House of Commons

Justice Committee

Oral evidence: Probate, HC 520

Tuesday 12 March 2024

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Watch the meeting

Members present: Sir Robert Neill (Chair); Tahir Ali; James Daly; Rachel Hopkins; Dr Kieran Mullan; Chris Stephens; Edward Timpson.

Questions 1 - 59

Witnesses

I: Alex McDowell, Vice Chair, Remember A Charity; Angela Morrison, Chief Operating Officer, Cancer Research UK; and Dave Hawes, Director of Finance and Infrastructure, Devon Air Ambulance Trust.

The Institute of Legacy Management and Remember a Charity (PRO0056)

The Institute of Legacy Management (PRO0052)

Cancer Research UK (PRO0054)

Devon Air Ambulance Trust (PRO0093)

Examination of witnesses

Witnesses: Alex McDowell, Angela Morrison and Dave Hawes.

Chair: Good afternoon. Welcome to this session of the Justice Committee, continuing our inquiry into the probate service. Welcome to our three witnesses. I will come to you very shortly. We just have to deal with our declarations of interest. I am a non-practising barrister and former consultant to a law firm.

Edward Timpson: I am a barrister with a current practising certificate, but I am not undertaking any direct court work. I am the former Solicitor General, the former chair of CAFCAS and the former chair of the National Child Safeguarding Practice Review Panel. My brother is chair of the Prison Reform Trust. I am currently providing informal advice to Ministers on family justice policy.

Q1 **Chair:** I don't think there is anything else from anybody. Welcome to our three witnesses. Thank you for coming to help us today. Perhaps each of you could introduce yourself and your organisation.

Angela Morrison: I am Angela Morrison, the chief operating officer at Cancer Research UK. By way of completeness for the record, I am also a non-executive board member of the HM Land Registry.

Alex McDowell: I am Alex McDowell. My day job is director of fundraising at the Duke of Edinburgh's Award, but I am here today to represent Remember a Charity, which is a consortium of around 200 UK charities.

Dave Hawes: I am Dave Hawes, director of finance and infrastructure at Devon Air Ambulance. I am also a director of the Institute of Legacy Management, but am here today in my capacity for Devon Air Ambulance.

Q2 **Chair:** Hopefully, we have covered a range of sizes of charity with your expertise. For those who have not seen the background briefing that we have read, would you tell us how important charitable gifts in wills are to charities in the UK?

Alex McDowell: I will put myself forward to speak first because we represent around 200 charities. You will hear from my colleagues who can give first-hand testimony about the impact on our individual organisations, but on behalf of the consortium, it is hugely important. It is not easy to overestimate how important gifts in wills and willanthropy are to our sector. Before we go into that, it is also important to say that behind every single gift we have received is someone's will and someone's intent to do good in the world. As a charity, our job is to be the vehicle for their good will to go on. We do not want to lose sight of that. We understand it from a charity point of view, but where the stewards are there, it is their money as well.

In terms of the impact, 10,600 charities in the UK benefited from a gift in a will last year. It is around £4 billion-worth of income every year. For the top thousand UK charities' overall income, it is around 30% of voluntary income. Obviously, that is an average; in many cases it is the majority of their income. You can imagine the impact that fluctuations in that income stream can have on planning, delivery of services and the overall wellbeing of those organisations and the good they do in society.

Q3 **Chair:** Dave, as a smaller, regional charity, what is the percentage of bequests in wills for the air ambulance?

Dave Hawes: It can be up to 50% or 60%. It is a huge part for us. That percentage has probably increased in recent years in the general environment of increasing costs and increasing pressure on income sources. There is a greater demand for our service as well. Those things have combined to change it significantly in recent years. It has always been significant, but while historically it was something that was relatively good to have for building capital projects—we still keep hold of that—it has become an increasingly crucial part of funding our daily operations.

Q4 **Chair:** Your revenue costs are coming out of it?

Dave Hawes: Yes.

Q5 **Chair:** Angela, what is your experience?

Angela Morrison: It is huge for us as a charity—about 40% of our overall income and about 50% of our fundraising. It is a massive contribution. We commit money for a minimum of five years when we give a grant. Every time we give out our grants, we do it for five years. We need to have assurance that that income is coming in over that period of time. Therefore, we are very acute to having that money coming in on a regular basis and being able to predict it.

Q6 **Chair:** We are going to come on to some of the consequences. Quite often some of the larger charities are co-executors in wills. Is that a common thing?

Angela Morrison: No.

Q7 **Chair:** Not in your case.

Angela Morrison: No.

Chair: It is in a minority of cases. That is probably not something we need to worry about too much then for the purposes of our inquiry. We can eliminate that.

James Daly: Can I make my declaration?

Chair: Of course. And very proper, too.

James Daly: I apologise to the witnesses for being late. Please forgive me. I am a practising solicitor and a partner in a firm of solicitors. I think it is appropriate to say that I have taken guidance on whether I can contribute to the discussion here today. Is there anything else I need to say?

Q8 **Chair:** You have put it on the record; that is very helpful, James. Thank you.

As you said, Alex, part of the executor's role is carrying out the wishes of the deceased person in the will. The probate registry, which is necessary, is there to do the transactional side in a sense. I don't suppose it is really giving effect to the wishes of the executor. Is it a necessary step?

Alex McDowell: It is an absolutely crucial step for several reasons. First of all, it safeguards the wishes and prevents fraud. Secondly, in terms of cash flow, obviously you cannot start distributing an estate until probate has been granted. Even after probate has been granted, it will typically take between six months and 18 months for the estate to be fully distributed. It is about the ability to predict and forecast, as Angela said, and the degree of certainty to meet our Charity Commission requirements for accrual of income and for planning, so for charities the probate service, apart from fraud prevention, is absolutely essential, and a well-run service is very important to us.

Chair: David, do you want to come in?

Dave Hawes: Not only is it the biggest single control, which makes it absolutely crucial, fundamental, but it also gives a level of assurance. Every legacy will be different, with different individuals and different solicitors involved. There are so many variables and different possibilities, but the grant of probate is the one point that gives clarification and certainty.

