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## Sacking a trustee? Prepare for toil and strife

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**Ane Vernon** explains what the Longleat House dispute reveals about trying to remove a trustee, and the complications HNWs should consider first

Longleat House's distinguished Elizabethan architecture sets an impressive backdrop to the less than amicable relationships of its inhabitants: the Marquess of Bath and his wife, who reportedly did not attend their son Viscount Weymouth's wedding to Emma McQuiston in 2013 (father and son are also said to have quarrelled over the Viscount's decision to remove some of his father's painted murals at Longleat).

The family recently made headlines after Lord Weymouth brought court proceedings seeking the removal of Richard Parry as trustee from the family trusts. Both sides are said to recognise that there was hostility and animosity between the two, and that their relationship had broken down to such a degree that Mr Parry must retire. However Mr Parry, family and contentious trust specialist at Farrer & Co, wants to find a new trustee acceptable to Lord Bath first. This has not been possible, and whilst Lord Weymouth wants the remaining trustees to act on their own until a suitable replacement can be found, Mr Parry is understood to have issued his own application for a judicial trustee to be appointed until a successor to his trusteeship can be found.

Disagreements in family trusts will not often make the headlines, but the case serves as an opportunity to look at the circumstances in which a trustee can retire or be removed from his role, a question that has relevance for trusts of all sizes throughout the country.

The first point of reference is the trust instrument which may provide for the removal of a trustee. Some trusts confer an express power upon a person to remove a trustee. Such power must be exercised for the benefit of the beneficiaries and the person holding that power will be well advised to consider from time to time whether the trustee is still performing adequately or ought to be removed.

A trust instrument can provide for the automatic termination of a trusteeship in specified circumstances. Trusts can provide that its trustees are to be the holders of specified offices, for example in the case of a trust involving an ecclesiastical parish or a club. If the holder of the office ceases in that role, so too will his trusteeship.

Express powers of removal are not that common in English trusts, and so the removal of a trustee is often sought by relying on statute. Under the Trustee Act 1925 a trustee who remains out of the United Kingdom for more than twelve months, refuses or is unfit to act, or is incapable of acting may be removed out of court by the appointment of a new trustee in his place.

The court may appoint a new trustee when it is found inexpedient, difficult or impracticable to do so without the assistance of the court. Provided there is no dispute of fact, this provision enables the court to displace a trustee against his will. A new trustee may be appointed in substitution for a trustee who lacks capacity to exercise his functions, is bankrupt or a dissolved corporation or in liquidation.

As in the case of Lord Weymouth's application, where a trustee is sought to be removed without the appointment of a new trustee, the court has an inherent jurisdiction to remove a trustee without his consent. This will also be the case where for some other reason the court's statutory powers are not applicable. However, the court will not normally make an order removing a trustee without a replacement being appointed or an adequate number of trustees remaining. If the removal is urgent, and no appropriate arrangements are in place for the ongoing administration of the trust, the court can appoint a receiver pending the appointment of a new trustee.

The guiding principle for the court is the welfare of the beneficiaries and the proper administration of the trust. As a general rule, friction or hostility between trustees and beneficiaries or amongst co-trustees is not of itself a reason for the removal of a trustee. However, if such friction is based on the manner in which the trust is run, or where the trustees' duties are likely to be obstructed, the court may decide that the welfare of the beneficiaries is best protected by the removal of a trustee.

Historically, cases where the court has removed trustees have included circumstances where a trustee held opinions contrary to the founder's intention, where a trustee had a conflict of interest or failed to recognise that he had a conflict and failed to take steps to ensure that his duty prevailed over his personal interest. Trustees have been removed when competing commercially with the trust or dealing with trust property for their own advancement. Also, a trustee who had embarked on a course of conduct and litigation calculated to promote the trustee's personal interests and prejudice the beneficiary's interest was removed, as was a trustee who had an obstructive attitude and general unwillingness to attend promptly to the rights of beneficiaries or the preparation of accounts.

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