors exceed the value of the Estate. The whole of the Estate is now understood to have a net value of just over £40,000. D1 said in the hearing today that the Estate may well be insolvent though I do not know why. The original probate value was set at £278,285, but that was made up of a retirement flat valued for probate at £170,000 which in the event was hard to sell and ultimately sold for less than £40,000, together with some £120,000 of cash which is now almost entirely gone, more than half on Qlaw invoices according to the Estate accounts I have seen. If it is insolvent, of course, no costs of these proceedings can come out of the Estate.

POSITIONS OF THE PARTIES AT THE HEARING

32. The Claimants now seek:

i) recovery of their costs on the indemnity basis against D1 personally;

ii) an order that they are entitled to indemnify themselves out of the Estate for any costs not recovered from D1, and

iii) an order that D1 is not entitled to indemnify himself out of the Estate for any of his costs of or occasioned by the claim.

33. D1 seeks recovery of his costs on the indemnity basis against Cs.

34. The Beneficiary's primary concern is that no costs of any party should be borne by the Estate, and therefore they seek an order that neither Cs nor D1 should be entitled to an indemnity for the costs of this application against the Estate. They seek their own costs to be borne by whichever party or parties (out of Cs and D1) bear the remainder of the costs of the proceedings. They have not argued that to the extent their costs are not met by the other parties they should be borne by the Estate.

APPLICABLE LEGAL PRINCIPLES

35. The general rule on costs is set out in CPR 44.2: the unsuccessful party pays the successful party's costs, but subject to the discretion of the Court taking into account all of the circumstances and in particular (a) the conduct of the parties, (b) whether a party has succeeded on part of its case, even if not wholly successful, and (c) any admissible offer to settle made by a party which is drawn to the Court's attention, and which is not an offer to which costs consequences under Part 36 apply.

36. Ordinarily where costs are ordered they are to be assessed on the standard basis, but the Court may order them to be assessed on the indemnity basis if, as the Court of Appeal said in *Excelsior Commercial and Industrial Holdings Ltd v Salisbury Hammer Aspden and Johnson (A Firm) [2002] EWCA Civ 879*, circumstances remove the case from "the norm."

37. Where a party acts in their capacity as personal representative, pursuant to CPR 46.3:

> "(2) The general rule is that that person is entitled to be paid the costs of those proceedings, insofar as they are not recovered from or paid by any other person, out of the relevant trust fund or estate.
>
> (3) Where that person is entitled to be paid any of those costs out of the fund or estate, those costs will be assessed on the indemnity basis."

38. This reflects the statutory indemnity given to every trustee or personal representative in respect of costs, provided they are properly incurred when acting on behalf of the trust, as set out in s.31 Trustee Act 2000.

39. Under PD46 paragraph 1:

> "A trustee or personal representative is entitled to an indemnity out of the relevant trust fund or estate for costs properly incurred. Whether costs were properly incurred depends on all the circumstances of the case including whether the trustee or personal representative ('the trustee') –
>
> (a) obtained directions from the court before bringing or defending the proceedings;
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> (b) acted in the interests of the fund or estate or in substance for a benefit other than that of the estate, including the trustee's own; and
>
> (c) acted in some way unreasonably in bringing or defending, or in the conduct of, the proceedings.
>
> 1.2 The trustee is not to be taken to have acted for a benefit other than that of the fund by reason only that the trustee has defended a claim in which relief is sought against the trustee personally."

40. This right of indemnity was discussed by the Court of Appeal in 2019 in *Price v Saundry* [2019] EWCA Civ 2261 where Asplin LJ said at paragraphs 24-27:

> "24. The test for whether the indemnity is available or has been lost or curtailed is also the same under *section 31(1)* of *the 2000 Act* and *section 30(2)* of *the 1925 Act*. It 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 answer to those questions is often far from straightforward. They are dependent upon all the circumstances of the case.
>
> 25. In this case, we are concerned specifically with the costs incurred in litigation. There are a number of cases in which the courts have attempted to categorise the kinds of dispute in which a trustee may become involved

and the circumstances in which an indemnity will or will not be available, the first of which was *Re Buckton* [1907] 2 Ch 406. In *McDonald v Horn* [1995] ICR 685, Hoffmann LJ (as he then was) described Kekewich J's consideration of the issue in that 1907 case as the "classic statement of the principles upon which the court acts".

