

Caught in the Middle: Trustees, Executors and Litigation Decisions



TRUSTS, WILLS & ESTATES

DATE: Wednesday 15th July 2026

TIME: 11:00 – 12:00

LOCATION: Online via Zoom

So you think you want to litigate?

- Duties
 - ▣ Factors to consider when suing and being sued
- Protection and Powers
 - ▣ Out of court safeguards, Court applications, compromise
- Costs

4 Problem Cases

1. Demand to pursue weak claim
2. Proprietary claim against the fund
3. Claims against beneficiaries
4. Facing a claim not pursued

Litigation Powers and Duties

Whether to sue or to defend?

1. Powers to sue or defend
2. Prudent to sue or defend
3. Protected in suing or defending



Powers

- Rights to litigate an incident of ownership and title

- Common law duty of care

*“... [As] a general rule a trustee sufficiently discharges his duty if he takes in managing trust affairs all those precautions which an ordinary prudent man of business would take in managing similar affairs of his own.”
(Speight v Gaunt)*



Powers – Proper Exercise

- (1) A duty to act responsibly and in good faith;
- (2) A duty to take only relevant matters into account;
- (3) A duty to act impartially; and
- (4) A duty not to act for an ulterior purpose.

- Trustee unanimity – general rule
 - ▣ *Re Maud (No2)* [2019] Ch. 15
- Executors?
 - ▣ (*Re AMT Coffee Ltd* [2020] 2 B.C.L.C. 50)



“Impartiality” Generally

- *“Primary duty to the trust as a whole”* Lewin 29-062
- Lewin 29-064
 - *“Where, however, the settlement does authorise the trustees to discriminate, as in the case of discretionary trusts or dispositive powers, it is meaningless to speak of a duty to act impartially between the beneficiaries. The very discretion conferred is to prefer one over another; unfairness is not a ground of challenge.”*



Duty and “Best Interests”

- *Alsop Wilkinson v Neary* [1996] 1 WLR 1220
“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”
- *Administration of Estates Act 1925, S.25(a)*
- *Merchant Navy Ratings Pension Fund Trustees Ltd v Stena Line Ltd* [2015] Pens. L.R. 239
- *Airways Pension Scheme Trustee Ltd v Fielder* [2019] 4 W.L.R. 9
 - Benefit to some

Discretion – Merits Investigation

- *Brinner v Brinner* [2026] EWHC 1462 (Ch)

“51....The task for an independent personal representative would in the first instance involve a limited scoping exercise...Any independent personal representative would have to consider the proportionality of the cost on an ongoing basis...”

52...Even if on further investigation there is a strong argument that the Deceased beneficially owned these or other assets, establishing that in law could be time consuming and costly. The potential upside may be large, but the potential cost is probably also large.”



Discretion – Merits Assessment

- *Shah v Shah* [2020] EWHC 1840 (Ch)
 - Obligation to get in assets is not absolute
 - Value and circumstances
 - Proportionality
 - Litigation risk
 - *“A trustee is not and is not required to be a crusader for his trust”*
- *Woolls v Byrnt* [2026] EWHC 1141 (Ch) – non-defendant beneficiary interest
- *Re Beddoe* at 562



Discretion – Funding

- *Serious Organised Crime Agency v Szepietowski* [2010] 1 W.L.R. 1316
 - *“In the first place, I know of no rule of the court, and I am satisfied that there is no case which establishes any such rule, or even hints at it, that a trustee is bound to bring an action at his own expense to recover the trust property.”*
- See too *Shah v Shah* [2020] EWHC 1840 (Ch) at [82]
 - *“where no funds are available, trustees are under no obligation to take proceedings at their own expense, unless the lack of funds arises out of the trustees' own breach of duty”*
- CF – *Rights of reimbursement and indemnity? Bradstock Trustee Services* [1995] 1 W.L.R. 1405



An attenuated duty to...?

- A duty to get in/safeguard the trust/estate
- Proper Claimant/Defendant in most proceedings
- To exercise the associated powers to sue/defend
 - *As an ordinary prudent person of business would*
 - Having regard to merits, net benefit and cost funding
- No obligation to self-fund
 - **The extent of the representative's duty is limited by their right of indemnity**



Summary

- Power
- Duty/Prudence
- Funding



Out of court powers/considerations

- Indemnity/reimbursement – trust fund/beneficiaries
- Consultation and Consents: *Clyne v Conlon* [2021] EWHC 2444 (Ch)
- Assent and assign - *Coutts & Co v Banks* [2002] EWHC 2460 (Ch)



