Neutral Citation Number: [2026] CIGC (FSD) 51

Cause No: FSD 2010-0166 (RPJ) and Others

IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

IN THE MATTER OF THE COMPANIES ACT (2026 REVISION)
IN THE MATTER OF LIQUIDATIONS OF VARIOUS COMPANIES:

Appearances:	**Mr Peter Sherwood and Ms Kalyani Dixit of Carey Olsen for the Applicants**
Before:	**The Honourable Justice Jalil Asif**
Heard:	**On the papers**
Judgment:	**30 June 2026**

Insolvency—resignation of liquidator and appointment of successor liquidator—whether costs of application should be paid out of the estate or borne by the liquidator

---

JUDGMENT

---

1. The context for this judgment is that I have been asked to determine applications by the official liquidators in 20 cases currently assigned to various judges of the Grand Court, as set out in the schedule to this judgment, to appoint an additional liquidator who satisfies the residency requirement in Regulation 5 of the Insolvency Practitioners Regulations 2026 (as amended) or to approve the resignation of Mr Simon Conway of PwC Corporate Finance and Recovery (Cayman) Limited as an official liquidator and to appoint a successor official liquidator from PwC. The applications have been necessitated by Mr Conway's relocation to the United Kingdom from the Cayman Islands for personal reasons. The applications for addition, in those cases where Mr Conway is remaining as a liquidator, or replacement, where he is not, have all been properly prepared and I have approved them.

2. However, the applications raise the question of how the court should approach the issue of the costs of replacing office holders for what I shall call *"non-substantive"* reasons, to distinguish such applications from cases where there is an application to remove and/or replace an office holder for cause. More specifically, the question is whether the costs of the necessary application to the court in each case should be treated as an expense of the liquidation, and should therefore be payable out of the assets of the estate, or should be borne by the office holder or, more realistically, by the firm by which the office holder and their successor office holder are employed.

3. This judgment focusses on the legal costs associated with the applications that are within the scope of GCR O.62. The applicants may themselves have spent time in preparing the applications. The recoverability of fees in respect of any time spent by the applicants or their staff on these applications is not within GCR O.62 and is not something that is before me for determination. The ability of the applicants to obtain payment in respect of their own time and that of their staff would have to be considered as part of an application for approval of the applicants' remuneration in due

course. Nevertheless, the principles discussed in this judgment should apply with equal force to office holders, as they do to their agents.

4. The applicants in the various cases seek orders that the costs of the applications should be treated as costs of the liquidation in each case. Conversely, the materials filed in support of the applications include orders made in some of the cases by other judges in response to previous resignations and appointments of office holders, where those judges ordered the costs to be borne by the office holder and not to be treated as costs of the liquidation. My own experience from other cases that have come before me is that office holders and their attorneys have taken different approaches to costs when seeking to replace office holders for non-substantive reasons, for example due to retirement or moving to another firm.

5. When I raised this divergence of approach regarding costs with the attorneys for the applicants, it became apparent that the question of costs in such cases is not addressed in the CWR and neither is there any case law in the Cayman Islands on the approach that the court should take to the costs of applications to replace liquidators for non-substantive reasons. Further, the attorneys' research into orders made in other cases, to the extent that that information is available, indicates that there does not appear to be a general consensus on the approach that should be taken by attorneys or, indeed, by judges. This judgment is therefore intended to provide some general guidance on the costs issue in this kind of case.

6. The submission on behalf of the applicants is that the costs of the applications should be paid as an expense of the relevant liquidation for the following reasons:

   6.1 The CWR do not provide any guidance as to how the costs of applications of this kind should be allocated.

   6.2 The Court has a broad discretion to award costs as it considers appropriate in the circumstances.

   6.3 An application for orders releasing an official liquidator and/or appointing a replacement is not a sanction application, as defined in CWR O.11, r.1(1), and is not an application for approval of an office holder's remuneration. It is therefore not strictly within the scope of CWR O.24, r.9. However, the Court can draw an analogy with the costs of applications of those kinds, where the costs should be paid out of the estate unless the Court is satisfied that either: (a) the application should not have been made as the directions sought were unnecessary or served no useful purpose; (b) the directions sought were wholly unreasonable; or (c) the official liquidators have misled the Court or acted unreasonably: see CWR O.24, r.9(2).

