



ICAEW submission to Justice Select Committee's call for evidence: probate

INTRODUCTION

1. ICAEW's Professional Standards Department (PSD) has prepared this response in its capacity as an Approved Regulator for the reserved legal service of probate. ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest and regulates more than 160,000 chartered accountant members in over 160 countries. ICAEW is an Approved Regulator and Licensing Authority for the administration of oaths and probate under the Legal Services Act 2007. ICAEW accredits around 360 firms to undertake probate activities. More information about our role as an improvement regulator can be found [here](#).
2. ICAEW welcomes the opportunity to respond to the Justice Select Committee's call for evidence on probate. Our response reflects the views of ICAEW accredited probate practitioners (probate practitioners) and other individuals with experience using the service delivered by HM Courts and Tribunals Service (HMCTS). Our submission addresses certain questions the Committee has sought evidence on within each section.
3. We recognise the recent efforts made by HMCTS to address delays and improve its service, particularly in terms of upskilling staff and allocating resource to specialist teams. However, despite reforms and procedural improvements, long delays continue, exacerbated by a backlog of paper applications. Some delays can be extreme, with some paper or stopped applications reported to take around 12 or 18 months to process. This is not only time consuming and stressful for all concerned but can also have a serious financial impact on bereaved families.
4. To understand these issues in more detail, PSD published a survey in December 2023, seeking views and evidence from ICAEW probate practitioners and individual probate service users. We received 40 responses to the survey. A lack of confidence in the service, prolonged delays, increased costs, and inadequate communication were key themes raised by respondents throughout our survey.
5. We welcome a review of how the probate service could be improved and the financial impact on bereaved families mitigated. Our survey suggests that four key areas for improvement are as follows:
 - A more customer-focused approach to service delivery, for example a minimum service level agreement.
 - The ability to submit all applications online, which is not currently the case for example where applicants have lasting power of attorney (POA).

- Regular updates and communication points with a case worker during the application process before 16 weeks has elapsed.
 - Relief for families from the impact of inheritance tax (IHT) and other costs.
6. Our response to the key questions is based on evidence provided by probate practitioners and other users of the probate service. We would be pleased to share our survey responses in more detail if required.

Answers to key questions

CAPACITY, RESOURCES AND DELAYS

What are the principal causes of the delays in issuing grants of representation?

7. Our survey revealed that 18% of respondents experienced average processing times of 25 weeks or more and 25% reported an average wait of 28 weeks or more. In some cases, the wait can be even longer. Respondents noted that it is not average processing times but the '*extremes*' that is the chief concern with delays. For example, some straightforward applications can take a week to process, while others can take around 12 to 18 months.
8. We asked respondents to rank the principal reasons for delays. A lack of capacity and resources at HMCTS was ranked highest and was closely linked to concerns around communication and the backlog of cases. For example, the only way for applicants to obtain updates on paper applications is by calling the help desk which can involve long waits of 30 to 60 minutes or more. One respondent reported waiting four weeks for an initial response to a non-urgent email, followed by six weeks for a follow up email.
9. Some respondents noted that some delays can also be the result of errors made by HMCTS. For example, a respondent noted '*it took 12 months to gain Letters of Administration...[as] they were unable to trace our application*' this was eventually found '*out of the blue*' during which time the value of an asset had reduced. While it is not unusual for documents to go astray occasionally, the length of time taken to rectify this is concerning. It suggests there may be a lack of suitably experienced staff at HMCTS.
10. Delays also often occur when a paper application must be submitted, for example, where applicants have a POA. This can be because errors are not picked up as easily as online applications. Overwhelmingly, responses highlight that a lack of updates exacerbates such delays, as well as feelings of frustration. Stopped applications are diverted to a separate queue and a team in Newcastle who cannot be contacted directly by telephone. Respondents also reported frustration that straightforward queries can't be resolved quickly because they are unable to speak to HMCTS for 16 weeks from submission.

What is being done to overcome the current delays and are there any gaps?

11. In terms of reducing delays, we are aware that HMCTS have recently recruited more staff, introduced specialist teams, and upskilled their call advisers to build capability within existing resources. These operational improvements do appear to be having some positive impact on call handling times and the backlog. However, lengthy delays remain and gaps in service are particularly evident when applications are complex, are submitted by post, or when errors occur.

