Neutral Citation Number: [2025] EWHC 24 (Ch)

Case No: PT-2023-000803

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

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

Date: 10 January 2025

Before :

MASTER BRIGHTWELL

- -

Between :

NASLOOM ASLAM	**Claimant**
- and -	
(1) MARIA SEELEY (2) SONAL MADAN	**Defendants**

- -
- -

Seamus Kearney (instructed by **Duncan Lewis Solicitors**) for the **Claimant**
The First Defendant appeared in person
Louis Grandjouan (instructed by **Taylor Rose MW**) for the **Second Defendant**

Hearing date: 24 October 2024

- -

Approved Judgment

Crown Copyright ©

This judgment will be handed down remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 4:00pm on Friday 10 January 2025

Master Brightwell :

1. This judgment concerns some questions which can arise in relation to the costs of an application to remove a personal representative pursuant to section 50 of the Administration of Justice Act 1985.

2. The claim relates to the estate of the late Mr Narayana Samy Madanagopalan, who died on 28 May 2020, leaving a will dated 3 April 2020. The defendants are his two daughters. By his will he appointed the claimant, a family friend, as his executor. The will disposes only of the property at 120 Fairholme Road, West Croydon, leaving 50% of the proceeds of sale to the second defendant, 30% to the first defendant, and the remaining 20% divided between the first defendant's children. The claimant obtained a grant of probate on 22 September 2021.

3. I made an order at the first hearing of the claim, on 12 January 2024, removing the claimant as executor of the deceased's estate. Unusually, the claimant sought her own removal. As she explained in her witness statement in support of the claim, 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 her. I considered that the claimant's unwillingness to continue in office in the face of an impasse justified the appointment of a new personal representative.

4. The second defendant did not attend the first hearing, but wrote to the court in advance of the hearing to indicate that she did not oppose the order sought by the claimant. In their letter dated 11 January 2024, her solicitors said that they did not intend to attend the hearing to save costs. Concern was expressed at the length of time taken in the administration of the estate and a wish stated that the claim could be dealt with swiftly and economically.

5. At that first hearing, I also decided that it was inappropriate to appoint the first defendant alone as a replacement personal representative. It was apparent from the claimant's evidence that the two sisters had a history of making serious allegations against the other (including an allegation that the first defendant had murdered their father). It also appeared to me from the first defendant's distressed state and her ill-health that it would not be correct to appoint her. In order to reach that decision, I did not need to take into account the nature of her conduct in relation to the administration of the estate, or of the nature of the allegations she had made in the current proceedings.

6. The claimant had by her claim put forward only one proposed replacement personal representative, with no details of his charging rates. As I considered that Ms Seeley had squarely raised the issue of such costs, I directed 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. In circumstances where there was to be another hearing and where the claimant indicated that she wished to obtain representation, I did not consider it appropriate to determine questions of costs on that occasion.

7. At the second hearing on 5 June 2024, which was intended to be the final hearing, I appointed Ms Lucy Wood of BP Collins LLP as replacement personal representative. She was the first defendant's choice of the three suggested replacements put forward and neither the claimant nor the second defendant indicated any preference.

8. Again, the second defendant did not attend the hearing, but her solicitors sent a constructive letter dated 23 April 2024 to the court, saying that costs should be borne by the claimant and the first defendant, and also indicating as follows:

> 'Our client has been extremely patient and has given the executor considerable time to deal with the administration, in the hope that things would work out without any application by our client to remove her and incur significant cost. Things were ultimately taken out of our client's hands when the Claimant in this matter decided to make a court application to appoint independent administrators. She made the decision not to take any steps to defend the application as, in her view, the appointment of independent administrators is the best way to progress this matter and ensure that the property can finally be sold and the estate distributed.'

9. After dealing with the appointment of Ms Wood, I began to hear submissions on costs. Mr Kearney asked for the claimant's costs to come from the estate. Ms Seeley then replied, stating as she had on several previous occasions that the claimant lacked capacity and that any instructions to the claimant's solicitors must have come not from the claimant but from her daughter. In my ruling on 12 January 2024, I had indicated that I was satisfied that the claimant must have capacity because her solicitors had a professional obligation to ensure that this was so. The claimant's solicitors were well aware of the allegation of lack of capacity (as it had been made by Ms Seeley on numerous occasions).