In the charity sector in particular, when you are asking trustees who are not involved day to day, but who come to the charity periodically, to understand the information being given to them, the measure of probate as to how certain the receipt is and the valuation of that receipt is absolutely crucial in the figures that they need to understand to be able to make strategic decisions. That level of assurance also translates into auditors' assurance for annual reports and things like that. When they are coming in to review figures, it is the one standard that they are comfortable with, can understand and can apply. It is absolutely crucial in so many senses.

Angela Morrison: Especially with the big, complicated cases.

Q9 **Chair:** Do you get many of those?

Angela Morrison: Yes.

Q10 **Chair:** What are the sorts of complications?

Angela Morrison: All different types. They are becoming more international. There are properties and different investments. It is just becoming much more complicated with shares and things. Having a probate service that provides clarity is so important for us.

Q11 **Chair:** Alex, you referred to the importance of a well-run probate service. Do we have that at the moment?

Alex McDowell: We have a really constructive relationship with HMCTS. It is worth pointing out that they have been very proactive and supportive in understanding the charity sector's needs, particularly over the last couple of years. However, we would not be having this inquiry if we were not asking questions about the impact of delays. That has had a direct impact on us, both the time for an individual will to gain a grant of probate and the overall backlog in the number of estates. It has had an impact. We have all the ingredients for a good service, but we want that maintained, with understanding of the need for an evolution of a service in which we are seen as, and are, invested parties.

Angela Morrison: We absolutely appreciate all that they do. They are fantastic for us, and it is a great service. It is the unpredictability of the service and the future forecast of the service that gives us the uncertainty that causes us to make decisions internally that we do not want to have to make.

Q12 **Chair:** We will come on to those in a minute. David, anything to add?

Dave Hawes: I stress that to be able to forecast you need consistency. That consistency obviously has not been there.

Q13 **Edward Timpson:** Can we drill down a bit more into the impact that delays in probate are having on both the charitable sector overall, and particularly the individual charities in which you have roles and responsibilities for. Earlier, we heard that the income from wills is about £4 billion per year. From evidence that you submitted to the Committee, there is also a suggestion, with quite stark figures, that about £800 million to £900 million across the charity sector as a whole is being tied up in probate. Cancer Research UK gave a figure just for themselves of £34 million. First of all, how did you estimate those figures?

Alex McDowell: The bigger numbers are extrapolated from long-term trends, average gift values when received, and the number of estates we believe to be currently awaiting a grant of probate. A key point—one of the things we put forward in our submission as a request—is to have greater visibility and transparency upstream, earlier in the process, perhaps with a charitable indicator, so that we can identify what the figure is more accurately. To be fair, we feel it is a robust figure, but it is also an extrapolation. There is not 100% certainty around it, but it is based on long-term trends and the proportion of gifts that are currently included at probate, which is around 14%, and average gift values.

Q14 **Edward Timpson:** What about Cancer Research UK?

Angela Morrison: We are basically a microcosm of that. We forecast based on history. Since 2019, the history has not been as consistent because there have been ups and downs with HMCTS. We are more conservative with our forecasting because of that uncertainty. We have taken a macro number and, based on our history, said, "We estimate that it's about £34 million." We now think it's about £30 million as of January. We then had a good month in February—a bumper February—in terms of legacies and we will probably do a re-evaluation. It might have come down again. We literally run it week by week almost, in what we receive and how we review those numbers.

Q15 **Edward Timpson:** From the figures, it seems that since 2017 the delays have been increasing. We have had to factor in covid and some of the unusual factors that that produced in the probate system. You have now had six or seven years of those delays increasing. To really understand the impact that is having on the charitable gifts not finding their way to you, either predictably or in a timely manner, what are the most significant impacts for the overall charitable sector? Again, you may want to talk specifically to your own charity.

Dave Hawes: I am happy to pick that up from our charity's perspective because it has had a huge impact. As you say, there have been issues in that period. At times the perceived backlog has gone down and gone back up. Trying to get an idea has been really difficult to build into forecasts. All of our decision making is based around those forecasts. There is effectively a knock-on impact on cash as well.

Last week, I went to see our investment manager. We had flagged that we would potentially have to realise a part of our investments to invest in a significant capital project. At the chat last week, we had to say that our cash flow and our legacy debt, which is normally around £2 million to £2.5 million of the money we are due to receive through legacies that have gone through probate, has increased to about £4 million. That is due to some of the figures that came through probate at the end of last year, as the figures started to clear, but obviously the cash has yet to flow through to us. That £1.5 million is what we would normally expect to have in cash, but we do not have that. The money we were expecting to draw down to invest in the capital project, we are going to have to use for our short-term financing, with the hope that the legacy income will start to flow through later in the year. Predicting how and when that will come through is so difficult because the flows have been so irregular in recent years.

Similarly, there is a will in probate at the moment that is potentially worth several million to us. Our legacy income last year was £3.7 million, so just a single one could cover a large part of that. We know that is in probate at the moment, but we do not know how quickly it will come out. Our trustees' strategic decisions are fundamentally based on, potentially, one or two transactions. It certainly affects the flow. The flow of cash slowing between the end of last year to where we are expecting it to be means that we have to take different strategic decisions now. The timing of our capital projects will potentially be impacted. It is all under constant review. If the cash flows that come through are as consistent as we hope, we will have greater certainty from what has already gone through probate. We would have more cash in the bank to manage our day-to-day operations, and we would be able to be much more decisive and clearer in our decision making to commit to key capital projects that are fundamental to every element of our strategic plan.

Edward Timpson: Does anyone else want to say anything from their perspective?

Angela Morrison: We are incredibly similar. We have just been through our budget, and we are going through our budgeting process at the moment for next year. We do not put the probate backlog into that forecast because we do not know when it is likely to happen. We cannot commit to spend that money unless we know it is going to come. We have gone through budgeting rounds where we have taken money from capital investment. We have had research this year that we have not invested in. There are 44 projects that we could have invested in this year that we have not invested in. We are making day-to-day decisions based on the fact that we don't know when the money is coming, or the size of it. Our £30 million is our best guess, based on history and those sorts of things but not through any evidence we have had from HMCTS about what it actually looks like, such that we can put anything in our books to say that we know that is coming.