6.4 The Court should in principle therefore award an office holder their costs of an application to add or substitute an office holder as an expense of the liquidation unless they have acted unreasonably or improperly.

6.5 The applicants accept that applications to release, add and/or replace office holders are only necessary due to the resignation of an office holder. They say that it is not unusual or unreasonable that it may be necessary for an office holder to retire and for an appropriate replacement to be appointed in the interests of stakeholders. Applications are accordingly part of the overall administration of the estate and should be paid for by the estate and not by the office holder.

6.6 In the present cases, the applications are necessary due to the retirement and departure from the Cayman Islands of Mr Conway, a longstanding official liquidator. The majority of the liquidations in question have been ongoing for several years. The applicants' approach has been entirely reasonable, identifying the most appropriate replacement office holders and seeking to minimise costs by making the applications as a block, with a request that they be dealt with by a single judge of the Financial Services Division.

7. I will say at the outset that the applicants and their attorneys are to be commended for the way that they have prepared and presented the applications for orders in each of the relevant cases. Making the applications as a group has been helpful and has allowed the applications to be dealt with efficiently. The approach of the applicants and their attorneys is entirely consistent with the overriding objective and is likely to have significantly reduced the overall costs of dealing with the 20 applications. However, I consider that this point goes to the reasonableness of the amount of the

costs incurred, not to their incidence as between the applicants and the various estates in liquidation.

8. Due to the circumstances in which the question of the incidence of costs has arisen, I have not had the benefit of submissions on behalf of creditors or from other stakeholders taking any contrary position to that put forward by the applicants' attorneys. Indeed, it appears that in those cases that are before me where a liquidation committee has been formed, the liquidation committee has not expressed any view regarding the costs of the application. However, it is not clear from the correspondence in evidence that the applicants' proposal that the costs of the applications should be paid from the various estates was drawn to the attention of the liquidation committees. I therefore do not regard the absence of comment on that point from any creditors or liquidation committees as being indicative of positive support for the applicants' position.

9. I accept the applicants' submission that the Court has a broad discretion to award costs as it considers appropriate in the circumstances. However, that discretion is not at large, and should be exercised on a principled basis. In this judgment, I attempt to identify what those principles should be.

10. In my view, the starting point is the judgment of Ferris J in the English case of *Mirror Group Newspapers plc v Maxwell & Ors* [1998] BCC 324. The court was faced with an application by court-appointed receivers for directions as to how their remuneration should be fixed. In setting the context for his decision on that question, Ferris J explained at page 333F-H:

> *"The essential point which requires constantly to be borne in mind is that office-holders are fiduciaries charged with the duty of protecting, getting in, realising and ultimately passing on to others assets and property which belong not to themselves but to creditors or beneficiaries of one kind or another. They are appointed because of their professional skills and experience and they are expected to exercise proper commercial judgment in the carrying out of their duties. Their fundamental obligation is, however, a duty to account, both for the way in which they exercise their powers and for the property which they deal with.*
>
> *Office-holders are nowadays not normally expected to act gratuitously. It is salutary to remember, however, that the rule that a trustee must not profit from his trust is a rule that applies to all kinds of person who are in a fiduciary position (see* Snell's Principles of Equity *(28th edn, 1982, Sweet & Maxwell), pp. 249–252). The allowance of remuneration in particular cases represents an exception to this rule, but it inevitably involves a conflict between the interest of the fiduciary who is to receive such remuneration and the interests of those to whom the fiduciary duties are*

