

Executor and trustees fees: better safe than sorry



In the recent case of [Gavriel v Davis](#) [2022] WTLR 943, Chief Master Marsh had an opportunity to restate and clarify some of the principles relating to the remuneration of executors and trustees.

In this case, a defendant executor had extracted a grant of probate in an [estate administration](#), and sought to charge £27,300 for her time. The claimant beneficiaries considered this unreasonable, and settlement not being forthcoming, the issue came to trial.

The law in this area is well settled. In the absence of a charging clause in a will, a non-professional executor or trustee may only charge for their services with the express agreement of all the beneficiaries, or by order of the court, under the principles explained in *Boardman v Phipps*. In this case, the executor had made some communications, but had not set out a clear fee estimate, or included a schedule of proposed charging rates. There was also no written agreement, only an assertion of an oral agreement with the beneficiaries. The court rejected this assertion on standard contractual principles, considering the lack of evidence and supporting documentation. The executor also claimed estoppel by convention in respect of her fees, which was again rejected for lack of a clear agreement having been reached.

The court took the opportunity to emphasise that the authorising power under *Boardman v Phipps* was to be used sparingly, and in exceptional circumstances, including when it would be unfair to refuse payment. The court further emphasised that the honesty of the executor should be beyond question. Executors are not advised to rely on this discretionary power to authorise fees after they have been incurred. Reaching written agreement with all interested beneficiaries provides certainty and removes the need for costly litigation to recover fees.



How we can help

If you are an executor who would like to charge fees, or a beneficiary concerned about the amount being charged to an estate in which you have an interest, please [contact our experienced team](#), who will be happy to advise you.

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