10. Given the frequency with which Ms Seeley had forcibly suggested that the claimant lacked capacity, I considered it appropriate at that point to ask Mr Kearney to confirm, for Ms Seeley's benefit, that his solicitors were satisfied that their client had capacity. To my consternation, he indicated instead that they had in fact become aware of facts suggesting that she might have lost the capacity to litigate. When asked for a further explanation, Mr Kearney said that he and his solicitors had considered that the lack of capacity should not matter, because all that remained to be dealt with was the identity of the replacement personal representative and costs. He said that he and his solicitor had met with their client before the January 2024 hearing, and were satisfied then that she had

capacity. I should also say that Mr Kearney immediately apologised for not having told the court about the concerns regarding his client's capacity.

11. In circumstances where the claimant's counsel was now indicating that she might not have capacity, I did not consider it appropriate to continue to determine questions of costs. There was no reason not to make the order appointing Ms Wood as the claimant had, when apparently having capacity, wished to be replaced, and an order directing that step had been made when she had capacity. But, CPR r 21.2(1) provides that a protected party must have a litigation friend to conduct proceedings, and by r 21.3(3), if during proceedings a party lacks capacity to continue to conduct proceedings, no party may take any further step without the court's permission until the protected party has a litigation friend. It seemed to me that this prevents a party's own legal representatives from taking steps on her behalf without the court's permission. And, if those representatives consider it appropriate to proceed in that way, it is incumbent on them to seek that permission first, on notice to the other parties. The decision of the claimant's lawyers in this case to keep their concerns up their sleeve, only revealing them when required to do so by a direct question from the court, was a serious error of judgment. As will be seen to be relevant below, it directly led to a further adjournment of this claim and to an increase in the costs incurred.

12. I therefore directed the solicitor with conduct of the claim on behalf of the claimant to file and serve a witness statement, indicating when she became aware that the claimant may not have capacity, and explaining how she was satisfied that she did have capacity when the claim was issued and as at the date of the first hearing, on 12 January 2024.

13. The claimant's solicitor, Ms Caroline Roche, filed a witness statement dated 14 June 2024. She added a further apology for not having disclosed the issue to the court proactively. The witness statement also indicates that the first defendant made a complaint to the Legal Ombudsman in November 2023, alleging that the claimant lacked capacity, which complaint was dismissed, and explains why she, Ms Roche, was satisfied up to January 2024 as to the claimant's capacity to make decisions in relation to the litigation and to communicate those decisions.

14. The claimant's solicitors have also disclosed a mental capacity assessment carried out on 28 June 2024 by an independent mental capacity assessor. That assessment concludes that Mrs Aslam is able to understand, retain and weigh matters relating to the costs which have been incurred in these proceedings. It also (as does Ms Roche's witness statement) discloses matters which show that there were solid grounds as at January 2024 (but not then known to Ms Roche) to suggest that the claimant's litigation capacity may be in doubt. I do not

consider it necessary for the purposes of this costs judgment to set out any further detail about the claimant's health.

15. Ms Roche's witness statement indicates that she was not aware of doubts as to the claimant's capacity until she received a communication from the claimant's daughter on 30 May 2024, shortly before the June hearing. I consider that to be consistent with the conclusion in the mental capacity assessment, and I accept Ms Roche's evidence in this regard. It is worth stating that the first defendant's concerns about capacity appear not to have been entirely misconceived, and they may have led to serious enquiry by the claimant's solicitors at an earlier stage if they had not been accompanied by other intemperate and at times incoherent allegations directed at the solicitors.

16. Having considered the documents mentioned above, I considered that questions of costs required to be determined at a further hearing.

17. At the start of the hearing on 24 October 2024, the first defendant made an application for an adjournment, which I dismissed for the reasons I then gave. One of the grounds of the application was that the second defendant had served a witness statement made by her solicitor, with a very lengthy exhibit, very shortly before the hearing, and despite having been on notice of the hearing for some time. The second defendant had filed no evidence in response to the claim and at no stage sought directions permitting reliance on evidence for the purposes of costs. Not least as the second defendant strongly opposed an adjournment (as did the claimant), I did not consider it appropriate to permit the second defendant to rely on her solicitor's witness statement. As Ms Seeley indicated that she had experienced difficulty in reading the bundle and that she had found a solicitor who could assist her in doing so, I gave her permission to file and serve further written submissions after the hearing, in response to the submissions of the other parties, provided they be filed by 14 November 2024.