> *owed, who will bear whatever remuneration is allowed. A consequence of this is that it must be for the office-holder who seeks to be remunerated at a particular level to justify his claim. As I see it this is simply one aspect of his obligation to account. What he retains for himself out of the property which comes into his hands as office-holder is not available for those towards whom he is a fiduciary. He cannot therefore account for it by paying it over. The only other way in which he can account for it is by showing that he ought to be allowed to retain it for himself. But this is necessarily a matter for him to establish."*

Ferris J's statement later in his judgment at page 335 concerning the need for an office holder to give full particulars of their work in order to justify a claim for remuneration was adopted by Smellie CJ in ***AHAB v Saad Investments Co Ltd*** [2011] 2 CILR 1. In doing so, Smellie CJ must necessarily have accepted the correctness of the underlying principle on which that statement was founded, namely the passage in Ferris J's judgment that I have set out.

11. The Privy Council in the recent case of ***Attorney General of Trinidad and Tobago v CL Financial Ltd (In Liquidation)*** [2025] UKPC 41 considered in detail the question of the approval of liquidators' remuneration, and the nature of the evidence in support and level of detail required. In doing so, the Privy Council confirmed the correctness of Ferris J's reasoning in ***Mirror Group Newspapers***, saying at paragraphs 43-45:

> *"43. The various reports and decided cases which have dealt with these issues have focused attention on some basic principles which are widely accepted across common law jurisdictions.*
>
> *44. First, liquidators and other officeholders appointed to administer an insolvent estate occupy a fiduciary position and they may not apply assets of the estate for their own benefit without proper authority. Secondly, as a consequence, the burden is on officeholders to justify any remuneration for which they seek approval. It follows, thirdly, that if after considering the evidence and having regard to the guiding principles there remains any element of doubt, such doubt should be resolved by the court against the officeholder. Fourthly, the court should give weight to the fact that the officeholder is an officer of the court and, where applicable, is a member of a regulated profession and as such is subject to rules and guidance as to professional conduct. It may be assumed, unless the evidence suggests otherwise, that the officeholder is behaving with integrity. It does not, however, follow that the work undertaken by the officeholder was reasonable and proportionate on an objective basis. That is an issue to be decided by the court, the creditors' committee or others responsible for approving the remuneration. Fifthly, the remuneration fixed by the court should be fair and reasonable for the work properly undertaken.*
>
> *45. These principles have been accepted and applied in many of the common law jurisdictions which have grappled with the problems of officeholders' remuneration."*

12. The Privy Council's opinion in ***Attorney General of Trinidad and Tobago v CL Financial Ltd*** on the appropriate approach to making and determining remuneration applications by office holders is intended by the Privy Council to give general guidance and to be applicable across the jurisdictions

that still look to the United Kingdom as the source of the common law. It is likely to be adopted and applied in the Cayman Islands, and so I have not considered it fruitful to look at decisions of the Grand Court or the Court of Appeal on that issue for the purpose of preparing this judgment.

13. Looking further afield, there is a useful decision in the High Court of Hong Kong of Recorder Eva Sit SC in *Re Nimble Holdings Company Ltd* [2026] HKCFI 1445. The Recorder was dealing with the recoverability by an office holder of their costs incurred in complying with an order for discovery in relation to a remuneration application. Whilst the factual matrix was therefore somewhat different from the applications before me, I have found Recorder Sit's analysis of the relevant principles quite helpful. At paragraph 40, the Recorder said:

> *"40. As fiduciaries they are subject to the 'no profit' rule i.e. a trustee must not profit from his trust, and allowance of their remuneration represents an exception to this rule. This exception inevitably involves a conflict between the interests of the fiduciary who is to receive such remuneration and the interests of those to whom the fiduciary duties are owed, who will bear whatever remuneration is allowed."*

14. In the subsequent paragraphs of her judgment, Recorder Sit focussed on the question of the office holder's ability to claim remuneration. However, I consider her analysis applies with equal force where an office holder is seeking payment from the assets of the estate of their legal costs in relation to their application for addition of another office holder or replacement.