26. *McDonald v Horn* itself was concerned with a slightly different point from the one here. The question was whether a pre-emptive costs order should have been made in favour of claimant employee beneficiaries of a pension scheme who had commenced proceedings against the pension fund trustees and others alleging improper use of the powers in the trust deeds and breach of trust in the investment of the trust fund. They had sought an order that their costs and any costs which they might be ordered to pay to the defendants should, win or lose, be paid on an indemnity basis out of the pension fund. As the position of trustees in relation to the costs of litigation had, in some circumstances, been extended by analogy to others, Hoffmann LJ set out the position in relation to trustees involved in litigation at 695G – 696B. Having mentioned Kekewich J's consideration of the relevant principles in *Re Buckton [1907] 2 Ch 406* at 413–415, Hoffmann LJ went on to note as follows:

> "While warning that it was 'well nigh impossible to lay down any general rules which can be depended on to meet the ever varying circumstances of particular cases', he said that trust litigation could be divided into three categories. First, proceedings brought by trustees to have the guidance of the court as to the construction of the trust instrument or some question arising in the course of administration. In such cases, the costs of all parties are usually treated as necessarily incurred for the benefit of the estate and ordered to be paid out of the fund. Secondly, there are cases in which the application is made by someone other than the trustees, but raises the same kind of point as in the first class and would have justified an application by the trustees. This second class is treated in the same way as the first. Thirdly, there are cases in which a beneficiary is making a hostile claim against the trustees or another beneficiary. This is treated in the same way as ordinary common law litigation and costs usually follow the event."

27. A similar categorisation was adopted by Lightman J in *Alsop Wilkinson v Neary & Ors [1996] 1 WLR 1220*. He set out the categories and their

likely effect in relation to the trustee's indemnity at 1223H – 1224G as follows:

> "Trustees may be involved in three kinds of dispute. (1) The first (which I shall call "a trust dispute") is a dispute as to the trusts on which they hold the subject matter of the settlement. This may be "friendly" litigation involving e.g. the true construction of the trust instrument or some other question arising in the course of the administration of the trust; or "hostile" litigation e.g. a challenge in whole or in part to the validity of the settlement by the settlor on grounds of undue influence or by a trustee in bankruptcy or a defrauded creditor of the settlor, in which case the claim is that the trustees hold the trust funds as trustees for the settlor, the trustee in bankruptcy or creditor in place of or in addition to the beneficiaries specified in the settlement. The line between friendly and hostile litigation, which is relevant as to the incidence of costs, is not always easy to draw: see *In re Buckton; Buckton v. Buckton [1907] 2 Ch. 406*. (2) The second (which I shall call "a beneficiaries dispute") is a dispute with one or more of the beneficiaries as to the propriety of any action which the trustees have taken or omitted to take or may or may not take in the future. This may take the form of proceedings by a beneficiary alleging breach of trust by the trustees and seeking removal of the trustees and /or damages for breach of trust. (3) The third (which I shall call "a third party dispute") is a dispute with persons, otherwise than in the capacity of beneficiaries, in respect of rights and liabilities e.g. in contract or tort assumed by the trustees as such in the course of administration of the trust.
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> Trustees (express and constructive) are entitled to an indemnity against all costs, expenses and liabilities properly incurred in administering the trust and have a lien on the trust assets to secure such indemnity. Trustees have a duty to protect and preserve the trust estate for the benefit of the beneficiaries and accordingly to represent the trust in a third party dispute. Accordingly their right to an indemnity and lien extends in the case of a third party dispute to the costs of proceedings properly brought or defended for the benefit of the trust estate. Views may vary whether proceedings are properly brought or defended, and to avoid the risk of a challenge to their entitlement to the indemnity, (a beneficiary dispute), trustees are well advised to seek court authorisation before they sue or defend. . . .
>
> A beneficiaries dispute is regarded as ordinary hostile litigation in which costs follow the event and do not come out of the trust estate: see per Hoffmann L.J. in *McDonald v. Horn [1995] I.C.R. 685*, 696."