18. Ms Seeley applied for, and I granted, an extension of time to 18 December 2024 when she filed further comments in the form of five separate emails which did not appear to have been prepared with the assistance of a legal representative. Ms Seeley also filed four emails on 4 December 2024, two of which attached voice recordings on which there was no permission to rely. I have not considered these recordings. The other parties indicated that they did not wish to respond further. I comment further below on what Ms Seeley has said.

The parties' positions

19. The claimant seeks all her costs of the claim to be paid out of the estate on the indemnity basis. A schedule of costs has been filed and served for the costs of the proceedings, in the sum of £32,729.14. It represents an increase on the costs of the proceedings of £23,306.58 claimed in the schedule of costs filed in

advance of the June 2024 hearing. Pursuant to a request from the solicitors for the second defendant, the claimant has also included in the bundle a bill of costs in a form appropriate for detailed assessment, rather than a schedule of costs in form N260. Unfortunately (and inexplicably), it was served on the second defendant on 17 October 2024, but was not made available to the first defendant until shortly before the hearing.

20. The claimant's position is that, following her obtaining a grant of probate, the property was made ready for marketing, and marketed, in late 2022/early 2023. Attempts to progress a sale were frustrated by the first defendant, who countermanded her instructions to the estate agents, refused to allow a reduction to the marketed price despite a lack of interest, and at times refused to allow her access to the property. The claimant's witness statement in support of the claim also refers to the first defendant's aggressive conduct towards Duncan Lewis solicitors, who had been instructed by the claimant. The claimant, now aged 81, says that she became unwilling to deal with the harassment and aggression she faced from the first defendant. She says that, after the January 2024 hearing, the appointment of a replacement representative could have proceeded without a hearing, if the defendants had indicated their proposed replacement.

21. Mr Kearney relies in support of the claimant's claim to costs out of the estate on the executor's indemnity for costs properly incurred in the proceedings brought for the benefit of the estate. The claimant takes no positive position on whether the costs should be borne by the estate as a whole or by the share of the first defendant. Mr Kearney acknowledges that if the first defendant is personally liable for costs, they should be assessed on the standard and not the indemnity basis. He submits that none of the claimant's costs have been incurred unreasonably and that there has been no conduct that would justify depriving her of her indemnity from the estate.

22. The bill of costs I have referred to above sought the higher sum of £47,606.46, to include also the costs incurred by the claimant in administering the estate, which are not the costs of these proceedings. Mr Kearney did not pursue that element of the costs application after I indicated that I was not satisfied that the court was seised of any question of costs other than costs of the removal claim.

23. Ms Madan, represented at this hearing by Mr Grandjouan, submits that the majority of the costs incurred by her and by the claimant should be borne from the first defendant's share of the proceeds of sale of the property. Put simply, her position is that the first defendant's conduct has delayed the administration of the estate and brought about this claim.

24. Mr Grandjouan points out that the second defendant indicated from the outset in her acknowledgment of service that she did not oppose the claim. He submits that the second defendant's costs have been caused by her sister's conduct and

the claimant's costs should therefore be borne by her share and not by the estate as a whole.

25. The arguments relied on by the second defendant are essentially twofold. She alleges that the proceedings were necessitated by Ms Seeley's conduct. Ms Seeley had been aggressive to and had bullied the claimant, meaning that she was no longer prepared to act as an executor, despite this being a straightforward estate to administer. The evidence also suggests that she inappropriately interfered with the sale of the property and at times withheld the keys from the claimant. Mr Grandjouan also submitted that Ms Seeley should have consented to the claim, instead of contending that she should be appointed personal representative herself, and the costs would have been reduced if she had done so. He also suggested that Ms Seeley's correspondence raised irrelevant matters; even where no response was sent, the emails had to be considered by the claimant's solicitors.

26. The second defendant further seeks an order that the second defendant's own costs be paid personally by the first defendant for the same reasons. The second defendant's costs schedule for the proceedings is in the sum of £19,323.60. I would note that, in correspondence before the previous hearing, the second defendant sought an order that her costs be payable by both the first defendant and the claimant. No order is now sought against the claimant.

