

# Costs in executor disputes: Recent judicial insights and principles

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Disputes about who should – and who should not – act as an executor of an estate are very common.

They might occur, for instance, before a grant of probate has been made, where there are doubts about the suitability of the person named as executor in a Will. Or they might occur after a grant of probate has been made, where an executor has failed to comply with their duties to administer the estate in a timely fashion perhaps.

## Who pays the costs of a dispute about who should be an executor of an estate?

In disputes over who should be the executor of an estate, the costs are typically determined by the court. The general rule is that an executor is entitled to be indemnified from the estate for costs properly incurred in carrying out their duties. However, the courts retain a wide discretion to depart from this rule, particularly where parties have acted unreasonably or in their own interests rather than for the benefit of the estate as a whole.

In disputes regarding who should be appointed as the executor of an estate, the question of who pays the legal costs can be complex and depends on the circumstances of the case and the decisions made by the court.

### General principles

- **Court's discretion:** The court has wide discretion to determine who should bear the costs of the proceedings. This means there is no automatic rule, and each case is considered on its own facts.
- **Estate pays in some cases:** If the dispute is genuine and arises from reasonable grounds (for example, ambiguity in the Will or legitimate concerns about a proposed Executor's suitability), the court may order that the costs be paid out of the estate. This is often the case where the dispute is not caused by unreasonable behaviour or misconduct.
- **Individual pays in other cases:** If the court finds that a party has acted unreasonably, vexatiously, or in bad faith (for example, by bringing a frivolous challenge or causing unnecessary delay), it may order that person to pay the costs personally, rather than the estate bearing the expense.
- **Partial costs orders:** Sometimes, the court may order that costs be split, with some paid by the estate and some by the individuals involved, depending on their conduct and the merits of their arguments.

### Recent guidance from the courts

Two recent cases, *Aslam v Seeley* and *Hanson v Coleman & Anor*, provide valuable insight into how the courts approach the issue of costs in such disputes.

Both cases involved applications for the removal of executors, but the circumstances and the courts' decisions on costs differed in important respects. By examining the facts and outcomes of these cases, it is possible to draw out some of the key principles that guide the courts when determining who should pay the costs of litigation in the context of contested probate proceedings.

This article explores the facts of each case, the arguments advanced by the parties, the legal principles applied by the courts, and the ultimate decisions on costs. In doing so, it highlights the factors that are likely to influence the court's approach and the potential financial consequences for those involved in disputes over the administration of estates.

## The facts in Aslam v Seeley

The case of Aslam v Seeley related to the estate of the late Mr Madanagopalan, who died on 28 May 2020. He left a Will dated 3 April 2020, which appointed Ms Aslam, a family friend, as his sole executor.

The defendants in the proceedings were the deceased's two children. The Will of April 2020 left 50% of the proceeds of sale of a property to one of his children, 30% to the other, and the remaining 20% to be divided between his grandchildren.

Ms Aslam obtained a grant of probate on 22 September 2021. However, she subsequently took the unusual step of seeking her own removal as an executor of the estate. She explained in her witness statement in support of her claim that she felt the first defendant would not co-operate with her to enable the property to be marketed and sold, and the claimant felt threatened and harassed by the first defendant.

Not surprisingly the court considered that the claimant's unwillingness to continue in her role as executor, in the face of an impasse, justified her removal and the appointment of a new independent executor in her place. The first defendant proposed however that in fact she should be appointed in place of the claimant.

The second defendant did not attend that first hearing, but wrote to the court in advance to say she did not oppose the order sought by the claimant, and that she did not intend to attend the hearing in order to save costs.

At that hearing the court decided that it was inappropriate to appoint the first defendant; it was, the court said, apparent from the claimant's evidence that the two sisters had a history of making serious allegations against the other.

After directing the claimant to put forward three proposed replacement independent personal representatives, together with their charging structure and an estimate of the costs required to complete the administration of the estate, there was a further hearing where a third-party solicitor was eventually appointed as a replacement executor.

The issue of costs then fell to be decided; in other words, who should pay the costs incurred as part of these proceedings, and to what extent, if at all, should those costs be met by the deceased's estate?

## Aslam v Seeley: The arguments on costs

By the time the court came to consider the issue of costs the second defendant was represented and in attendance.

The claimant sought an order that all of her costs be paid from the estate on an 'indemnity basis', i.e. that any benefit of the doubt about whether the costs were reasonable be decided in her favour. These costs totalled in excess of £32,000. In support of this claim they said that a hearing had only been necessary because the defendants had not indicated their proposed replacement executor.

It was also submitted that nothing had occurred in the proceedings that ought to result in the claimant executor being denied her usual 'indemnity' from the estate for costs incurred in pursuance of that role; the claim, it was said, was entirely for the benefit of the estate, and not for the benefit of the claimant personally.