41. The categorisation of the claim is therefore relevant to the determination as to whether the trustee's costs in bringing or defending it were properly incurred. It is in addition relevant to the Court's approach to any costs incurred by a beneficiary in relation to such claim.

42. As the cases all acknowledge it can be difficult to determine into which category any particular litigation falls, and indeed in this case the parties had differing views (Cs considering the s50 Application to be "friendly trust litigation" and D2 that it was a "beneficiaries dispute"). As Master Brightwell said in *Hanson v Coleman* [2025] EWHC 116(Ch) the Court must "*assess the character of the proceedings*."

ANALYSIS

43. This matter should have been a straightforward and relatively inexpensive action. There is, however, a vast gulf between what should have happened and how this litigation in fact proceeded.

44. For this, Cs blame D1, D1 blames Cs, and Cs' solicitors, and has at times seemed to blame D2 and its solicitors, and D2 says the whole matter is personal between Cs and D1 and should never have escalated to the point it has.

45. In respect of Cs' conduct, D1 says the application should not have been brought at all, it should not have included the accusations and aspersions on D1's behaviour it did, Cs should not have pursued costs against the Estate or against D1 personally and Cs should not have sought directions from the Court that D1 cease to contact Cs personally. It was, says D1, those ill-conceived actions by Cs, in the context of Cs' own grievance and "unparticularised accusations" against D1 and Cs' (or their solicitors') allegedly rude tone and refusal to engage to D1's satisfaction in resolving matters outside of Court that resulted in the spiralling costs.

46. For their part, Cs say it was D1's unjustified opposition to the s50 Application and refusal to contemplate several reasonable offers to settle the matter including costs, but particularly the volume, content and tone of the barrage of correspondence from D1, including repeated intercessions directly with the Court and allegedly in a misleading manner, that was the cause of the multiplying costs.

47. As to whether it was reasonable to bring the s50 Application at all: D1 says the Cs' purported disinstruction of Qlaw was something they were without power to do and/or it was improper for other reasons, and their refusal to "regularise" the matter prior to a re-instruction meant Cs could not continue the administration (i.e. it was their own fault they needed to resign) and that their resignation could have been achieved without the intervention of the Court at all through the "informal route". I am not able to accept this. I accept Cs' submission that given they had acted as executors for some time and intermeddled in the Estate, court intervention was required to remove them. I think it would be inconsistent with the overriding objective to enter into decision-making as to whose fault the breakdown in relations between Cs and D1 was. It seems to me there undoubtedly was a breakdown in relations between them but that in addition there was (and continues to be) a difference of opinion on the legal position as to whether, Cs having been granted probate in their professional capacity, they could or should continue to exercise the role upon leaving employment with the firm. The very fact that both sides were acting in accordance with their own view posed a risk of liability to the parties themselves and meant the Estate could not be properly administered. I therefore consider that Cs making the s50 Application was reasonable and proper, and that making the application was in the interests of the Estate as well as the interests of the executors.

48. This raises the question of whether it was reasonable to contest the application, which is coupled in this case, oddly, with a question over whether the application was contested. D1 maintains he did not contest the application (and therefore cannot be considered the unsuccessful party), but I find his stance caused this to be treated as a contested application that attracted the costs of a contested application. He ticked the box on his Acknowledgement of Service indicating he intended to contest the claim in order to require the Cs to "*clarify the true extent of their application*" and contest "*relief beyond that set out in the claim form*". Those matters were simply not in issue in the s50 Application and should not have been raised or pursued beyond setting out a denial of the assertions about his conduct that he objects to. Nor is this merely a technical mistake - his correspondence with the parties and the Court, his "Part 18 requests" and his submissions, show that he approached this application as though it was his case to correct the record as to his

own behaviour throughout the administration and establish his "innocence", defending an application to remove him that had not been made. As this was not an issue on which the Court had to decide, it was not reasonable to pursue the case in this way and he cannot be said to have been successful in making that case, such that the costs involved in dealing with it should be for his account. Although it is somewhat artificial in this case, Cs are the "successful party" in that their application was granted and D1 is the "unsuccessful party".

49. In terms of how the issues in the application, including costs, were pursued, it appears to me on the evidence that while there undoubtedly is bad blood between Cs and D1, though the s50 Application referenced alleged poor behaviour by D1 on which the Court was not asked to adjudicate and though at times the tone of the correspondence on behalf of Cs has been tetchy, even on occasion rude, their conduct of the litigation has been reasonable overall.