27. That leaves consideration of Ms Seeley's position. She has not filed any evidence in these proceedings, but filed an acknowledgment of service which I gave her permission to rely on at the first hearing of the claim, even though it had not yet then been served. As she did at the previous hearing, she expanded on the points made in that acknowledgment of service with some considerable energy. I have also taken account of what she has said in the nine separate emails filed on 4 and 18 December 2024. These largely repeated points which had been made by her before.

28. Ms Seeley initially seems to have had a good relationship with the claimant, whom she has described as a friend (and also as being, in her words, 'like my mum'), and also with Duncan Lewis solicitors, who were appointed to advise in the administration of the estate. Ms Seeley asserts that she herself made that instruction on the claimant's behalf. This good relationship seems to have dissipated once the fee earner initially instructed had left the firm, and issues arose about the marketing of the property. It is Ms Seeley's position that she, and not the claimant or Duncan Lewis, supervised and/or arranged works of repair at the property so that it could be marketed. As she considers that she alone has done work for the benefit of the estate, she does not believe the costs incurred by the claimant in instructing Duncan Lewis, at least latterly, to have been properly incurred.

29. The first defendant also maintains criticisms about Duncan Lewis as a firm, which appeared from her oral presentation to be more significant to her than her criticisms of the claimant. Indeed, it was Ms Seeley's position from the start of the proceedings that the claimant lacked capacity and that she was incapable of giving instructions to her solicitors, those instructions coming instead from the claimant's daughter. Ms Seeley has repeatedly asserted that Ms Roche has lied about this, and has continued to make serious allegations about her. She plainly also considers that Duncan Lewis have overcharged for the work they have carried out. She also considers that Ms Roche acted behind her back, to some extent because in the early stages she had direct contact with the firm and it appears was given a fee quote which has clearly (and in my view understandably) been significantly exceeded. I repeat that I am concerned only with the costs of these proceedings and not with the prior costs of administration. Duncan Lewis's client for the purposes of these proceedings has been the claimant.

30. The points above had been made before by Ms Seeley, at the previous two hearings. She additionally raised some new points about the claimant and her family situation at the costs hearing. As the claimant had no opportunity to respond to them in evidence, I have not taken them into account but, in any event, they add nothing to the allegation already made that the claimant was not in fact providing instructions to her own solicitors. I do not consider that Ms Seeley's allegations against Duncan Lewis of impropriety and dishonesty have been substantiated.

Relevant principles

31. The statutory provisions applicable to the indemnity of a trustee or personal representative were set out by Asplin LJ in *Price v Saundry* [2019] EWCA Civ 2261, which also in part concerned a claim for the removal of a personal representative, at [19]–[23]:

> '19. …. The general proposition in relation to reimbursement of a trustee from the trust fund is now to be found in section 31(1) of the Trustee Act 2000. It provides as follows:
>
> > "(1) A trustee—
> >
> > (a) is entitled to be reimbursed from the trust funds, or
> >
> > (b) may pay out of the trust funds,
> >
> > expenses properly incurred by him when acting on behalf of the trust."

Mr Learmonth also took us to the predecessor of section 31(1), section 30(2) of the Trustee Act 1925. That was in a slightly different form. It provided:

> "A trustee may reimburse himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers."

20. In relation to the costs of proceedings in which a trustee is or has been involved, there are specific provisions in the CPR. CPR 46.3 is concerned with the powers of the court to award costs in favour of trustees or personal representatives. It applies where a person is or has been a party to any proceedings in either of those capacities and costs are not payable under a contract to which CPR 44.5 applies. The general rule is that such a person:

> "(2) . . . 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."

Those costs will be assessed on the indemnity basis: CPR 46.3(3). The Rule is supplemented by 46PD.1 which provides as follows:

> "1.1 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;
>
> (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."

21. The relevant Supreme Court Rules which preceded CPR 44.6 were also in a slightly different form. Order 62, r 6 which was headed "Cases where costs do not follow the event" provided (in its 1994 form, at least) where relevant, as follows:

> "Where a person is or has been a party to any proceedings in the capacity of trustee . . . he shall be entitled to the costs of those proceedings, in so far as they are not recovered from or paid by any other person, out of the fund held by him in that capacity . . . and the court may order otherwise only on the ground that he has acted unreasonably or, in the case of a trustee . . . has in substance acted for his own benefit rather than for the benefit of the fund."