The second defendant however said the majority of the costs incurred should be paid by the first defendant; it was, they said, only because of the first defendant's conduct that the claim had been necessary. If the costs fell to be paid by the estate, then the second defendant would, in effect, end up being responsible for some of the costs, because the size of the estate would be reduced, as would her share in it. As a result, it was only right it was the first defendant, and not the estate, who paid the costs.

Finally, the first defendant submitted that the costs incurred by the claimant were not all 'properly incurred' and should not therefore be paid by the estate.

## Aslam v Seeley: The legal principles on executor costs

The court then considered the relevant principles when the issue of costs is addressed in cases come of this nature.

These costs principles can be summarised as;

- An executor is entitled to be reimbursed from estate funds for costs 'properly incurred' by the executor when acting on behalf of the estate;
- In litigation, the 'general rule' is that an executor is entitled to be paid costs of proceedings out of the estate (insofar as they are not recovered from another party).
- Whether costs were 'properly incurred' will depend on all of the circumstances of the case, including;
  - Whether the executor obtained directions from the court before bringing the proceedings;
  - Whether the executor acted in the interests of the estate in bringing the proceedings; and
  - Whether the executor acted unreasonably in some way in bringing the proceedings.

## Aslam v Seeley: The court's decision

Not surprisingly the court had little trouble in finding that the claimant had brought the proceedings 'for the benefit of the estate' and that there was no good reason why she should be denied her usual 'executor's indemnity' from the estate (save for some costs related to an adjourned hearing, which were deemed to have been wasted as a result of a failure on the part of the claimant's solicitors).

In respect of the second defendant's costs, while the court was concerned by – perhaps even critical of – various points of conduct on the part of the first defendant, it did not feel the costs incurred by the second defendant had been necessitated by her conduct.

There would, the court pointed out, have needed to be a hearing to remove the claimant as executor in any event; once a grant of probate has been made a court order will always be necessary to remove an executor. It cannot simply be done by the agreement of all parties involved.

As a result the court ordered the second defendant's costs to be paid from the estate, and not by the first defendant herself.

## The facts in Hanson v Coleman & Anor

Just four weeks after the costs hearing in Aslam, the same court Master dealt with another claim for the removal of an executor. This case was Hanson v Coleman & Anor.

In Hanson v Coleman the claimant sought the removal of her two brothers as executors of the estate of their late father, Mr Frank Coleman. Mr Coleman had left his residuary estate to those three parties – his three children - in equal shares.

At the hearing in November 2024, the court made an order removing the defendants as executors, and appointed a third party firm of solicitors in their place. The decision was reached on the basis that:

- The defendants had obtained a grant of probate based on an inheritance tax return which showed the estate having a beneficial interest in two properties. The defendants then subsequently advanced a claim to own a greater beneficial share of the two properties at the expense of the estate. This claim placed them in an obvious position of conflict of interest;
- There had been a significant delay in the administration of the estate, with no progress having been made in realising the estate's interest in those two properties. That delay had, arguably, caused financial loss to the estate; and
- The defendants took an incorrect approach to their duties as executors for a sustained period of time. This, coupled with the delay, meant the claimant's apprehension that the estate would not be administered in the interests of all the beneficiaries was reasonably held.

When it came to decide the issue of costs, a novel point of law arose, which meant the parties were given permission to exchange further written submissions on that point, with a decision on costs being given at a later date.

## Hanson v Coleman & Anor: The decision on costs

The successful claimant argued that her costs should be paid on an indemnity basis. The defendants did not object to the idea that she should recover some of her costs, but not on an indemnity basis, and added that it should be the estate that meets those costs. They also wanted the estate to meet the defendants own costs in defending the proceedings as well.

The court found that the defendants had, in effect, defended the claim in their own interests, and were unreasonable in having done so. As a result the court held that the defendants should be deprived of their usual indemnity, and that instead they should personally have to pay not only their own costs, but also the claimant's costs on the 'standard basis'.

# Concluding observations

These two cases illustrate the importance of clarity and diligence in the administration of estates and that there are often subtle complexities at play.

The courts consistently emphasised the need for executors to act in good faith, to communicate transparently with beneficiaries, and to adhere strictly to the terms of the will and the relevant statutory framework. These principles not only safeguard the interests of beneficiaries but also protect executors from potential liability.

It is also not at all uncommon for an individual to have different roles, and to find themselves as both executor and beneficiary. Anybody finding themselves in that position would be well advised to seek specialist legal advice at an early stage, especially whenever litigation is a realistic prospect. Failing to do so could prove to be a very costly mistake.

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