

Justice Committee

Oral evidence: [Probate](#), HC 520

Tuesday 16 April 2024

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

Questions 60 to 110

Witnesses

[I](#): Stuart Simpson, head of end-of-life services, Equiniti Benefactor; and Jo Summers, private tax and wealth partner, Jurit.



Examination of witnesses

Witnesses: Jo Summers and Stuart Simpson.

Q60 **Chair:** We are resuming our session of the Justice Committee. We are now turning to evidence on an inquiry into the probate system. We are grateful to our two witnesses for their patience and for coming to give evidence to us today. All Committee members, except Mr Daly, made declarations of interest at the beginning of the meeting, which we will not repeat. Would Mr Daly like to make an additional declaration?

James Daly: I have made a declaration of interest already, but I have to make a fuller declaration in respect of this sitting. I am a partner in a firm of solicitors and that firm undertakes probate work. My wife is a probate solicitor.

Q61 **Chair:** It is important to have that on the record. Could our two witnesses introduce themselves?

Jo Summers: My name is Jo Summers. I am a partner in a firm called Jurit LLP. I was recently on the Law Society Wills and Equity Committee and I am also a spokesperson for the Society of Trust and Estate Practitioners. That name was a bit long, so we shortened it to STEP. I am a practitioner dealing with probate.

Stuart Simpson: I am Stuart Simpson. I am head of end-of-life services for a company called Equiniti. We undertake estate administration and probate work for our corporate clients and customers on their behalf. We are registered and licensed by the ICAEW, so we represent those services.

Q62 **Chair:** Between you, how many probate applications do you deal with on an annual basis?

Stuart Simpson: We do about 500 to 600 a year at Equiniti.

Jo Summers: We do a lower number, because we are at the other end of the scale, so we tend to act for more complicated estates and richer people.

Q63 **Chair:** And you have both practised in the probate area for a number of years.

Jo Summers: Yes, more years than I like to admit.

Q64 **Chair:** Ballpark terms?

Stuart Simpson: For about seven years, but some of my team have been involved for over 30 years.

Q65 **Chair:** And Jo, how long have you been specialising in this long?

Jo Summers: I started in practice in 1995.

Q66 **Chair:** That gives us a flavour of what you are able to say by way of experience. We have had a lot of written evidence in this inquiry, which you may have seen. We have picked up examples of what seems to be a



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range of problems being repeatedly raised by practitioners and individuals: delay, poor communication and error. We have heard that significant changes happened, I think back in 2017, when a number of things came together and there were changes, which seemed to cause a deterioration. That was pre-pandemic—is that fair to say?

Stuart Simpson: I think the pandemic exacerbated that position as well. I am not dismissive of the pandemic and the impact that had on working away from the office or the environment, but I think we would both say that prior to that, there were a number of things, such as the consolidation of the probate courts—bringing them all together under a central solution in Birmingham—and also winding down the expertise in local registration, which had already started causing delays to applications coming back. On top of that, with the pandemic, things moved significantly out and communication became less effective at that point.

Jo Summers: I described it as a perfect storm. You had a number of big changes happening at the same time. You were getting away from being localised, where you could speak to people locally and get advice from the local registrar. It was centralised and digitalised, but the digital system does not deal with everything.

There are some paper applications that you have to do and some digital, so you have a twin system that does not work particularly well. On top of that, with any stressor that you added on, whether it was probate fees—it was announced that they were going to go up, so suddenly there was a deluge of applications—or with covid, which sadly caused more applications, the system went over to not working anymore.

Q67 **Chair:** So in a sense, the system was being asked to do more than it was capable of digesting.

Stuart Simpson: It was definitely that. As Jo mentioned, changes were implemented, but it was a phased approach as well. That phasing of how applications could be made or what could go through the system caused confusion as well around what was stopped and what wasn't and what would go through. That caused delays in the initial timeframes as well; so "perfect storm" is probably the right phrase.