> 22. It was common ground that the source of the right to an indemnity is to be found in section 31(1) of the Trustee Act 2000 and that the provisions of the CPR can only be a commentary upon and complementary to that section. That must be right and must also have been the case in relation to section 30(2) of the 1925 Act and Order 62 r 6 of the Supreme Court Rules. There was some discussion as to whether section 31(1) had changed the law and that the earlier case law should be seen in that light. It seems to me that that was not the effect of section 31(1) of the Trustee Act 2000. On the contrary, it seems to me that it was an attempt to codify the law as it stood.

> 23. Although many more trustees are remunerated as a result of express provisions in the trust deed than in Victorian times and in the early twentieth century, the policy behind the availability of an indemnity has not changed. It is designed to ensure that the trustee is not out of pocket when acting in his capacity as trustee on behalf of the trust and that the trust is efficiently and properly administered. Nothing has changed. The right to an indemnity is part of the fabric of the relationship between the settlor, the trustees and the beneficiaries: see *Turner v Hancock* (1882) 20 Ch D 303 per Jessel, MR at 305.'

32. Mr Kearney referred also to the judgment of HHJ Matthews in *Mussell v Patience* [2019] EWHC 1231 (Ch) at [17], where he said this:

> '17. I cannot deprive executors of their indemnity out of the estate for costs or other expenses or liabilities which they have incurred for the estate unless they have incurred them improperly. This in summary form is the effect of section 31 of the Trustee Act 2000 (applied to executors by section 35) and CPR Part 46 Practice Direction, paragraph 1, acting as an exception to the general rule in CPR rule 46.3. In the caselaw before the CPR and the 2000 Act it was sometimes put (and is still sometimes put) in the form, had the executors or trustees behaved *unreasonably*, or committed *misconduct*? But I do not think the variation in words makes any difference in substance.'

33. Mr Kearney pointed out that, to the extent that costs are awarded inter partes and not from the estate, there was no presumption that they would be paid on the indemnity basis. Mr Grandjouan acknowledged this, and recognised that if an order were made that the first defendant pay some or all of the claimant's

costs from her share, those costs should be assessed on the standard basis. To the extent that the claimant was entitled to recover a greater sum on the indemnity basis, the balance would be recoverable from the estate as a whole.

34. On the separate question of whether the first defendant should bear the claimant's costs from her own share of the estate, Mr Grandjouan relies on the decision of Roth J in *Green v Astor* [2013] EWHC 1857 (Ch). That was a complex application for directions by the administrator of an estate. Roth J set out the three categories of trust litigation as derived from *Re Buckton* [1907] 2 Ch 406. The starting point where costs are necessarily incurred for the benefit of the estate, whether the claim is issued by a personal representative or by a beneficiary, is that they be paid out of the estate. As far as the costs of the claimant personal representative are concerned, that is consistent with modern principle, as summarised in *Price v Saundry*, even though the *Buckton* principles were established with conventional trustee directions applications in mind.

35. Even though applications under section 50 of the 1985 Act are often issued and fought out as conspicuously hostile litigation, it is quite possible for them to be both issued and defended in the interests of the beneficiaries of the estate as a whole. Indeed, the present claim, where the claimant sought her own removal because of her age and because of the difficulties which had arisen in her relationship with Ms Seeley, might be seen to be an obvious case of such a claim issued for the benefit of the estate. Where proceedings are hostile, on the other hand, costs will normally be determined only in accordance with the general principles applicable to costs in civil proceedings, i.e. pursuant to CPR r 44.2.

36. Mr Grandjouan relies on Roth J's comments in *Green v Astor* at [54], to the submission of the administrator in that case that her costs should be paid by a beneficiary personally, because of his conduct:

> '54. Mr Ham responded that a beneficiary has no duty to consent to action proposed by an administrator, or indeed to be polite. That is no doubt correct, but equally, in my judgment, a beneficiary cannot expect to be immune from liability in costs irrespective of his conduct. An order of costs is not to be applied as a sanction for the intemperate and frequently insulting language of Mr Astor's correspondence. But in my view, where unreasonable conduct by a beneficiary is responsible for generating substantial costs on the part of a trustee or personal representative as regards an application to the court, it is appropriate that the burden of those costs should be borne by that beneficiary and not fall on the trust or estate and thus the beneficiaries as a whole.'