15. Drawing on the cases to which I have referred, I conclude that the court has a discretion as to the incidence of costs in respect of applications to add or to substitute new office holders for non-substantive reasons. The court should consider all the circumstances in determining how to exercise its discretion. The relevant principles to be applied are as follows:

15.1 An office holder is a fiduciary. They are appointed by the court to protect, get in and realise the assets and property which belong to the entity in receivership, administration or liquidation and to distribute those assets to creditors or to members and to other stakeholders, as appropriate. In doing so, their duty is to maximise returns for creditors and any other relevant stakeholders.

15.2 As a fiduciary, the office holder is subject to the "no profit" rule and may not apply the estate's assets for their own benefit, including by way of paying their remuneration and expenses, without proper authority. To mitigate the effect of this common law rule, common law jurisdictions expressly provide mechanisms in their insolvency legislation by which an office holder can obtain approval for payment of their remuneration and expenses, including the fees of professional advisers whom they employ. These mechanisms generally require the office holder to obtain approval from the court for the remuneration, expenses and disbursements they are seeking to charge to the estate.

15.3 In addition, an office holder is under a fiduciary duty to account to the estate. Any asset of the estate that the office holder retains for himself by way of remuneration or payment of expenses is no longer available for payment to those for whom he is a fiduciary. The office holder cannot therefore account by paying that asset over. The only other way in which they can provide an account is by showing that they should be allowed to retain the asset (or its value) for themselves.

15.4 Accordingly, the burden is on the office holder, who seeks to be remunerated from the assets of the estate or to be reimbursed for expenses, to justify their claim to be allowed to do so. This necessarily includes demonstrating that the work in respect of which the remuneration or expenses are claimed was of value to the estate, rather than simply being of value to the office holder. The office holder must also provide sufficient evidence and explanation of the work to justify approval, as explained by the Privy Council in *Attorney General of Trinidad and Tobago v CL Financial Ltd*.

15.5 If, after considering the evidence and having regard to the guiding principles, there remains any element of doubt, such doubt should be resolved by the court against the officeholder, to reflect where the burden of proof lies.

15.6 However, the court should give weight to the fact that the officeholder is an officer of the court and, where applicable, is a member of a regulated profession and as such is subject to rules and guidance as to professional conduct. The court may assume, unless the evidence suggests otherwise, that the officeholder is behaving with integrity. It does not, however, follow that the work undertaken by the officeholder was reasonable and proportionate on an objective basis. That is an issue to be decided by the court, the creditors' committee or others responsible for approving the remuneration.

15.7 The remuneration fixed by the court should be fair and reasonable for the work properly undertaken and should reflect the value to the estate of that work. Whilst the modern approach is now to seek remuneration on a time spent basis, this may need to be modified, depending on the circumstances of the estate in question.

15.8 It is inevitable that, in some cases, it will be necessary to add an office holder or to replace an office holder due to: (a) death; (b) retirement; or (c) an inability or unwillingness to continue in office, i.e. the addition or replacement is due to the vicissitudes of life or for some reason other than for cause.

15.9 However, applying the principles set out above, unless there is some tangible benefit to the estate from the addition or replacement in question that outweighs the benefit to the existing office holder, the officer holder will be unable to demonstrate that the application of the no profit rule and their duty to account allows them to charge the estate with the associated remuneration or expenses, or it will be doubtful that they can do so and such doubt should be resolved against them.

16. This last point can be rationalised in another way by recognising that the consequences of the death, resignation, or inability or unwillingness to continue to act as liquidator should generally be a cost of doing business for the office holder's firm rather than being a cost attributable to the particular liquidation unless, perhaps, the resignation or inability or unwillingness to continue to act is directly caused by some feature of that liquidation.

