

Executor removal in Jersey: Insights from Lakeman case

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An executor (or administrator) is key to the probate process. They are responsible for administering the estate of the deceased and distributing to beneficiaries. It is thankfully rare for there to be contentious disputes between the executor and beneficiaries. However, the Royal Court has recently explored the removal of an executor in the decision of *Lakeman v Lakeman* [2023] JRC 187.

In *Lakeman*, one brother sought removal of the other as executor on the grounds he unreasonably delayed administering the estate, was incapable, in poor health and was hostile towards the beneficiaries.

The Court found the executor failed to open an estate account, despite various agencies attempting to assist him. He also failed to comply with various Court orders. It was found that he was not independent and, in view of the hostility displayed to the beneficiaries, was unlikely to be able to comply with his fiduciary duties.

Agreeing with observations made in the Court of Appeal case of *Representation of Mackinnon* [2010] JLR 508, the Court confirmed that a beneficiary is 'entitled to expect a reasonable level of competence, proportionality and good sense from the person entrusted with protecting their interests' and that the beneficiaries had not received it. Thus, on the facts of this case, the executor was removed, and a professional executor appointed.

As regards costs, the Court found that the behaviour of the executor removed was sufficiently unreasonable, taken as a whole, to justify him being ordered to pay the costs of the application. It was ordered that those costs be paid from his share of the net moveable estate and paid to the applicant's Advocate before any balance was distributed to him.

Article 17 of the Probate (Jersey) Law 1998 provides a mechanism for the removal of an executor and this decision is thought to be the first instance of the Court examining the grounds for removal. The *Lakeman* case clarifies that whilst it is certainly possible to remove an executor, it

will only be in exceptional circumstances. Therefore, professional advice should be sought before any application is made to the Court.

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