Derivative Claims

- See recently *Kaur v Kaur* [2025] EWHC 2806 (Ch)
 - *“34. In relation to disputes between beneficiaries of trusts or estates, however, the position is rather different, and the starting point appears to be that the beneficiaries should themselves litigate the issues, at their own cost, with trustee or personal representative being neutral”*
 - ...
 - *“38...Where a trustee has properly concluded that bringing a particular action would not be in the interests of beneficiaries, it should be open to a beneficiary to come to court at his own expense to establish that that decision was wrong, which he can do by successfully bringing that action.”*

Decisions, Decisions

1. A claim by or against who?
2. Funding investigations/scoping
3. Merits?
4. Fighting funds?
5. Recoveries?
6. Flow through benefits?
7. Standing back

Neutrality and Costs

General starting points

Type	Inter-Partes	Indemnity
Trust dispute (friendly)	Fund pays	Fund pays
Trust dispute (hostile)	Hostile costs	- Neutral - Consent - Beddow - Properly incurred
Breach of Trust/Beneficiaries Dispute	Hostile Costs	Only if T/PR defends successfully
Third party dispute	Hostile costs	- Neutral - Consent - Beddow - Properly incurred

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Third party dispute with beneficiary	Hostile costs	- Neutral - Consent - Beddoe - Properly incurred



Beddoe Apps – What are they really?

- Court authorisation to sue, to defend or not to do either
- Akin to a blessing – conferring issue estoppel immunity
- Authorises conduct without breach
- Onerous disclosure requirements: *Representation of BOS Trustee Limited re Q Trust [2025]JCA329*

***Beddoe* – A Requirement?**

- *Fernandez v Fernandez* [2025] EWHC 2373 (Ch)

[91]

- ▣ In hostile litigation against a third party, a wise trustee or executor will normally seek the protection of a *Beddoe* order (or at the very least obtain counsel's opinion that it is proper to incur such liability) before engaging in the litigation, but that is not a formal requirement.
- ▣ in hostile litigation between a trustee or executor on the one hand and a beneficiary on the other, the court is not usually in a position to make a *Beddoe* order.
- ▣ Yet that does not mean that it can never be proper for a trustee or executor to incur costs or a costs liability in such litigation. The matter is fact-sensitive.



Neutrality – Context

- *Alsop Wilkinson v Neary [1996] 1 WLR 1220*
“where the dispute is between rival claimants to a beneficial interest in the subject matter of the trust, rather the duty of the trustee is to remain neutral”
- 1. Adverse proprietary claims against the fund
 - PE, CT, voidable settlements, S.423 IA
- 2. Beneficiary claimants or defendants - self-funding success

No secure indemnity, no absolute duty



Beddoe – Examples

- *Re Dallaway* [1982] 1 WLR 756 – adverse beneficiary prop estop, whole estate, full indemnity (good merits, no joinder suggested)
- *Re Evans* [1986] 1 WLR 101 – adverse beneficiary prop estop whole estate, all bens joined, no indemnity
- *Blatchford v Laine* [2018] WASC 207 – proprietary claim to *some* assets, no self-funding risk, defence authorised
- *Lines v Wilcox* [2019] Costs L.R. 1215 – Lifetime UI transfers, executor claimant, *Beddoe* refused (endorsed in *Kaur v Kaur* [2025] EWHC 2806 (Ch))

CF

- *Dhillon v Dhillon* [2019] EWHC 2442 (Ch) – Lifetime UI transfers, executor claimant, *Beddoe* granted (up to disclosure, good merits)



Neutrality when?

1. Beddoe injustice
2. Adult sui juris beneficiaries
3. No alternative adequate indemnity



Neutrality Considerations

- Minors & unborns
- Incapacitated beneficiaries
- Impecunious beneficiaries?
- Alternative indemnity options

Protections and Powers



Powers – Compromise

S.15 Trustee Act 1925

A personal representative, or two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation, a sole acting trustee where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and powers reposed in him, may, if and as he or they think fit—

...

(c) pay or allow any debt or claim on any evidence that he or they think sufficient; or

(d) accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed; or

(e) allow any time of payment of any debt; or

(f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust;

and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them if he has or they have discharged the duty of care set out in section 1(1) of the Trustee Act 2000.



Compromise - scope

- External Disputes v Internal Disputes
- Co-executor disputes (*Houghton, Re* [1904] 1 Ch. 622)
- The role of beneficiary consent
 - 1975 Act Claims



Protective Applications

- *Fitzhugh Gates/Cobden-Ramsay* Orders
- *Re Yorke* Applications + indemnity/retention
- *Benjamin* Orders
 - *Representation of BNP Paribas Jersey Trust Corp Ltd* [2010] JRC 199
 - *Parsons v Reid* [2022] EWHC 755 (Ch)
 - *Kaur v Kaur*



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Thank you for joining

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