17. Before turning to my decision in the cases that are before me, I record that I have also considered the approach to the costs of block transfer applications in England and Wales to deal with a change of office holder in multiple cases, although there is no similar procedure currently available in the Cayman Islands. Rule 12.38(4) of the Insolvency (England and Wales) Rules 2016 provides that:

> *"(4) In any case other than an application relating to the appointment of an administrator, in deciding to what extent (if any) the costs of making an application under this rule should be paid as an expense of the insolvency proceedings to which the application relates, the factors to which the court must have regard include—*
>
> *(a) the reasons for the making of the application;*
>
> *(b) the number of cases to which the application relates;*

(c) the value of assets comprised in those cases; and

(d) the nature and extent of the costs involved."

By contrast, Rule 12.38(5) provides that a block transfer application in respect of an administrator will be paid as an expense of the administration unless the court directs otherwise, in other words there is a presumption in favour of the costs being borne by the estate. I am not aware of the underlying rationale for this difference in approach.

18. There do not appear to be any judgments in England and Wales that are available through the usual legal databases considering the application of Rule 12.38(4) of the English Insolvency Rules or providing any additional guidance on the approach to be taken to questions of costs in block transfer cases. However, Issue 82 of *"Dear Insolvency Practitioner"* (November 2018), the circular published in the United Kingdom by The Insolvency Service, includes the following:

> *"The Secretary of State by virtue of Rule 12.37(6) Insolvency Rules 2016 receives a copy of all block transfer applications. Insolvency Practitioner Regulation Section (IPRS), as oversight regulator, considers the application and makes any relevant regulatory checks with the Recognised Professional Bodies.*
>
> *It has been noted that contained within some recent applications, are clauses attributing the costs of the application to the various estates listed in the schedule.*
>
> *When making an application, the insolvency practitioners and their legal representatives should be mindful of Rule 12.38(4).[…]*
>
> *IPRS will bring to the Courts' attention any costs contained in the application for consideration by the Judge. It should be noted that in a recent transfer the order was made, excluding costs which the Judge said should be picked up as an expense by the firm making the application."*

This tends to suggest, albeit gently, that The Insolvency Service considers that the costs of block transfer applications should be borne by the office holders and not by the estates affected, and that at least one judge in England has taken that view.

19. In each of the cases before me, the reason for the application for the addition of a liquidator who satisfies the residency requirement in Regulation 5 of the Insolvency Practitioners Regulations or to replace Mr Conway is that Mr Conway has voluntarily decided to relocate from the Cayman Islands to the United Kingdom for personal reasons. There is nothing wrong with Mr Conway's decision to do so. However, in my view, there is no substantive benefit to the estates in question from the need, as a result, to make these applications to the court. It might be said that there is a benefit in ensuring that the liquidations continue to comply with the legal requirements of the Cayman Islands, but I

consider that would better be viewed as a benefit to the office holders rather than to the entities in liquidation. In addition, the need for these appointments has, of course, only arisen as a result of Mr Conway's relocation.

20. In the circumstances, applying the broad principles that I have set out in this judgment, I do not consider that I should exercise my discretion on costs to order that the costs of the applications should be payable out of the various estates or should be treated as expenses of the liquidations. I consider that to do so would be to ignore the effect of the no profit rule and would not be just as between the creditors in each case and the office holders.

21. Whilst this judgment addresses the question of the legal costs involved in these applications, the principles that I have set out will, obviously, apply with equal force to any claim by the applicants for their own remuneration insofar as they have devoted their own time to these applications.

Dated 30 June 2026

____

THE HONOURABLE JUSTICE JALIL ASIF
JUDGE OF THE GRAND COURT

Schedule to judgment

This schedule identifies the causes in respect of which this judgment is delivered and where the Court has made an order for the addition of the specified new office holder to meet the residency requirement in Regulation 5 of the Insolvency Practitioners Regulations 2026 (as amended) or where Mr Simon Conway has resigned as an office holder and is replaced by the specified new office holder.