12. Many respondents felt that resources need to be increased to ensure applications are assessed in a timelier way. For example, a respondent commented: *'I think there needs to be more staff reviewing cases and not waiting for weeks ... to look at new information sent in or requested by them.'* Crucially, our findings suggest that any potential increase in resource should be targeted at priority areas such as the backlog and stopped applications.
13. Other responses suggest that a lack of timely updates from HMCTS adds to delay and makes it difficult to manage the expectations of executors and beneficiaries about timescales. Respondents also mentioned they would like more information about changes in HMCTS' procedures. A key improvement in terms of service delivery would therefore be to focus on customer care, guidance, and communication. This could include transparent minimum service level agreements or customer service targets.
14. Providing regular communication stages or touch points during the application could also help to manage expectations and improve information sharing. It could also encourage ownership of aged cases by HMCTS agents so that applications reach a timely conclusion. We understand that HMCTS needs to focus resources on progressing applications, however providing regular updates on delays would improve transparency and provide assurance for service users. It would also help probate practitioners to manage expectations about timescales.
15. Our findings also suggest that a key service gap relates to applications that are stopped for errors, anomalies, or queries. For example, respondents reported cases being stopped when there are intestacy issues or where an affidavit is required. One respondent noted that this resulted in a six-month delay to issue the grant of probate. Again, this is because applications are diverted to a different queue and there can be a lack of communication for an extended period.
16. Avoiding errors in applications helps to prevent delays. Automated online application checks and website guidance can help with this. However, what is currently missing are clear and accessible communication channels to address queries and prevent potential issues at the start of the process. Additionally, a clear explanation that timescales are likely to be longer with paper applications and cases requiring additional documents would help applicants to have more realistic expectations. Having this information in advance could also potentially reduce follow up calls to the helpline and prevent resources from being overstretched.

What has been the impact of delays and what should the Government do to mitigate that impact?

Emotional and psychological impact

17. 85% of probate practitioners reported that the main impact of delays on executors and beneficiaries was emotional or psychological. An individual executor highlighted a lack of information and timeliness can have a particular impact on grieving families because it can mean an *'inability to have closure and move on with our lives'*. They said, *'living with the present uncertainty is extremely stressful and very unfair.'* Delays also caused tension between executors and beneficiaries who were under financial strain and waiting for bequests to be realised.

Financial impact on estate

18. 78% of respondents noted that probate delays have an adverse financial impact on clients and the value of estates. Property sales being frustrated was a frequent issue because buyers can often be reluctant to wait long periods for probate. Share values are also affected as they can only be sold once probate has been granted. If there is a long delay before their sale and a loss is made, IHT loss relief may not be available as it can only be claimed if shares are sold within 12 months of death.
19. Delays also have an impact on any estates where IHT is due and paid in instalments because tax becomes payable six months after the end of the month of death. If the tax is not paid, interest accrues, reducing the value of the deceased's estate. Other examples of financial impacts reported by respondents include:
- financial penalties incurred in other countries
 - larger capital losses and gains being incurred in estate administration when selling investments
 - some estates having to file estate tax returns which might have been otherwise avoided.

Financial hardship and family relationships

20. Many respondents reported experiencing difficulties meeting ongoing costs for the estate and even building up debts. Assets tied up in the probate process can sometimes be needed by beneficiaries to meet their immediate financial needs following the death of a family member. For example, an individual executor described helping a beneficiary who was experiencing financial hardship because of probate delays following the death of their partner. The executor had to use their credit card to help them, and this unfortunately led to their own financial hardship as well as building up debt. The executor felt that the probate service lacked empathy and were immune to their concerns about the urgency of the matter. Ultimately, the delay damaged a long-standing relationship with the beneficiary who believed the executor was responsible for '*deliberately withholding money.*'

Reputational and financial impact for practitioners

21. Probate practitioners also reported that delays had a financial and reputational impact on their businesses. Delays mean they cannot bill for work in progress which affects their cashflows. Additional administrative costs following delays cannot be recouped when matters are billed on a fixed cost basis.
22. In terms of reputational impacts, practitioners have difficulty keeping executors updated and informed about progress. This can lead to complaints to the firm about their own service, particularly when a property sale is involved. In one extreme case, a practitioner reported that HMCTS delays even led to legal action. For example, a respondent reported that '*beneficiaries will sometimes "shoot the messenger" and perhaps think we got something wrong in the application.*'

Proposed government action

23. We understand that average waiting times are gradually improving, however, respondents tell us they remain high, particularly with paper applications or when stops arise. The evidence we have highlighted demonstrates this has a huge impact on bereaved families and can make probate a stressful, time consuming and costly experience.

24. Clearly further action is needed by government to increase the resources available to HMCTS to reduce application processing times. In addition, we would encourage government to consider how the financial impact of delays on executors and beneficiaries can be mitigated. For example, government should consider extending the current 12-month time limit for IHT loss relief on shares to mitigate the existing financial impact on estates due to long delays at HMCTS.

What can be done to avoid stops?

25. We are aware that reducing stops is an area of focus for HMCTS and they have recently launched a new process to reduce stops that arise due to the IHT421 form. However, a quarter of our respondents mentioned errors and stopped applications as key issue leading to lengthy delays. This is because there is a delay allocating these applications to a case worker, which means that errors are not communicated to applicants promptly. This could be avoided by enabling applicants to rectify simple errors as soon as they are identified. For example, by allocating trained resource to triage straightforward errors on applications and notify applicants directly on the probate portal.