50. Conversely, it seems to me D1 has engaged in these proceedings in a highly unreasonable, obstructive and badgering manner, to an extent quite outside the norm.

i) D1 claims in his statement of costs for nearly 500 hours spent by him emailing Cs and D2 in these proceedings. I am told this included 185 emails to Cs' representatives, and 42 emails to Cs directly even though they had requested that correspondence go exclusively through their representatives and on several occasions multiple emails on the same day. This is manifestly excessive and inappropriate.

ii) I have seen many of those emails, and a large amount of the correspondence is demands by D1 that the other parties justify both accusations D1 perceives have been made against him but which were not actually in issue in the s50 Application, and the other parties' different positions and approaches. The tone of many of those emails was described by Cs as "berating" and that is a fair description. The initial and subsequent "Part 18 requests" were not in substance requests for further information at all, but requests that Cs retract statements and change their positions.

iii) D1's correspondence with the Court was in the nature of litigation by correspondence asking the Master to make decisions in the case on his submissions alone and inappropriate, to the extent that he was directed to cease such behaviour.

iv) In respect of his engagement with Setfords, the representatives of Cs, and to a lesser extent Foot Anstey for D2, D1's interactions show a lack of professional courtesy, making suggestions that are not supported that those firms have conducted themselves so as to expose themselves to wasted costs actions and seeking to delve into inappropriate areas demanding explanations of the genesis of the solicitor-client relationship between Cs and their representatives, and the privileged advice given by D2's solicitors.

v) D1 was indeed, as he says, consistently seeking resolution of the matter, but only on his own terms and in a manner that involved other parties expressly "setting the record straight" about his own, and others', behaviour throughout the administration of the Estate. These efforts, whatever his subjective perception of the justice of the matter, showed an absence of measured engagement or compromise and derailed what should have been a much easier process resolving much narrower issues than D1 tried to resolve through these proceedings.

51. I note with regret that this matter could have come to a full conclusion in April 2025 at a cost to the Estate of less than £3,000 if D1 and D2 had been willing to contemplate reimbursement of those costs from the Estate as contemplated by Cs' proposed consent order, before further dispute raised Cs' costs to £8,000 by the time of the Order. Many of the further costs of the proceedings could possibly also have been avoided if Cs had been willing to settle on the basis that they not be reimbursed for their costs, but I do not consider their refusal to settle in this way unreasonable. I do note however that at this point the litigation was not being continued for the benefit of the estate, but to settle matters between the personal representatives.

52. A further real opportunity to minimize cost was missed in August when D1 refused to agree with Cs for all executors to undertake not to seek any costs from the

Estate, which would have enabled the Beneficiary's costs of making costs submissions and attending the costs hearing to be avoided. As it was in any event D1's professed position at that point that no party should charge their costs to the Estate, there seems to me to be no justification for refusing to agree to this.

53. These facts demonstrate the litigation ended up being more costly than it might have been, and are factors against imposing the full cost of the litigation on the Estate.

CONCLUSION ON INTER PARTES COSTS

54. Standing back and looking at all the circumstances of the matter in the round, in respect of Cs' costs, except for the minimal costs of issue (at the level set out in Cs' proposed consent order of 25 April), which I consider to be costs of administration of the Estate, Cs' subsequent costs should be borne by D1, and assessed on the indemnity basis.

55. D2 was joined as a party to this matter by the Court for purposes of giving input on costs as a beneficiary, for the benefit of the Estate. The reasonable cost of them doing so is prima facie an Estate expense. However, all of that cost could have been avoided by Cs and D1 making the undertaking that Cs proposed on August 21 that D1 rejected as "highly improper." As such, D2's costs from and after that date should in my judgment also be borne by D1.

CONCLUSION ON INDEMNITY FROM THE ESTATE

D1's Costs

56. As laid out above, I consider that D1 contested the original application, and engaged with the matter of costs both unreasonably and improperly in the sense that his conduct throughout demonstrated he was defending his own honour, rather than acting efficiently in the interests of the Estate in relation to these proceedings. I think this is the case even though he says his stance as to costs was only ever that each party bear their own costs. He may in doing so have been partly motivated by avoiding expense to the Estate, but in fact based on the offers I have seen, after April 25 no party's primary position was that costs should be borne by the Estate.

