

Private Client eBriefing



Leaving a trust in limbo: Can a sole trustee resign?

Article by [Simon Atkinson](#), 30th September 2025

Under the old law of uses, out of which the law of trusts grew, a use would fail for want of a person in whom *cestui que use* reposed his trust and confidence. Under the modern law of trusts this is not so; a trust does not fail for want of a trustee: *Kings v Bultitude* [2010] EWHC 1795 (Ch). This is obviously an important principle given the risk of a sole trustee dying, losing capacity or (if a corporation) being dissolved while in office. Trustees cannot, however, usually voluntarily resign from office if by such resignation the trust would be left with no trustee. The statutory power to retire without a replacement under s. 39 of the Trustee Act 1925 is only available where that would leave at least two trustees (or a trust corporation) remaining. Express powers of resignation likewise will typically only be exercisable where there is at least one trustee continuing in office. What then is a trustee to do if he or she wishes to retire but there is no one willing to take up the mantle?



This question arose for consideration in the recent case of *In re O Trust* [2025] CIGC FSD 56. The relevant facts of the case can be shortly summarised. There had been a breakdown in the relationship between the sole trustee claimant and the beneficiary defendant. The defendant was evidently unhappy with the manner in which the trustee had been administering the trust: the trustee had refused to distribute to the defendant sums to be applied for discharging her tax liabilities; the trustee wanted to pay those sums directly to the relevant authorities: [7]. Kawaley J found that the defendant had 'huffed and puffed' and 'grumbled' about the trustee's actions but had 'never made any coherent criticisms of the conduct of the Trustee': [6]. Faced with this state of affairs, the trustee had been trying to retire since 2019 but no replacement had been identified.

The trustee accordingly approached the court in 2023 seeking orders under the Trusts Act (2021 Revision) (CI) and/or the court's inherent jurisdiction to appoint a new trustee in substitution. The trustee sought orders that its accounts for the period January 2019 to

March 2025 be approved and that it be permitted to pay its usual fees and expenses until it was discharged from office.

The defendant was given an opportunity to file evidence to contest, if she wished, the evidence of the trustee. She did not take up that opportunity and was not represented and did not appear at the hearing.

As the proceedings progressed, the trustee amended the relief it was seeking. It sought an order that it be 'held before the court' without being discharged and that it be directed to file and serve accounts annually (essentially until such time as a replacement trustee might be appointed in substitution).

Kawaley J held that he had jurisdiction under s. 48 of the Trusts Act (2021 Revision) (CI) to grant the relief sought. He accepted Counsel's submission that that statutory power was consistent with long-standing authority that a court would assist trustees in difficult circumstances, citing *Marley v Mutual Security Merchant Bank and Trust Co Limited* [1993] 3 All ER 198.

So far as consideration and approval of trust accounts were concerned, the court applied by analogy the approach adopted by the court in approving executor's accounts. A trustee's right of remuneration under Caymanian law is embodied in s. 47 of the Trusts Act (2021 Revision), which is broadly equivalent to the statutory right of remuneration in England under s. 31 of the Trustee Act 2000, which section in turn applies to personal representatives administering an estate by TA 2000, s. 35. The court relied on the decision of HHJ Matthews (sitting as a deputy judge of the High Court) in *Mussell v Patience* [2018] EWHC 430 (Ch) which held that in such cases the court is not concerned with detailed assessment of costs principles under CPR Part 44; rather, the rule for the approval of accounts is that a personal representative is entitled to be allowed all expenses that have been properly incurred by him in the conduct of his office, except those that arise from his own default: [11] – [13].

Having considered the legal principles concerning the approval of accounts, the Judge then turned to the question of the trustee's resignation. The court was referred to a Canadian case of *Evans v Gonder* 2010 ONCA 127 in which a trustee was held entitled to be discharged despite there being no replacement trustee available, although this was noted by the Court of Appeal to be 'an extreme remedy' which 'will be inappropriate in most cases': [68]. Although the Canadian decision was doubted in *Underhill and Hayton*, it was followed by the English High Court in *Serious Fraud Office v Litigation Capital Limited* [2022] EWHC 3053 (Comm) where Foxton J accepted that the court had jurisdiction to remove a sole trustee without replacement, albeit this 'will be a rare, perhaps exceptional course': [106] – [108].

Applying these decisions, Kawaley J ordered the trustee to be held before the court without being discharged and for the filing and service of accounts annually: [19] – [21].

The Judge hoped that a replacement trustee would be found, which process he noted could be undertaken by the court without the active participation of the defendant.

The case provides an important example of the assistance which courts will provide trustees who find themselves in difficulties, not necessarily of their own making, which cannot be resolved out of court. Trustees are always entitled to approach the court when faced with such difficulties and bespoke solutions can be crafted as needed where exceptional or unusual circumstances require this. For charitable trustees it should be noted that a similar jurisdiction exists entitling them to approach the Charity Commission for guidance or authorisation of specific actions under s. 110 and 105 respectively of the Charities Act 2011, and the Commission has the same jurisdiction as the High Court to appoint, discharge or remove a trustee: CA 2011, s. 69.

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