Q16 **Edward Timpson:** At what stage was the decision made to take the potential probate funding out?

Angela Morrison: We have our normal probate funding, and this is the backlog. We have our 40% forecast in there, so we plan for that, but because of the backlog, it is an estimate and we cannot put that into our plans.

Q17 **Edward Timpson:** Are there any consequences for things like staff or training and those types of important aspects of making the charity move forward?

Angela Morrison: All of our budgetary decisions are made, because we just put it in as our income stream. Ostensibly, it is £30 million. It is a backlog. It is money we should have already had in our organisation if there had not been a backlog, assuming that £30 million is correct.

Q18 **Edward Timpson:** Are you also monitoring the impact on the users of your service? Ultimately, that is what we are all here for.

Angela Morrison: Yes. That is the research, and we have had to not do certain parts of research. We are in a scenario where we launched our manifesto, and there is a £1 billion gap in cancer funding in the UK over the next 10 years. We are sitting there saying, "We'd like to be able to do more of that." That is what people in their wills want us to do, but we cannot do it at the moment.

Edward Timpson: Alex, do you want to add something?

Alex McDowell: Yes. A bit of wider context might be helpful. A survey by Charities Aid Foundation last year found that around 55% of charities said they were not confident that they would be able to fund their core costs based on their current projections. Around 46% said they were needing to dip into their reserves just to carry on their current work, which will obviously have frontline impacts on those organisations. It is also not sustainable. You have the planning, but it is having an actual impact.

We went out to our members and asked them for some real examples. We heard from a military charity that provides support for veterans. They said they can pretty reliably understand what the demand on their services is. They do not want to start supporting treatment and not be able to complete it, and they have not been able to do that because they cannot reliably understand what the income flow is going to look like over the next year.

There is a wider context. There is the perfect storm of inflationary pressure, which all charities and the wider public are experiencing, that is not only having a knock-on effect on charities' costs but on the general public's ability to donate. We have this perfect storm where many charities see the demand for their services increasing but their ability to raise money from the public is reducing. That is yet another challenge for them. It could also be part of the solution, because we believe there is a significant amount of funding that is potentially tied up and could help see these charities through some really difficult times. It is a real double whammy, and it is crucial to understand the impact it is having.

Edward Timpson: Thank you.

Q19 **Dr Mullan:** I want to ask a bit more about some of the points you have made about the longer-term decisions that you make. The evidence you have supplied to us suggests that your probate income tends to be used, in a strategic sense, for the longer-term decisions. You mentioned the five-year research and the capital grants. Could you elaborate on the types of projects that you tend to fund specifically with probate money but that are being held back at the moment?

Angela Morrison: Probate is just one of our income streams. We pool all of our income, and we manage a reserves pot to keep the flow going. We run it that way. It is not that we specifically put probate to a certain part. We are a massive funder of research, in that we make commitments for five and seven years. We have four institutes that we jointly fund across the UK. The Crick in London is one of them. Cambridge, Manchester and Scottish institutes take many tens of millions from us every year. We have to have that money and know that we are getting that money in so that we can get that money out.

Q20 **Dr Mullan:** I made an assumption in the question. Feel free to say that I am wrong. You don't see probate as more stable or reliable for long-term decisions than other forms of funding.

Angela Morrison: It is absolutely an element that enables us to run our reserves level at whatever it is because it has a level of consistency. It might fluctuate, but I agree that it has a level of consistency. It is a very stable income line for us.

Dr Mullan: Does anyone else want to come in?

Dave Hawes: It is similar for us. Although in normal times there will be a certain degree of fluctuation, you can still have a degree of assurance over a three, four or five-year period, which will be more accurate than a single-year period. Certainly, for capital projects, it has always been key for us; historically, and in simpler times, it was very much almost viewed that legacy income would be our capital fund and we would build on that. It covers more of our operational costs now.

A great example is that, at the moment, we fly two aircraft. We have two different types of aircraft. Historically, we would aim to replace each aircraft after 10 years. That is the most efficient way to do it because, obviously, as it gets older, replacement and maintenance means there is more time down and you cannot see patients if the aircraft is down. We are having to delay those types of decisions, particularly at the moment, because two aircraft types mean that you have to keep your pilots able to fly both and have the required training. That becomes quite inefficient. It is tying up your pilots more, and making it more likely that the aircraft will not be available and will be offline. Being able to use the funds and have them available, with the knowledge, foresight and comfort that that cash is coming so that we can invest in new aircraft, would make a big difference to our operation. Having two aircraft means that the larger type gives more access to patients.

That is just an example that being able to free up the cash flow for those kinds of capital projects immediately gives us the quality of service that we can give to the patient in flight and the hours that we are able to operate our service. We have critical care costs to cover when the aircraft are not in flight. Ideally, we want the aircraft available all the time to give the best service to patients.

Dr Mullan: Is there anything you want to add, Mr McDowell?

Alex McDowell: Not on this particular issue. I think my colleagues are better placed.

Q21 **Dr Mullan:** I understand that since September 2023 the grant rate is greater than the application rate. The backlog is beginning to decrease. Would you say that you have noticed that improvement? Do you have confidence that it is a steady trajectory that is going to remain? If you don't, what do you need to see to give you that confidence? First of all, have you noticed an improvement?

Alex McDowell: Yes, generally. We have 200 members so they will not all feel it equally. We have noticed anecdotally that there certainly has been an uptick, which is really pleasing. What we need, and what we would like to see going forward, are two things in this respect. One is for there to be consistency. The good news for society and all of our charities is that more of the public are choosing to include a gift in their will. That is brilliant news. If you look at the demographic projections, there will be more demands on the service because there will be higher mortality in the near future. What we cannot have is a short-term fix to the service, but then find in six months, a year, or two years' time that it has dipped back down, to deal with rising demand.