Accordingly, I judge D1's interest in these proceedings has been in his personal capacity, and to the extent he has incurred costs it has been in defending his own interests, and none of his costs should be recoverable by him pursuant to his indemnity from the Estate. For avoidance of doubt this covers not only his own costs of the proceeding but also, *a fortiori*, those costs of the other parties that I have ordered he bear.

57. As I have decided that D1 should not be entitled to recover costs of these proceedings against the Estate or any other party, I do not need to consider Cs' arguments in respect of the propriety of D1 claiming costs for his own time at his charge out rate as a solicitor of Qlaw for work done seemingly for himself as a litigant in person executor.

Cs' Costs

58. Cs are in a different position. They argue that to the extent they do not recover their costs in excess of the issue costs from D1 as ordered, they are entitled to recover them from the Estate under the personal representative's indemnity. This is on the basis that the s50 Application is in the nature of a "friendly trust dispute" in the *Alsop v Neary* classification and as such their costs incurred in that application (and not met elsewhere) are for the Estate so long as they are neither unreasonably nor improperly incurred.

59. By analogy with the position of trustees who successfully defend breach of trust claims as proposed in *Lewin on Trusts* §48-076, I would expect that even to the extent permitted, Cs would not recoup out of the Estate the costs D1 has been ordered to pay in reliance on their indemnity unless it becomes clear that they are irrecoverable from D1. Given that I am told the Estate may be insolvent and there is no reason to think that D1 is impecunious, it may be that this issue is not practically important but nonetheless I must address it.

60. I have explained that in my judgment the s50 Application was reasonably brought in part for the benefit of the Estate to enable continued administration, as well as for the executors' own benefit.

61. I consider it was unreasonable to refuse to settle this matter by consent in April on the basis that Cs' reasonable costs be paid from the Estate, but I understand that at the time D2 was adamant on that point, meaning it would have been difficult for D1 to consent to this resolution (though it also seems to me he had no inclination to do so anyway). It was that fundamental problem that meant that costs increased until the date of the Order and that the costs hearing had to be held. However, the vast majority of Cs' costs were incurred after the date of the Order when the only issue was who should bear costs. Litigation over which of the executors should bear the other's costs, which is what this was, is of no benefit to the Estate, but the Court does not treat costs of seeking costs in an application as separate from the costs of the application. Cs should not be out of pocket for these costs, and they will not be if D1 is able to pay them. But in the hypothetical scenario that D1 is not able to pay them, Cs will be out of pocket.

62. There is a tension, where the matter is purely about an executor's recovery of costs – pursuing the matter is clearly not for the benefit of the Estate *per se*, but it is an important part of the scheme of trusts administration and as Asplin LJ said in *Price v Saundry* the reason the trustees' indemnity exists is so that that trustees do not end up put to cost because of taking on that role (subject to the proviso that they have to act reasonably and make proper decisions in the trust's interest about pursuing any litigation).

63. The answer must depend in part on the nature of the underlying litigation, as categorised under the *Alsop v Neary* framework. This matter is clearly not a "third party dispute", but has traits of each of a "trust dispute" and a "beneficiaries dispute." I have indicated the s50 Application itself was in the nature of a technical administrative matter to achieve a necessary outcome and was in the mixed benefit of the Estate and the executors themselves. In this sense it has traits of friendly trust litigation although it is litigation seeking removal of an executor. However, taking into account the genesis of the dispute and the manner the proceedings were in fact pursued, as well as the fact that the Estate had no interest in the only matter actually disputed and that generated almost all of Cs' costs (the argument as to which executor was responsible for costs), it also has traits of an adverse or hostile litigation between beneficiaries, albeit that in this case the

litigation was between personal representatives. Although this is a very unusual case, which does not neatly fall into any of the *Alsop v Neary* categories, it is most closely analogous to a beneficiaries dispute.

64. Even if I am wrong about the classification of the dispute, ultimately, I think it would be wrong to regard that the end of the matter. Per *Price v Saundry*, I should consider the parties' conduct and the key question is to determine if the costs were properly incurred for the benefit of the Estate.