37. Roth J went on to say this, at [55]–[56]:

> '55. Mr Astor evidently lost all confidence in Mrs Green as administrator and wished to be in a position where he had before him all the information available to Mrs Green so that he could, in effect, verify all the steps she took in administration of the estate. I have quoted above relatively short extracts from some of the very many emails which Mr Astor sent to Mrs Green. It is his conduct, alone among the beneficiaries, which has led Mrs Green to seek the approval of the court to the Partition Agreement on which she had favourable advice from a Swiss lawyer, which advice she shared with the beneficiaries, and to which the other beneficiaries consented. Further, I consider that it is the conduct of Mr Astor in the litigation which has done much to escalate the costs until, in the light of the agreement "brokered" by Peter Smith J on 2 May 2013, Mr Astor made clear by his counsel for the first time at the opening of the trial that, subject to the question of the power under Swiss law, he was not opposing Mrs Green's exercise of her discretion in entering into the Partition Agreement.
>
> 56. Although in form an application that comes within category (1) of *Buckton*, I do not think it falls neatly within Kekewich J's tripartite classification. It has far more the character of hostile litigation, in which the other individual beneficiaries support the position of the personal representative, who has faced sustained hostility and opposition from the one beneficiary who has opposed this claim. Having regard to the overall justice of the case, I do not regard this as one where the costs should fall on the estate, and thus be at the expense of all the beneficiaries. The appropriate order, in my judgment, is that the costs referable to the second head of relief should be paid by Mr Astor.'

38. I take from this the following two propositions. First that, where a claim or an application by a trustee or personal representative is necessitated by the unreasonable conduct of a beneficiary, that beneficiary may be ordered to pay some or all of the costs incurred by the claimant even though prima facie they are costs which would generally be payable out of the estate pursuant to the indemnity of the trustee or personal representative. And, secondly, that conduct within the litigation itself can justify a similar approach. The purpose of this approach is to protect the interests of other beneficiaries from costs which have not been incurred for the benefit of the estate, in order to respond to unreasonable conduct on the part of another beneficiary. Roth J made clear that he was considering the overall justice of the case, and that the court continues to exercise a discretion in order to do justice between the parties. Furthermore, as he emphasised at [48] (citing *IBM United Kingdom Pensions Trust Ltd v Metcalfe* [2012] EWHC 125 (Ch) at [20]) and at [56], not all cases neatly fit within the *Buckton* categories.

39. I consider that similar considerations apply to the question whether the second defendant can recover her costs from the first defendant. In this case, the second defendant has not explicitly sought an order for her costs out of the estate as a whole, but only that they be paid by the first defendant out of her share of the estate. Mr Grandjouan did, however, also submit that any costs not recoverable from the first defendant should be payable out of the estate, and on the indemnity basis. The starting point where proceedings are brought for the benefit of the estate is that the costs of all parties are paid out of the estate. It follows that where a party's costs have been incurred or increased because of the conduct of a beneficiary, an order may be made that such beneficiary should bear some or all of the costs of the other party.

Discussion

The claimant's costs

40. I consider that, prima facie, proceedings issued by a personal representative for her own removal because she is no longer properly able to act in the role are proceedings brought for the benefit of the estate. She is entitled to her costs out of the estate unless she has acted improperly (or unreasonably, see *Mussell v Patience*, discussed above).

41. I find no reason why the claimant was unreasonable in issuing the proceedings. Her own witness statement sets out a compelling story of Ms Seeley interfering in the sale process in relation to the property, and aggressively and angrily challenging the actions of both the claimant and her solicitors. That is all consistent with what Ms Seeley has written in correspondence during the course of these proceedings, which is in the hearing bundle, and with what she has said in court. While her behaviour in court has been polite, Ms Seeley has tended to become somewhat impassioned when discussing her complaints, at times showing signs of anger. Her complaints are also to some extent incoherent. This all tends to support what is said by the claimant in her witness statement.