That is really important, but we would also like to have more certainty. HMCTS have been increasingly good at sharing information with us as a consortium, but we are bound by confidentiality with some of the management information. We rightly do not share that. There is therefore a wider group of people who are still not able to make fully informed decisions. We would like greater transparency and for that information to be made public sooner.

Part of that might be having indicators at the point when the person is appointed for probate, whether professional or lay, so that they can indicate whether a charity is included. That would help us understand the size of charities in the backlog. It would also help us to see whether there are any trends going forward, so that we can workforce plan and understand our income projections. It would also help us to understand whether there are any differences for charity cases. Do they take longer? It may be correlation rather than causal, but it might help us to understand if there is specialist training that we can provide on dealing with bereaved people or with charitable estates, because they can sometimes be slightly different, with more nuance in the estate.

Having an indicator earlier on would help us to understand the size of the backlog, help with the flow for the end user as well, and potentially help us reach out to bereaved families. The whole system could be improved. It could also start a dialogue so that we could work more closely with HMCTS as a whole sector for the greater good. That would be really helpful, but the main point is about consistency going forward.

Q22 **Dr Mullan:** It might be self-evident—you touched on this—that there has been an improvement and you are experiencing it. The reason why I asked is that there is a suggestion that the legacy estates, which are the ones you tend to benefit from, are the larger estates with more complexity. It might be that there has been an overall improvement, but that is the low-hanging fruit of the simple estates, and you are not really seeing an improvement for the larger estates that you tend to benefit from. That is why I am asking if you have felt that improvement. I don't know if you want to comment?

Angela Morrison: I absolutely can comment. We benefit from the lower ones as well. We just don't get as much. We always know that in our Q4—which is January, February and March—we get more legacies. The service tends to do the more complex ones. We always uptick our forecast in our budgets for Q4. We didn't get anything pre-Christmas time really, but in January we over-performed by 20% and in February we over-performed by 40%. What we do not know is how much of that is backlog and how much is just us not getting our forecast right for the normal flow. Yes, there has been an uptick, and more than we expected, but we have no visibility of whether that is backlog or not.

As Alex said, our big thing is forecast and getting visibility of where the cases are. Are they stopped? Are they paper and complex? As Alex said, if they have an indicator in there, we may or may not have visibility. If we do, then we will get a larger proportion. If we do not, we do not get anything. It is very lumpy. It is having visibility of what those cases are. The simple ones will just come through, and we know they will come through. Future visibility is so important for us, so that we are able to be better at putting future money in our forecast.

Dave Hawes: As a smaller charity it is always hard to follow the trends. It might just be the effect of timing. Up to September last year, we were about £1.7 million behind our budget. In the last three months, that had gone down to £1 million behind budget. Not only was it the first quarter that we hit our expectations, but it also covered it. That suggests to me that it is not just the low-hanging fruit; that is the quite valuable larger estates coming through to us. We have seen a similar trend in the first couple of months of the year.

It is reassuring to see where that is. It is reassuring that it has been a couple of months of performance, and not just one month and then dipped down. That is positive. My personal expectation is that it will still take until towards the end of the year to clear that backlog down to a historical level. The area to consider is whether it will be able to maintain that level, and ideally drive it down. Obviously, the system has been digitalised, so you would hope it would speed up and be better. It is about continued improvement, particularly if death rates are to rise as is expected. There will be increased pressure over the next couple of years, so it is making sure that the system is in place to do that. It is hard to get assurance at the moment because, obviously, we are not there yet.

Angela Morrison: The sustainability point, we would not see. Q1 and Q2 were well below forecast for us. Our forecasts in Q1 and Q2 were well below where we expected them to be. Yes, we have had a bumper Q4, but at the start of the year we were very much not where we expected to be. It has been a very feast and famine year.

Dr Mullan: Thank you.

Q23 **Rachel Hopkins:** Pushing a bit on the future-proofing point that was raised earlier, I noticed that in the joint submission between Remember A Charity and the Institute of Legacy Management there were concerns about the future capacity of probate registry in the context of an ageing population, and therefore more deaths each year going forward. How confident are all of you that probate will be able to cope with future demand?

Alex McDowell: I don't think it would be fair to rank a confidence level, but over the last year the raw output from HMCTS has been pretty consistent with years gone by. What has changed is the number of applications being made. If that is an indicator of likely future demand, and we think it is, the evidence would suggest that they have not been coping as well as they could have done up to this point, albeit absolutely noting the recent performance improvements. I wouldn't say whether I have confidence or not, but what we need to see are reasons to believe that the planning is being put in place, whether it is workforce systems or ways of making it work.

The other important element is not just ability to deal with capacity but making sure that the service deals with the quality and safeguarding elements as it always has. We are big supporters of what the service does. It prevents fraud; it helps loved ones at a difficult time to get the assurance they need to live their lives at a very traumatic time. Yes, we want capacity increase but not at the cost of quality or some of the safeguards that are absolutely essential for us.

Angela Morrison: I absolutely agree with all of that. It will require, I am sure, further transformation because these things don't just organically grow. We would like to say, "Trust us by giving us insight into that," because then we can plan accordingly. The issue at the moment is that, when we do not have the insight, it is really difficult to plan. If they decide, for the right reasons, that they need to train a load more people and they take some experienced caseworkers off to train them, output will therefore drop for two or three months. That is fine, just tell us and then we know. When we are left in the dark it is hard because suddenly we just don't get anything. We want to be part of the journey because we really appreciate the work that they do and we recognise that they need to transform, but we want to be part of that so that we can plan accordingly.

Q24 **Rachel Hopkins:** Have you had any conversations or discussions with HMCTS about the future-proofing and stability you are talking about?

Angela Morrison: We work through the ILM and Remember a Charity in our relationship with HMCTS. We approached them directly in January, and we are still trying to arrange a meeting, but for most of our work we align and are absolutely one voice from a charity perspective.