Q68 **Chair:** It has been put to me that the advantage of a regional system was that you could ring up, if you were a practitioner, and you would know the people.

Jo Summers: Yes. You could get quite a good rapport with the local registrar and you could also cherry pick. We would have emails going round the office saying, "Brighton's stacked; don't go to Brighton, go to Winchester this week". You could almost help HMCTS allocate their workload by doing it for them, by going to the one that you knew was less busy.

If you had a knotty one that you didn't quite know how to deal with, you could ring up, speak to the registrar and say, "Look, I've got this, what do I need to file?" and they could give you guidance, so you could make sure



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that when your application went in, it was accurate and met all their requirements. Now, you have to send in what you think they might want—it may be stopped—and you have to guess from the email that they have sent what they are asking for. Sometimes, you misinterpret the email or they misinterpret the reply. That direct contact is just not there anymore and that is slowing things down.

Stuart Simpson: I would say that I am not totally against the system. The implementation of a system that works, which allows you to contact people in that way or get an accurate and timely response, is what we should be moving towards and what we should be aiming for. The implementation of it and the way that was delivered is what has caused the problems. If we could move to that and have better engagement and dialogue, that would help us much more.

Q69 **Chair:** It has been suggested to us that things had improved since September 2023. Is that your experience?

Jo Summers: Some, yes—we were just comparing notes. It is the inconsistency, now, that is difficult. If a client now asks how long it is going to take, I do not know what to say to them. It could come back in four weeks, or it could be four months, or it could be one of the ones that gets logged somewhere into the system and disappears for another nine months. I have no way of telling them—none at all. And I have no way of chasing it when it has disappeared for a long period.

There used to be an escalation system, so if you had waited 18 weeks, you could then say, “Can I please speak to someone to see why I am still waiting?” Effectively, you were queue-jumping a little bit. I can understand why they removed that, because you were getting past the other people in the system, but it means that now there is no way of finding out where along the system you are.

Stuart Simpson: The figures themselves, published by HMCTS, show that there is improvement. The inconsistency of that improvement means I do take it with a level of caution. There was a big improvement and a big clearing of the backlog in December, but we know that that period is typically one where there are fewer applications made, which allows that grace period.

Now that we are in the part of the year where applications grow, they are still clearing, but lesser volumes. Over the Christmas period, the backlog came down, as they cleared 6,000 more applications than they received in December; over the past two months that have been published, January and February, they cleared 2,000 more than they received. My question is that, as we go through March and April, with the Easter period and the bank holidays coming up in May—a busy period, which is typically when they would receive more applications than they would clear—do we go back to a period where the backlog starts to grow, and things like that? That is my personal concern.



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We are seeing good progress, but my other concern is that at no point has it been communicated to us what the size of the backlog is. What did it grow to? I estimated last year that they received 40,000 more applications than they processed, but we do not know how many they had before that period. We do not know what that has grown to. If we had transparency, we could see what the timescales would come down to around that, but my concern is that it starts to grow again.

Jo Summers: Yes, STEP had some figures and they thought that at one point there were 50,000 in the backlog, and then it went down to 40,000—but as Stuart says, it is not published. I have asked before, when we have had meetings with HMCTS, “If you got rid of that backlog and it wasn’t there, would that then let you keep up with everything? Would everything else that now comes in be dealt with quicker?” In that case, is there a way of dealing with that backlog?

I have jokingly said, “Can you not get all the old retired registrars, lock them in a hotel room and pay them to be there for the weekend, and see how many they can do?” I suspect that is not going to be allowed, but there might be some creative ways that that backlog can be dealt with.

Chair: Thanks; that is very helpful to set the scene.

Q70 **Tahir Ali:** How many applications do your organisations submit on paper and how many do you submit online?