42. There is also the factor, for which the claimant cannot herself be in any way blamed, that she is not in good health. It is clear from the capacity report that, even though she has capacity, there are material issues with her health. This suggests to me that it will have been apparent to those around her for some time that it might be better for some other person to take over the role of acting as personal representative of Mr Madanagopalan's estate.

43. Ms Seeley's complaints about the claimant, or about Duncan Lewis, are essentially in relation to the period before the claim was issued. I have summarised those points above. Ms Seeley accepted during the hearing that she had withheld the key to the property from the claimant and had instructed the estate agents to take the property off the market without consent. She accepted

that had been a mistake. These matters, in my view, largely concern her complaint about costs incurred before the proceedings started and not the costs of the claim. Those earlier costs are not before me for consideration (although I would comment that I have seen and heard nothing to suggest that Ms Seeley's complaints are well founded).

44. Ms Seeley has put forward no coherent reason why the commencement of the claim by the claimant was unreasonable. She suggested that the claimant had signed a document renouncing probate but, as she had a grant in her favour, this could have been of no effect.

45. Apart from the reason for the adjournment of the June 2024 hearing which I have described above, I do not consider there to be any improper or unreasonable conduct on the part of the claimant such as to justify depriving her of her indemnity from the estate. Some criticism might be made for the failure to provide costs information for the one proposed independent administrator put forward at the first hearing, but I do not consider this to be improper or unreasonable in the sense discussed in the authorities, and neither defendant suggested that it was. That first hearing was adjourned both for that information to be provided (and for two other alternatives to be proposed), and also because I did not consider it appropriate to decide questions of costs when Ms Seeley was unrepresented and indicated that she wanted to obtain representation for that purpose. The hearing had also overrun its short hearing time. The other costs incurred by the claimant, in obtaining details of alternative personal representatives had to be incurred in any event.

46. Accordingly, I consider that the claimant is entitled to recover her costs of the claim, save for those costs thrown away by the adjournment of the June 2024 hearing. Her schedule of costs for the proceedings as at that date came to a total of £23,306.58, as against the total of £32,729.14 sought at the final hearing (a difference of around £9,400).

47. I have come to the view that the appropriate starting point is in principle to allow to the claimant from the estate the sum sought in the schedule of costs filed in advance of the June 2024 hearing (around £23,300). Whilst it was the costs of that hearing which were thrown away, the final costs hearing was of a similar length, and Mr Kearney's brief fee (of £2,500) was the same. Furthermore, the costs incurred in the preparation of Ms Roche's witness statement explaining her understanding of the claimant's capacity were incurred after the June 2024 hearing, and directly result from what I consider to be unreasonable conduct.

48. Set against that, I recognise that some element of the costs incurred after June 2024, such as consideration of the capacity report, and corresponding with the other parties on costs, were not improperly incurred. To take account of this, and as the assessment is on the indemnity basis, I allow the claimant the slightly

higher sum of £25,000 inclusive of VAT. Ms Seeley objected to any costs being met from the estate but did not make any more particularised objections. Save for that element disallowed above, I do not consider that the costs can be shown to be unreasonably incurred or unreasonable in amount and any doubt would fall to be resolved in favour of the claimant as receiving party.

The second defendant's costs

49. As noted above, Ms Madan seeks orders that the claimant's costs and her own be borne by Ms Seeley, by their being paid out of Ms Seeley's share of the estate as it is administered. With reference to the discussion of *Green v Astor*, above, I consider that there are two material questions: were the proceedings necessitated only by the conduct of the first defendant, and has the conduct of the first defendant escalated the costs incurred in such a way that a costs order ought to be made against her?

50. It is clear to me that these proceedings were necessary, and that the claimant could not remain as personal representative. Complaint is made on behalf of the second defendant of Ms Seeley's conduct before the claim was brought but, on the assumption that those complaints are well founded, they do not show that the entire proceedings were unnecessary. Indeed, her position appears to have been that she would commence proceedings herself if the claimant did not do so, it being obvious that the administration of the estate was not proceeding. The fact that the claimant did so obviated the need for the second defendant to incur those costs. Criticism might also be made of the claimant in not acting sooner to deal with the impasse in administration, but that cannot be a reason to subject the first defendant to a personal costs order.