Q25 **Rachel Hopkins:** Cancer Research UK submitted written evidence in the consultations on will storage and electronic wills. Do you have any concerns about how the probate service might approach that future opportunity, or is it a challenge?

Angela Morrison: As long as the will is secure, we would go more to the practitioners for that. That is where we see that.

Q26 **Rachel Hopkins:** You raised a point earlier about checks and balances around fraud. ILM submitted separate evidence about having rigorous checks as part of the process for applying for probate. Would you like to add anything to the points raised earlier?

Alex McDowell: I don't know whether it is an additional point, but when a grant of probate is complete, the will becomes public and the Smee and Ford service, which has been providing a valuable service for charities for many years, ensures that charities are aware of their legal entitlement. That service no longer happens in Scotland for reasons that are probably not helpful to go into here, but we have seen a drop-off in charitable gifts in Scotland compared with the rest of the UK, whereas, historically, their trends followed exactly the same path. Without being able to prove it, that would suggest that the loss of that service—the loss of transparency, checks and balances—is detrimentally affecting behaviour. The lack of visibility, for both charities and wills, suggests that there is a fraud risk that we need to take very seriously.

Rachel Hopkins: Would anyone else like to add to that?

Dave Hawes: I emphasise that, anecdotally, you hear so much of that. It is difficult to put a figure on what the impact is, but looking at the Scotland figures, there is quite a notable difference and it is certainly a sign of the anecdotal stories that you hear in the sector. The importance of it as a control is absolutely fundamental.

Angela Morrison: We support that.

Q27 **Rachel Hopkins:** Finally, the threshold for whether an estate has to apply for probate has not changed since 1999. The Institute of Legacy Management stated that it would "strenuously resist" any increase in the threshold. Do you want to elaborate a bit more on your specific concerns?

Alex McDowell: It builds on a previous point: this is not just a way of expediting the money, it is about transparency and visibility. Therefore, anything that safeguards testators' good intentions and gives a charity visibility is a good thing. The concern would be how much more of an opportunity it might be. Sometimes it might just be a lack of understanding on the part of the lay executor about what their roles and expectations are. There might be different intent, but the point is that if we change the thresholds, we need to be very mindful of what the unintended consequences might be for making sure that the intended money goes to the intended parties.

Angela Morrison: With the digitisation of the service, one would assume that those would be the simpler cases that would just flow anyway. Why would you look to change the threshold in that scenario?

Dave Hawes: At the end of the day, the main focus for us all is making sure that a person's final wishes are honoured. It is effectively the only real control in the process. Raising the threshold would significantly increase the risk for a large number of people.

Q28 **Chair:** On the other hand, the threshold of £5,000 in 1999 would be just over £9,000 in today's money. Isn't there a logic to increase or uplift it to take account of the rate of inflation since that time?

Alex McDowell: We have certainly not pushed back against a logical increase on an inflation basis, but whichever way you do it, whatever the threshold is, the point is still about whether the system is secure and is it making sure that people's wishes are being honoured. Yes, there is an inevitable fiscal drag of what those are worth, but it needs to be understood in a context of safeguarding intent as well.

Q29 **Chair:** The idea is that it is the smaller estates—basically, the simpler ones that need not necessarily attract a fee. That is the point. Otherwise, you are having to pay out a fee—

Alex McDowell: Absolutely.

Chair: —which has gone up rather more than the threshold has.

Dave Hawes: There would be a rationale for an inflation-based increase. If the change was to reduce workload, or something like that, it would obviously be a concern.

Chair: Understood. Thank you.

Q30 **Tahir Ali:** One part of applying for probate involves sending the original will to HMCTS. It is then scanned and sent for storage. What concerns, if any, would you have if solicitors or notaries were able to scan wills themselves and certify that the electronic copy was correct?

Alex McDowell: We would probably have a similar view to the one in the previous conversation: if it was a way of making the system and service more efficient, it would be sensible to look at it. We would not have a significant problem with it, provided that the appropriate checks and balances were still in place.

Q31 **Tahir Ali:** It would remove unnecessary cost and duplication and make the process a bit easier. A number of them must be lost in the post if they are not sent by secure delivery by Royal Mail.

Alex McDowell: That is probably one for practitioners to answer, rather than us from our perspective.

Q32 **Tahir Ali:** Angela, as a non-executive director at the Land Registry, are there lessons to be learned from the Land Registry portal and the digital registration service?

Angela Morrison: I am not sure that I am in a position to answer that today. If you want us to link up with the Land Registry team, I am sure we could. You are right; it is a very similar process, and the legal certification of that is for debate too.

Q33 **Tahir Ali:** How would you describe your relationship with HMCTS?

Chair: That is a question to everybody, isn't it?

Tahir Ali: Yes.

Angela Morrison: We do ours through the ILM and Remember a Charity, so we do not have a direct relationship with HMCTS.

Alex McDowell: We do, and it is very constructive. It is fair to say that it has improved over time. Four or five years ago, I don't think there was quite the level of collective understanding of the impact that the decisions being made at HMCTS have on charities. That is very different now. They have been much more open to working collaboratively and proactively reaching out to us, but the things we are asking for remain: even greater transparency, being able to share information sooner and some of the service practice changes that might help us. They still stand, but in the overall relationship, we felt listened to and supported, and they have been very constructive over the last few months.

Q34 **Tahir Ali:** You made a number of suggestions about how charities could be assisted. For example, has there been any progress in adding a flag to indicate whether an estate includes a charitable gift?

Alex McDowell: You would probably have to direct that to colleagues in the service. They have agreed in principle. A lot of it will depend on other changes they made at the time. They have agreed it, but we have not yet seen the impact of it having been delivered.

Tahir Ali: Dave?

Dave Hawes: That's right, yes.

Angela Morrison: As a large charity, with a clear dependency on the income, we would like to feel that we could be trusted to get the information that the ILM gets. The fact that information is shared with the ILM that it is not allowed to pass on to us feels somewhat harsh.

Chair: Understood. Dr Mullan, do you want to raise a point?