Stuart Simpson: We submit a large proportion of paper applications—you are probably looking at 75% to 80% paper—and that is because of the way we operate. We are a trust organisation, so we make the application as a trust organisation, which means they have to be made on paper. Because of that, we also see those longer timescales and we are impacted by them, so where we can make them online, we do.

Jo Summers: Likewise, we will do everything that we can digitally, but the digital process does not cover everything we do. If there is a foreign-domiciled person, there are assets outside the UK, or we have executors outside the UK who have appointed an attorney—usually me—we cannot do it digitally; it has to be on paper. Percentage-wise, it is probably 50-50 between the digital and the paper.

Q71 **Tahir Ali:** What is your experience of the probate registry? How do they differ in dealing with online applications compared with paper applications?

Jo Summers: Online applications are easier to track, because you have your portal. With paper applications, you do not even get put into the system until somebody has opened the envelope and read it, and it seems to me that there is quite a long delay between proving it has been delivered—because you can send it by tracked delivery—and its actually appearing anywhere in the probate system. You can call and speak to somebody who says, “No, we haven’t got it,” for weeks.



Stuart Simpson: We have an example where it took three weeks from the date of receipt via Royal Mail special delivery to the date of its appearing on the system and starting to process. When we queried that, we were told that it is the point at which the application is starting to be processed that starts the 16 weeks ticking. At that point, we cannot make a query about that until 16 weeks, so then you are looking at more like 20 weeks. If I turn that around to members of the public, that is not commonly known. They will not get spoken to, and there may be people who are vulnerable wanting to understand that.

From the position of a member of the public on paper vs digital, my personal view is this: is there digital exclusion of those people? If you do not have access to a computer and you cannot make it online, or if you are not computer literate or you have a disability that means you would prefer to use paper, are you disadvantaged because of the timescales? It is weeks in that position, as well.

Jo Summers: Yes, and it seems that quite a lot of the people who do probates themselves prefer to do it on paper.

Stuart Simpson: They do, yes.

Q72 **James Daly:** Jo, you have very openly confirmed your vast experience in this field of work—

Jo Summers: Yes—it is now in *Hansard*, so I can't deny it!

James Daly: We are very grateful for your expertise in respect of that. If you go back to when you were dealing with your local probate registry and applying for probate on behalf of a client, in general terms how long did the process take?

Jo Summers: About four weeks.

Q73 **James Daly:** Okay. We can blame lots of things, but let us just say that the problem at the probate registry was so exacerbated that an application that have previously taken approximately four weeks would take—how long?

Jo Summers: Now?

James Daly: Well, at its worst, if I can put it like that. We have to say that there has been some progress recently from the probate registry. Four weeks seems to me to be a perfectly reasonable amount of time for a process to take place. On the face of it, we know that the system can work and can deal with applications in four weeks. We have invented a system that has created a problem, but we had a system that worked perfectly well.

Jo Summers: Yes—it wasn't broken, so why did we fix it?

James Daly: Exactly. As a result of this, we as a Committee are looking for helpful suggestions to have a more efficient system, in terms of how we deal with it. You have sort of answered these questions already, but



how do we get back to that four-week process?

Jo Summers: We need better communication. There needs to be a way of talking to the person who is handling your case, not to somebody who is reading something on a system who does not necessarily have any knowledge of the question you are asking. For example, if you ring up and try to speak to somebody at the probate registry—it is now only mornings, and you have a webchat facility too—the person answering that may have absolutely no knowledge of what your question is, how to answer it or how to give you any guidance. They are literally just somebody who is answering the call.

When we were able to speak directly to the registrar, you could make real progress within five minutes. I had an example recently where we had to get an emergency grant on one asset in an estate on behalf of a creditor, which is a little unusual. It was a long time since I did one of those, and in the old days I would have picked up the phone and said to whoever I was speaking to, “Can you remind me what I do here, please?” For this one, we found somebody in the Cardiff registry, which was unusual because I didn’t think they were still around, who was willing to speak to the registrar for us, but it was like Chinese whispers.