51. What about the conduct of the first defendant during the proceedings? It might be said that the claim could have been dealt with at far less expense if it had not been opposed by Ms Seeley. From the perspective of the second defendant, however, the litigation costs she incurred in relation to the hearings in January and June 2024 were necessarily limited. She did not attend either hearing, and her involvement was limited to instructing her solicitors to write a sensible letter, indicating that she did not intend to be represented at the hearing, and seeking the appointment of a new personal representative and the conclusion of the proceedings as expeditiously as possible. The need for, and cost incurred in writing, such letters was not caused by the conduct of the first defendant.

52. As far as the claimant's costs were concerned, the first hearing was adjourned partly to enable fuller costs information to be provided, which was not a result of Ms Seeley's unreasonable conduct. The second hearing was also adjourned for reasons which were not unreasonable conduct on Ms Seeley's part. The costs then incurred by the claimant in pursuing and justifying her claim to costs were

also necessarily and reasonably incurred, save to the extent that they have been disallowed, and again not caused by Ms Seeley's conduct.

53. That leaves the costs incurred by the second defendant in preparing for and attending the final hearing to determine the costs of the claim. This accounts for more than half the second defendant's costs, or some £10,400. I consider it to be very relevant that this hearing was needed only because of the adjournment of the previous hearing, which adjournment was the responsibility of the claimant and not of the first defendant. If it had not been for that adjournment, the claim would have been concluded at the second hearing, at which the second defendant was not represented. Even though her solicitors wrote to the court before the hearing, no costs schedule was filed. The second defendant's real participation in the proceedings thus began after the point at which it would have concluded were it not for the issue of the claimant's capacity arising in the way that it did.

54. Standing back, it does not appear to me that those costs incurred after June 2024 were incurred by the second defendant as a result of the unreasonable conduct of Ms Seeley. They were incurred by the second defendant acting in response to the unanticipated adjournment and belatedly putting in a claim for costs.

55. I consider that the comments of Roth J in *Green v Astor* at [54] are apposite. He there said that a costs order was not to be made as a sanction for intemperate and insulting language, but where unreasonable conduct generates substantial costs. Some of what Ms Seeley has said has certainly been insulting, but those insults have been aimed at the claimant's solicitors and not at the second defendant or her solicitors. I agree that the other parties have had to read what Ms Seeley has said, but I consider that it must have been apparent to the second defendant all along that no substantive response from her would be required.

56. Accordingly, I do not consider it appropriate to make an order that the first defendant pay the second defendant's costs, or any of the claimant's costs.

57. As I have indicated above, the claim was brought by the claimant for the benefit of the estate. To the extent that they were incurred in such respect, the second defendant is in principle entitled to an order that her costs be paid out of the estate on the indemnity basis. I do not consider that this applies to her costs incurred since the June 2024 hearing, which have been essentially incurred in pursuing the first defendant personally, on grounds which I do not consider to have been made out. If a costs schedule had been filed for the June 2024 hearing, then the second defendant's costs could have been finally dealt with then, even if the making of an order might have had to await confirmation whether or not the claimant had capacity.

58. That leaves her costs incurred up to June 2024, which are said to be £8,889.50. Even without consideration of Ms Rixon's witness statement, which I did not admit, it is clear to me that the second defendant necessarily incurred costs in relation to the subject matter of the claim before the proceedings were issued, and also in considering the claim and in making a constructive response to the claim once issued. The schedule of costs does not enable the costs in that period to be separately identified, but resolving any doubt in favour of the second defendant, I consider £6,000 plus VAT to be a reasonable sum for the instruction of solicitors and for the correspondence undertaken both before and after the start of the proceedings.

Conclusion

59. For the reasons I have set out above, I will order that the costs of both the claimant and the second defendant be paid as assessed out of the estate of the deceased (and thus borne proportionally by the beneficiaries). The claimant's costs are summarily assessed at £25,000 and the second defendant's costs at £7,200, both figures inclusive of VAT.

60. Finally, by an email sent to the court on 2 January 2025, Ms Seeley asked me not to complete this judgment, but to allow her a further opportunity to obtain representation and to put in evidence. Following the circulation of the draft judgment, she has sent five further emails to the court to similar effect. I am satisfied that Ms Seeley has had every opportunity to obtain representation and to respond to the costs claims against her and against the estate. The other parties are entitled to the conclusion of these proceedings and there are no grounds to justify delaying this decision any further.