Dr Mullan: We have slightly covered it. Listening to your evidence, to my mind, it is important for us to go back to HMCTS to make sure that it is thinking about all these modelling and projection challenges. You can just imagine that it is a department that is used to things going a certain way and has not really thought through that we are entering a period of uncertainty. In particular, if more and more people are leaving a bequest, that is more and more work for HMCTS. Has it really engaged with that? It is for us, as a Committee, to make sure that we do that.

Q35 **Chair:** Are there any observations on that point? No. We have talked about data and so on. What data do you currently get from HMCTS?

Alex McDowell: Everyone gets the publicly available ONS data, but that is a bit of a blunt tool. It tells us how many applications have been made and how many grants have been given, but we do not get the nature of those or how big the current backlog is. I should caveat that by saying that HMCTS has been sharing information with Remember a Charity and ILM, but on the very strict instruction that it should not be shared wider, just to help us understand what is going on and so that we are able to communicate trends to our members. We can say, "Look, things look like they're improving," but we have not been able to share that information more widely.

Q36 **Dr Mullan:** Why is that? What are they sharing with you and why are you not allowed to share it more widely?

Alex McDowell: You would have to ask them about why we are not able to share it. Even within that, there is other information that would probably be more helpful. We get a bit more breakdown of the total number of cases processed and the breakdown between digital and paper, which is all useful information, but it does not necessarily tell us how many were charitable, because we do not have that indicator. It doesn't tell us why cases were stopped, for example, or what proportion of stopped cases were charity cases. We are able to extrapolate from that; based on historical trends, we are able to see the overall shape of it. It is not that it is ungratefully received or that it does not have any value to us, but it does not give us the granularity to make any certain conclusions, either.

It is a bit of a help, but we would like a bit more help, and sooner. If we have to rely on the ONS data, which always has a three-month lag on it, and then the charities have to work out how long it is going to be for that money to translate, there is a real lag, even when things have been improving. We saw the data suggesting that, from September onwards, it was improving, but charities did not feel it until probably January or February. We've been saying, "Hold on, it's coming," but it would be good to be able to share the information for that purpose.

Q37 **Dr Mullan:** Is that the reason why they say that it is provisional data? Is their reasoning that it is provisional data which may not prove to be correct and therefore they do not want it distributed more widely?

Alex McDowell: Absolutely. It is provisional data.

Q38 **Chair:** You have indicated some of the data that you would like to have. Is there anything else by way of additional data that you think could sensibly be provided that would assist you?

Angela Morrison: We need to have the breakdown of the future, and to know the ones that are stopped. The stopped ones are clearly important for us.

Q39 **Chair:** When you have had discussions with HMCTS, as you do, how receptive have they been towards requests for more data?

Alex McDowell: They have been receptive and have understood why we wanted it. We would now like to see them following up and starting to provide it, unless there has been a very good reason why they couldn't. They haven't pushed back, but there is a bit of a lag at the moment between the commitment and the delivery.

Q40 **Chair:** You have set out the reasons why it helps you with planning and so on to have more data. That is well understood.

Angela, in its written evidence, Cancer Research said that it would like more opportunities "to provide feedback, receive updates and…input on possible developments." Is there anything specific you were thinking about?

Angela Morrison: This is why I talked about where we know that they might be doing some changes. For example, back in the spring, when they moved a lot of caseworkers into training and stopped producing, we got to hear about that almost in hindsight rather than in future planning, which is why we did not get any Q1 output in terms of probate. It would have been nice to know that, because they would have planned it a couple of months in advance. If they had shared that with us and corresponded with us, we would not have put anything in our budget to come through in that couple of months. That sort of conversation and visibility means that we can work our plans in line with their plans, and then get more stability. We recognise that it is not going to be smooth.

Chair: Do your colleagues on the panel have any other observations?

Alex McDowell: No.

Q41 **Chair:** That covers it. Thank you. We have picked up that one of the consequences of moving more people into training is that they are not answering the telephone helplines in the mornings. What impact, if any, does that have on your operations as charities? Does it make it harder for you, or does it have no impact on you?

Alex McDowell: There is probably not much impact, as long as the output and the public service is maintained. That is our concern.

Dave Hawes: I don't think there is a direct impact on the executors, who obviously want to update us.

Q42 **Chair:** It is of more interest to the executors themselves rather than practitioners.

Dave Hawes: Yes.

Q43 **Chris Stephens:** There has been a lot of talk about Scotland. For those who are following this, Scotland has always had a separate legal system. I have a number of questions. Some of you have already touched on the Scottish system vis-à-vis the system in England and Wales. Scotland has not gone through a major reorganisation of the type we have seen of the probate registry. Angela and Alex are probably best placed to answer this. What are the experiences of the UK-wide organisations on the relative delays in Scotland versus delays in England and Wales?

Alex McDowell: The first thing to say is that the Scottish market is smaller, so statistical data is by definition a smaller sample size, but I go back to the point I made earlier that in 2018—correct me if I am wrong about that—the notification service changed because the fees charged at the time meant that it was unsustainable for Smee and Ford to provide that service to charities. Obviously, legacy gifts are still being received and people still include charities in their wills, but Scotland has now become an outlier in the overall trend of growth compared with the rest of the UK, when it was tracking the same. While we cannot prove a negative, it suggests that the impact from the loss of that service is something to look at, which is why we hold so dearly to the probate service that we have in the rest of the UK for fraud prevention and the ability to understand the data early. It all comes back to the same point that, with greater transparency, not only can we plan but we can help make sure that there are safeguards that are beneficial to individual executors and bereaved families and charities and their beneficiaries. There has been a change in the trend in Scotland since 2018. We have a hypothesis, but it is definitely worth trying to understand what is going on there.

Angela Morrison: We rely on executors to tell us when we have something in the will. There is no visibility of pipeline; we have lost all of that visibility. Likewise, we believe we have lost income, but it is very difficult to track or understand that.