Cause	Case name	Liquidation type	Current office holders	New office holder	Type of appointment
FSD2010-0166 (RPJ)	Banco Privado Portugues (Cayman) Ltd	Official	Simon Conway Jess Shakespeare	Ruth Simpson	Addition
FSD2013-0143 (RPJ)	Suntech Power Holdings Co., Ltd	Official	Simon Conway Yat Kit (Victor) Jong	Jess Shakespeare	Addition
FSD2015-0014 (MRHCJ)	China Lumena New Materials Corp	Provisional	Simon Conway Man Chun (Christopher) So Yat Kit (Victor) Jong	Ben Henshilwood	Replacement
FSD2015-0019 (MRHCJ)	Ardon Maroon Asia Dragon Feeder Fund	Official	Simon Conway Jess Shakespeare	Ben Henshilwood	Replacement
FSD2015-0144 (NSJ)	Brighton SPC	Official	Simon Conway Jess Shakespeare	Ben Henshilwood	Addition
FSD2016-0009 (MRHCJ)	Lehman Brothers CDO Associates (Cayman) Limited	Official	Simon Conway Jess Shakespeare	Ben Henshilwood	Replacement
FSD2016-0186 (NSJ)	Natural Dairy (NZ) Holdings Limited	Provisional	Simon Conway Yat Kit (Victor) Jong	Ben Henshilwood	Replacement
FSD2017-0224 (MRHCJ)	CECEP COSTIN New Materials Group Limited	Official	Simon Conway Man Chun (Christopher) So Yat Kit (Victor) Jong	Ben Henshilwood	Replacement
FSD2018-0113 (RPJ)	CW Group Holdings Limited	Official	Simon Conway Man Chun (Christopher) So Yat Kit (Victor) Jong	Ben Henshilwood	Replacement
FSD2020-0274 (NSJ)	Altair Asia Investments Limited	Official	Simon Conway Man Chun (Christopher) So Peter Greaves	Ben Henshilwood	Replacement

Cause	Case name	Liquidation type	Current office holders	New office holder	Type of appointment
FSD2021-0287 (NSJ)	China Silver Asset Management Limited	Official	Simon Conway Man Chun (Christopher) So Hiu Yeung (Jacky) Wan	Ben Henshilwood	Replacement
FSD2021-0332 (NSJ)	Puxin Limited	Official	Simon Conway Man Chun (Christopher) So Yat Kit (Victor) Jong	Ben Henshilwood	Replacement
FSD2021-0349 (MRHCJ)	Evergreen International Holdings Limited	Official	Simon Conway Man Chun (Christopher) So Yat Kit (Victor) Jong	Ben Henshilwood	Replacement
FSD2024-0124 (JAJ)	Meta Data Limited	Official	Simon Conway Yat Kit (Victor) Jong Ka Yee Annette Lee	Ben Henshilwood	Replacement
FSD2024-0377 (MRHCJ)	Amber Hill GO Fund SPC	Official	Simon Conway Man Chun (Christopher) So Yat Kit (Victor) Jong	Ben Henshilwood	Addition
FSD2024-0378 (MRHCJ)	Mount Peak Fund SPC	Official	Simon Conway Man Chun (Christopher) So Yat Kit (Victor) Jong	Ben Henshilwood	Addition
FSD2024-0379 (MRHCJ)	Mozi Fund SPC	Official	Simon Conway Man Chun (Christopher) So Yat Kit (Victor) Jong	Ben Henshilwood	Addition
FSD2024-0380 (MRHCJ)	Water Wood Capital Management Limited	Official	Simon Conway Man Chun (Christopher) So Yat Kit (Victor) Jong	Ben Henshilwood	Addition
FSD2025-0138 (JAJ)	Oasis FX Opp SPC	Official	Simon Conway Man Chun (Christopher) So Yat Kit (Victor) Jong	Ben Henshilwood	Addition
FSD2025-0173 (JAJ)	Energy Evolution GP Limited	Provisional	Simon Conway Man Chun (Christopher) So Yat Kit (Victor) Jong	Ben Henshilwood	Replacement