26. The ability to submit more applications and evidence securely online could also help to avoid stops. This is because clerical errors could be picked up automatically. Fostering greater collaboration with individuals and practitioners could also help to improve accuracy on applications. For example, by establishing practitioner forums and sharing updates on frequent errors and how to avoid them in podcasts, webinars or in online training videos, as well as a dedicated help page

How well is the system working for complex probate applications?

27. Respondents had mixed views about the handling of complex applications, and the complexity of applications was not considered a significant cause of delays. Many respondents commented that overall, they felt that complex applications are managed well, but they often take a long time to process. However, some respondents said that they were not being made aware that applications are considered complex by HMCTS. They also highlighted inconsistency with service levels on complex paper applications.

PERFORMANCE MEASUREMENT AND DATA

What mechanisms and metrics should be used to judge on a regular and ongoing basis whether the Probate Registry is performing well?

28. HMCTS currently provides information on case volumes, numbers of resolved applications and the average timescale of applications processed end to end. However, our survey highlighted that some respondents did not feel that the reported timescales were a realistic reflection of current processing times for applications. This may be because data on average processing times does not adequately capture the outlier cases in a way that is visible to users.

29. While it is useful to have statistics on case volumes, numbers of resolved applications, and time taken to complete the processing of an application, other metrics may be needed to assess the performance of the probate service. For example, data on the oldest cases and how

long some of these cases have been stopped for. Given the impact of poor communication from HMCTS, it would also be useful to measure the time taken to respond to emails and other queries raised on cases. Metrics related to resource efficiency can increase transparency in terms of assessing the service's overall performance.

30. Gauging satisfaction levels and the number of complaints received is another useful measure. It helps individuals to judge performance and can provide insights into potential areas for improvement. There may also be merit in using tools and metrics that present data in a user-friendly format to promote clarity.

TECHNOLOGICAL CHANGE AND INNOVATION

Does the probate portal provide improved access to justice and value-for-money?

31. Our survey indicates that the probate portal does not provide improved access or value for money for professional practitioners. Seventy per cent of respondents felt that the portal had not improved efficiency, and just 12% felt that it had reduced costs. However, respondents were less likely to consider that poor technology was responsible for delays. Some commented that digital reforms had a positive effect on the efficiency and accuracy of the service. However, in many cases this was negated by the fact that certain applications and physical documentation must still be posted. These documents need to be scanned in by a HMCTS agent, extending application timescales.
 - A respondent said: *'Filling in a digital form is quicker than a paper form with less chances of error. The Online option for professionals is a positive improvement but with many of our cases [we are] ... appointed under a POA from the executors, these types of applications are not capable of being submitted Online so we still need to use paper applications where we have no visibility or tracking capability.'*
32. Responses therefore highlighted disappointment that digital reforms have not had a significant impact on improving access to justice. This was perceived to be because of inconsistencies in applications, cost cutting and a reduction in staff resource. One respondent noted that: *'too many applications need a manual form when the smallest problem arises. Further delays then occur.'*
33. The ability to submit applications online should mean that the service is more efficient. For example, by enabling probate practitioners to monitor the progress of their application without needing to contact HMCTS. However, respondents reported that the online system does not always provide clear, helpful information and communication with HMCTS remains a challenge.
34. For example, our respondents said: *'The HMCTS portal provides little information about the status of applications. The comments put in by HMCTS staff are usually abbreviated and unhelpful. A case may be put on stop without any explanation why. There is no ability to speak to the person handling a case.'*

PEOPLE'S EXPERIENCE OF PROBATE

How well are beneficiaries, executors and the bereaved protected and supported through the probate process?

35. Individuals applying for probate are likely to be grieving. They need to be supported to navigate the probate system and to be treated with empathy and sensitivity. However, responses from individual executors strongly suggested that most did not feel supported or that their concerns were listened to. They highlighted that being unable to speak to an agent for 16 weeks prolongs uncertainty and exacerbates the emotional toll on families.
36. A respondent highlighted: *'Executors are left in a position where they must pay for things themselves until probate is granted. How is that fair? If there is money in the estate, then this should be accessed where there is good reason Beneficiaries are not contacted at all so have no idea - this places a big burden on the executor...If the probate office does not provide a progress update on application, then beneficiaries will naturally speculate as to what's happening... Considering probate is to do with people dying, there is very little empathy and the bereaved are not protected.'*

FEES AND THRESHOLDS

Are the fees and thresholds set at the right level?

37. Most respondents (69%) felt that fees are set at the right level, while almost a quarter felt that fees are too high. However, some indicated that overall, they did not feel that fees were fair or that the service represented value for money. One respondent felt that the threshold is too low and should be £25,000. Another felt that fees should not be higher for more complex cases as they are not always larger estates.

Conclusion

38. Overall, the evidence shared by our respondents demonstrates that professional and individual users of the probate service regularly experience significant delays and feel that communication with HMCTS is not satisfactory.
39. Delays have significant implications on the settling of an estate, the value of assets, personal relationships, and finances. We encourage government to take action to address delays in processing of probate applications so that bereaved families are not subject to further cost and distress at a deeply challenging and emotional time.

22 January 2024