Q44 **Chris Stephens:** That was a change in 2020. What could be done? I am looking at the results of a study from My Probate Partner in February which say that only 21% of the Scottish public understand what probate is and what the process entails; 65% confirmed that they would consult a solicitor; and 11% advised that they would look for support online. While the Scottish system may be better and money is being handed over quicker, what steps could the Government, either here or in Scotland, and the legal sector take better to advertise the different systems and save bereaved relatives solicitors' fees? Do you have any suggestions, Alex? I can see you are thinking it through.

Alex McDowell: It wasn't what I had prepared for. It always comes back to the information available and whether charities can potentially play a role. While we are increasingly recipients of gifts in wills, the overwhelming majority of probate cases may not include a charity. This goes wider than a charity issue. We need to make sure that, where we are involved, we can help to guide people who might contact us, and make sure that there is good guidance available through organisations such as the Institute of Legacy Management, which provide information and signposting to what you might need to do as a lay executor and where you might need professional help. Help is out there and it might just be a case of making sure that people are effectively signposted to the information they need. I don't know the extent to which that does or does not happen currently, and I don't necessarily see it as explicitly a charity issue, but for charities as a proportion of all estates it will have an impact.

Q45 **Chris Stephens:** Obviously, charities are impacted, which is the point I am trying to make.

Angela Morrison: We work within the system. I think it is very hard for people without the probate registry service to know what to do. I am afraid I am an advocate for a service for people to do that, however skeleton it might be. It might not be as big as the UK one, but a central group seems important.

Q46 **Chris Stephens:** Do the charities have any concerns about the fact that the CMA is investigating some of this, particularly unregulated online providers, and the fact that important documents are going missing and charities could lose out as a result?

Alex McDowell: Of course we have concerns. It goes to the heart of why we are so passionate about the probate service in general, and good practice in all will drafting. It is slightly beyond our brief. This is an issue for practitioners because it is about the integrity of wills in general rather than gifts in wills, but, on your previous point, it will affect us. If wills are not effectively managed and documents go missing, potentially we and, more importantly, the causes we serve will be affected. We have a view on it, but it is probably more a question for practitioners. I am not a legal practitioner and the remedy is not within our gift.

Angela Morrison: I agree with that.

Q47 **James Daly:** I am making a lot of apologies today. I have been up and down and apologising to everyone. I will just give a universal apology as I am here.

If I was in your position as esteemed charities I certainly would want to keep as cordial a relationship with the probate registry as possible. Therefore, I am not surprised that you are speaking in somewhat glowing terms regarding the positive relationship that you have with it. Certainly, we have identified evidence to show that from the pandemic onwards, and how the service has come out of it, applications and processing have not been proceeding at the speed they were previously, if I can put it that way without sounding too inarticulate. Is that a correct impression? Whatever the reason, something has led to further delays in the system which, as I am sure you have told my colleagues, mean that the money coming to charities like yourselves is not what it was. In basic terms is that correct?

Angela Morrison: Yes.

Q48 **James Daly:** As organisations, if that was a concern to you, how would you feed those concerns into the probate registry? I understand that you may have people working on individual bequests and some focus on individual cases, but as a corporate response to that, if it is causing problems, have you done anything? Have you spoken to anybody?

Angela Morrison: We work through the ILM and Remember A Charity. They are the voice of the charities within HMCTS, but we reached a point when we wrote directly to Nick Goodwin at the back end of last year to ask for a direct relationship and direct conversation with our CEO.

Q49 **James Daly:** Obviously, you were so concerned regarding delays that you felt you had to do that.

Angela Morrison: We did it in support of that because we needed to have that conversation.

Q50 **James Daly:** So that we understand how responsive the probate registry is when proper concerns are raised at a high level, how would you categorise their response to the matters raised with them?

Alex McDowell: This goes back pre-pandemic as well, when decisions were made that had an indirect impact on the charity sector. They have been responsive. We first started to raise our concerns in 2019 and they convened the probate user group, of which we are part; on a quarterly basis, we have an opportunity to ask questions about what is happening and try to understand what changes are being made, and to highlight the impact that is having on charities. We have a forum for raising those concerns and we don’t hold back in sharing those concerns. While you are right to say that it is in our interest to have a cordial relationship, it is not in our interest to have a relationship where we do not speak truth to them about the impact they are having. We have done that and we feel that they have responded accordingly, but we would not be here if that had happened as quickly as we would have liked it to happen.

Q51 **James Daly:** Touching on different people, whether it is corporate or individual, having relationships with the probate registry, I assume—I am sorry if you have answered this question already—that very rarely is an individual from a charity an executor. I am assuming that you are somewhat reliant on a third-party individual, a legal representative or whoever it might be, who is looking after the estate of the person who has left the money. Is that correct? Have I understood that correctly? What is the triangulation between that relationship and the concerns you have highlighted today?

Angela Morrison: That relationship is fine once you have built the bridge. It is about getting to the point of building the bridge and getting that right.

Q52 **James Daly:** But from the charities’ perspective, because of the legality of the situation, are you dependent on that third party to be your in-point if you need information regarding a bequest? I don't think any of you could just phone up and say, "Give us some information." Perhaps you could. Are you reliant on that third party?

Alex McDowell: We are. Our approach would differ depending on whether it was a professional versus a lay executor. Obviously, if it is a family member who has never done that before and is recently bereaved, we might have a different tone in our conversation, whereas we know that a professional executor understands what they should be doing on our behalf, because they are working on behalf of the testator and the beneficiaries. We have conversations. That is another part of the importance of the probate service, because once we know who the extracting executors are, we can make the appropriate contact with them. If it is a lay executor we can signpost them to where help is available, or the ILM website, and make sure that they are aware of their legal obligations. We can offer support in an appropriate, sensitive way. If it is a professional executor we can say what we expect, what we need and what we can do to help them. That triangulation very much happens, but it all depends on the visibility of the will, which is why that is so crucial.

Q53 **James Daly:** I am quite interested in how you find out about a bequest. Is it the legal representative or the individual, or do you have some other way of finding out that money has been left to you as a charity?