65. Practice Direction 46 likewise requires me to consider if the trustees acted in substance for a benefit other than that of the Estate, including the trustees' own. This is a different consideration from whether the trustee acted in some way unreasonably, and I do not need to find their actions were unreasonable to find they were in substance for their own benefit

66. In the circumstances Cs were reasonable in making the s50 Application and in pursuing the matter of costs and have been successful such that I have ordered D1 to bear those costs, but trustees cannot charge to a trust costs they incur for their own benefit, however reasonably and reluctantly they incurred those costs. Pursuing the proceedings to the determination of costs in today's hearing cannot be said to have been done for the Estate's benefit. In the special and unusual circumstances of this case where the poor relations between the executors that meant this case had to be brought at all, as it unfolded it was overwhelmingly akin to a private dispute between trustees, with the matter relevant to the Estate being almost incidental, I consider that Cs are entitled to an indemnity from the Estate in respect of any unrecovered costs incurred until the date of the Order only.

The Beneficiary's Costs

67. I have indicated that as the Beneficiary was joined by the Court and their interest in the matter was in protecting the interests of the Estate as a whole I would have been prepared to entertain submissions that the Estate bear any of the Beneficiary's costs not met by D1. However, the Beneficiary has not sought, even as a fall-back position, that its costs are met from the Estate, and as such I do not consider this further.

SUMMARY CONCLUSION

68. The effect of the decisions reached above are in summary:

i) Cs' costs of issue in this matter as set out in their draft consent order dated 25 April 2025 (the "**Costs of Issue**") are costs of the Estate;

ii) Cs' costs in excess of the Costs of Issue, to be assessed on the indemnity basis, are to be paid by D1 personally;

iii) D2's costs of the proceedings incurred on and after August 21 (which appears likely to be all of their costs based on the statement of costs), to be assessed on the indemnity basis, are to be paid by D1 personally;

iv) D1 is not entitled to be indemnified by the Estate in respect of any costs of the proceedings, whether those be costs he has incurred or costs he has been ordered to pay; and

v) If and only to the extent that Cs are unable to recover their costs from D1 in accordance with sub-section (ii) they would be entitled under their indemnity from the Estate to recover such costs from the Estate, but only in respect of such costs up to the date of the Order and of course without double recovery of the Costs of Issue. It would be for Cs to show they are unable to recover such costs from D1.

OTHER MATTERS

69. Two other matters were listed to be considered at the hearing. First was whether any order for delivery up of documents should be made against the Claimants. That was not pursued by any party and it is my understanding from the evidence in the bundle that Cs have no Estate documents in their possession or under their control. The second matter was whether an order pursuant to CPR19.8 for D2 to act as representative of all beneficiaries of the Estate was required. Cs' skeleton argument had suggested that such an order be made "for completeness" and this was also suggested in oral submissions. However it was not dealt with by me at the start of the hearing as a discrete matter. No submissions from any other party

were heard on the point, the entirety of the hearing day having been taken up by costs. I am told that D2 does not wish to be representative of all beneficiaries.

70. Under CPR19.8:

> "(1) Where more than one person has the same interest in a claim –
>
> (a) the claim may be begun; or
>
> (b) the court may order that the claim be continued,
>
> by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest.
>
> …
>
> (4) Unless the court otherwise directs any judgment or order given in a claim in which a party is acting as a representative under this rule –
>
> (a) is binding on all persons represented in the claim; but
>
> (b) may only be enforced by or against a person who is not a party to the claim with the permission of the court.
>
> (5) This rule does not apply to a claim to which rule 19.9 applies."

71. In this case, D2 was joined as a party to the case to assist the court in relation to the matter of costs by allowing direct submissions from a party with a financial interest in the Estate. I am satisfied D2 has the same interest in that matter as all other beneficiaries and in that sense is representative of the beneficiaries generally. However, I am also content that this case is not one in which it is necessary or proportionate that all beneficiaries be represented to dispose of the question of costs justly. I have doubts over whether, the hearing having taken place without my first making a representation order, I have any jurisdiction to make such an order now, but even if I do I will not exercise my discretion to make a representation order here where it is not sought or consented to by D2.

72. That is my judgment.