Q74 **James Daly:** I am going to say something that will horrify just about every Member of Parliament, this Committee and probably the world at large. Why don’t we go back to the old system?

Jo Summers: I don’t know. I would love to.

Q75 **James Daly:** It is amazing. As politicians, we invent systems that do not work and then look at ways to carry on the systems that do not work. Although we would have to quantify the cost of that, I think the point you would both make—please don’t let me put words in your mouth—is that the previous system worked, it gave reassurance to people who were taking part in it, and it was done in a timely and efficient manner.

Stuart Simpson: Can I just come back on that? Absolutely—it was four weeks. At our worst point, we saw 30 weeks for applications and on average we were at 24 weeks.

Q76 **James Daly:** So four weeks to 24 weeks?

Stuart Simpson: Yes, so six times the delay.

Jo Summers: And we had some that were a bit longer than that because they were foreign ones that had a bit more difficulty to them. The worst one we had was eight months.

Stuart Simpson: On the timescales, I think the system does work. I work in an organisation that has large systems and a customer experience centre—people contact us. For the non-complex things, that would be absolutely perfect. For Jo, where there is complexity and we can’t get to speak to somebody who knows about our case, there are those issues. We receive messages back saying, “Until you get to 16 weeks, you cannot engage with us about that case in any way.” That is the challenge we



have. We can't then communicate to our customers or the public about what is happening with that.

- Q77 **James Daly:** I have two further quick questions. I am going to describe this inadequately. There is a third party that is sometimes involved in the process and certain documentation has to be sent to them to be certified. Is that correct? Forgive me; I am not being very articulate about this.

Jo Summers: Are you talking about HMRC?

- Q78 **James Daly:** No. Colleagues can probably help me with this. In terms of the financial documents that support a probate application, where are the original versions sent?

Jo Summers: Even if you apply online digitally, you have to post in the original will and any other documents, like a codicil or anything else that is related to it. They have to go in physically.

- Q79 **James Daly:** Do they go into the registry, or do they go elsewhere?

Jo Summers: They all get sent to Newcastle, don't they?

Stuart Simpson: I believe there is a scanning area around there.

- Q80 **James Daly:** So you send it to a separate organisation?

Jo Summers: No, you send it to the HMCTS. I think they pass it on to the scanners.

- Q81 **James Daly:** Do you have any views on that relationship with the scanners, if I can put it that way, and whether that causes delay or problems?

Jo Summers: It has done.

James Daly: I would imagine that documents may have the habit of being lost from time to time.

Jo Summers: We have heard some horror stories. It has not happened to me, luckily. I have had the classic scanning error of a stop on my probate application because I had sent in an incomplete will. It was pages 1, 3, 5 and 7, and someone hadn't scanned both sides. You do get scanning errors. It is human nature—if you are doing the rather tedious job of scanning in however many wills per day, I'm not sure you are going to be paying a huge amount of attention.

- Q82 **James Daly:** Could that process could be done by you, rather than wills having to be sent from the probate registry to a third party?

Stuart Simpson: I think it probably could, yes. There are different ways: small-scale, local scanning, and in-house we have large-scale scanning that allows us to do that.

On Jo's point on not scanning two sides, if they have large-scale scanning, that should never happen. I think it could be done. Like Jo, we have not seen examples of things being lost in large-scales, or anything like that.



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My only question is: is that the cause of the time delays between it being received in the post and cases being stopped two or three days later? We have no evidence for that—I can't say I've got evidence. That is anecdotal.

- Q83 **James Daly:** This is my last question, because colleagues will want to come in. The probate registry has changed its working practices to avoid incentivising staff to stop a case. Have you noticed any change in the number of unnecessary stops since autumn 2023?