Alex McDowell: It is a bit of all of those. Sometimes, the first time we hear is when the executor contacts us and says, "My loved one has, sadly, died and I notice that you are in the will." Sometimes, a solicitor will contact us. There is a service provided by a company called Smee and Ford: because a will is a publicly available document, they scan wills and notify charities if they are included so that we can ensure fraud prevention and make sure that we do not contact deceased supporters and cause people further concern.

Q54 **James Daly:** I take it that you are at the height of professionalism in what you do. There have been some concerns regarding the conduct, shall we say, of certain organisations in the charitable sector. If you need the money, you need the money and you want to get it in the most efficient way possible, but do you think this Committee should be at all concerned by the relationship between some people in the charitable sector who are perhaps not as professional as your organisations, and executors and other beneficiaries, or is that not something we should consider?

Alex McDowell: You should consider whether you feel it is appropriate to consider it.

Q55 **James Daly:** Is it an issue you are aware of?

Alex McDowell: We feel that working through organisations like ILM, having a very clear code of conduct and working proactively with solicitors is the best way to make sure that the highest standard is always met. We do not think there is a particularly big issue. Will there be individual instances when you are looking at hundreds of thousands of wills every year? It is human nature, but I would be very satisfied that the overwhelming majority of charities work to very high standards.

Q56 **James Daly:** After all the questions and evidence we have heard today, what do you recommend we do? What should we put in our report? Not everything—just give us one thing that you think we should put in as a take-away, something that perhaps the MOJ or the probate registry can act on and it can have a positive outcome.

Angela Morrison: Transparency about where they are and where they are going, and how that will help us to be able to take people's wishes and put those wishes as soon as possible into the services they want them to be in, whether that is research, air ambulances or whatever it is. At the moment we are not able to do that as effectively as we should be able to do it, and we could do it better with more transparency.

James Daly: David, do you want to add anything?

Dave Hawes: And do it in a timely fashion as well, with quick and efficient transparency of information and clarity in discussion with us as charities—as a sector—and responding to executors. Although that does not directly impact us, where we speak to executors it can be challenging for them to get information back. It is about transparency stretching right across relationships.

James Daly: Alex?

Alex McDowell: To build on that, we all want the same thing, which is an efficient, well-run service that benefits executors, charities and beneficiaries. Yes to transparency, but also working with us in partnership when there are changes, if there are changes in management information, but also in practices, because we can work in partnership to find better solutions that work upstream. We are invested stakeholders, so working with us, whenever there are changes afoot, to understand what the implications might be in the charity sector is invaluable to us.

Q57 **James Daly:** I asked you questions earlier about legal responsibility. If you are not executors of a will, generally the probate registry will speak either to the appointed legal representative or to the individual who is the executor. Are you saying that we should look at options whereby you as charities and beneficials have more opportunity for a direct conversation with the probate registry, or is the existing relationship I have just described satisfactory?

Alex McDowell: It is certainly improving, but if there are significant changes planned it would be really helpful for us to be involved, to be informed or to be in some way able to shape them, because whatever happens there will be an implication for us as end users and, therefore, our beneficiaries. To be seen as a partner in those decisions would be invaluable.

Angela Morrison: But it is more at service level than case level. We do not need to be involved any more at the case level; we get that at the end, but the service level and how the service is performing is the bit where we would like greater involvement.

Q58 **Edward Timpson:** We have, quite rightly, talked a lot about process to try to improve efficiency, transparency, timeliness and all the important aspects of a good and functioning system. To try to humanise this for a moment, one of the things that you are doing with these legacies is using what a family's loved one has left behind for something that often they were very passionate about and perhaps affected them in their own life. That family will want to make sure that the legacy does what their loved one wanted it to do, and more with any luck. With these delays, do you ever get inquiries from families asking what has happened to the legacy? Have you seen an uplift in that? Do you have a way of communicating with them? Would it be helpful to be able to communicate with them more regularly through the process on what is actually happening so that they feel confident that the legacy that has been handed down is able to do what was envisaged?

Dave Hawes: Generally, for smaller charities not really. During the phase when it goes through, their contact is with the executor. Once that is settled we receive the funds. As a regional charity, we do not get many restricted funds, where it is specifically for something; it is generally for the service. It is probably slightly different for a large charity like the RNLI, for example. You might have a legacy for a specific place. That might be slightly different, but for small regional charities there is not so much. We always extend an invite and a thank you for the legacy to the family. Often, we are not aware of the legacy so we cannot thank them before that. There can be some relationships maintained from that, but they tend not to be around what specifically has happened to their gift; it will be a more general query about what our organisation is doing.

Angela Morrison: We are not hugely different.

Q59 **Edward Timpson:** In terms of improving the working relationship between the charitable sector, HMCTS and probate registry, you mentioned the probate user group, which sounds like a constructive way forward, or at least a forum in which some of those discussions and exchange of experiences can take place. Trying to think beyond that and about ways you can ensure that those working in HMCTS and probate registry understand what it is like to walk in the shoes of a charity that is on the receiving end of that service, has anyone from HMCTS or probate registry perhaps spent a day with your team just to see how you access the service, or would it be helpful for them to do so to see what are the things getting in your way, the information flow and whether the data is helpful? Has that ever happened and, if not, would it be something useful for us to recommend?

Alex McDowell: One recent development from the probate user group is akin to, but not exactly, what you described, so it would be helpful. We are bringing the charity to the service rather than the other way round, but we are going to be helping colleagues at HMCTS to understand that, while they are processing volume, there are human impacts at the end of it. There are charities putting that money to good use and there is an impact on us in terms of our ability to expedite it as effectively as possible, and there is an impact of that work. We want HMCTS colleagues to understand that what they are doing is a really important service to the charities as well. We want to help their morale, but also help them to understand both the humanising and the impact of their delays or challenges on us. That is not exactly as you described it, but I think it is an incredibly good idea, and we have started to put those kinds of things into place.

Chair: Unless there is anything else you want to raise with us, this has been extremely helpful from our point of view. Thank you very much for taking the time to come and give evidence to us today. It is much appreciated. The session is concluded.