Jo Summers: I think we have seen fewer stops. I understand that what happened before was that if it looked too tricky, it was very tempting to put it on the stop pile, because it went somewhere else. Now, it comes back to the same team to deal with it, so if you stopped it, you get it back.

You are now more likely to look at it the first time around, because you know it's coming back to you. We have seen a few less stops. In a couple of instances we have had emails saying, "I think we need this, but we don't seem to have it", or something that shows that they have actually read it, rather than just put a stop on it.

Stuart Simpson: I am not hearing anything material, if I'm honest.

Chair: I might just ask you to speak up a little bit, Stuart. When you are facing away from the mic, it doesn't pick up so easily.

Stuart Simpson: Sorry—I'm quietly spoken. I am not hearing anything that is too different from where we were before.

- Q84 **Dr Mullan:** I want to pick up on your points about the telephone conversations. Is there now literally no mechanism at all for you to have a discussion through formal channels with someone who is dealing with your case and is actually a registrar, or is it just way more difficult to get to that point?

Jo Summers: Until very recently, there was no way of speaking to the registrar. Within the last few weeks, HMCTS has instigated a trial of having some online sort of—"surgeries" might be a good word. A registrar or a senior person would appear and you could book your slot to talk about case number whatever. As you can imagine, those slots disappeared almost instantly. If that trial could be continued, that would resolve some of the problems we have mentioned. I would very much support that happening.

- Q85 **Dr Mullan:** My next question is about the reform to the process in terms of the necessity of an HMRC code to prove that you have done that side of things. Has it been a positive or a negative change? Do you have any reflections on that?

Jo Summers: Teething problems, I think. I understand entirely why they did it. People were trying to buck the system by applying too early, which was not working. We were trying to get out to all our members, both at the Law Society and STEP, "Don't do this, because it's actually going to take longer." But I think it is human nature—there's always somebody who is going to do that and think it is going to work.



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I understand entirely why they want to make sure you have done the HMRC process first, but what they did not appreciate—I don't know if this is the same for you—is that normally, when a practitioner meets their clients, they will take into that one meeting all the documents they need them to sign: "Here, sign this, sign that." Then you only need one meeting, particularly if you have to collect loads of people from different places.

Now, you cannot create the probate application document without the code. Does that mean you need two meetings? Do you have to circulate things twice? There have been a lot of complaints about that. If there was only a way of creating it, but with a gap for the code to go in—

Dr Mullan: A draft, almost.

Jo Summers: A draft, yes, and we could get that signed. The answer is that, actually, you do not need the client to sign all the documents. The IHT400 can be sent in by an agent—us—on behalf of the client. I can do the same with IHT100 for trusts: I can just put in my letter that it has been seen and approved.

But most practitioners are really reluctant to do that. They feel that it is better for the client to sign it. It shows that they have seen it, they have read it and they cannot say, "Oh, I did not see anything"; their signature is on it. Lawyers in particular, maybe you guys as well, are reluctant to change. This idea of having to have more than one meeting has not gone down well at all.

Q86 **Dr Mullan:** So if the system were to allow you to do everything that you need to do, except literally click the submit button without that code, that would be more effective.

Jo Summers: Yes.

Stuart Simpson: I think we are slightly different. We operate as administrators as well. The executors give that power over to ourselves to sign on their behalf. That means that we do not see some of the problems that Jo has mentioned.

From HMRC's perspective, what we have seen is a consistency of those responses coming back. It does take around about three weeks. That makes it four weeks before we can make the grant of probate application, but what I would say is that time from application to receipt has been relatively consistent. Across my team, we are getting good feedback. We did look into it as a slight concern—what is this going to do on top of what is happening? Actually, we have been pleasantly surprised in that it has not caused a longer delay to these things.

Jo Summers: Whereas I have had some feedback from a former colleague of mine that she thinks HMRC needs chasing on a regular basis. It obviously seems a bit patchy.

Q87 **Dr Mullan:** We mentioned the decision to cut the afternoon availability of



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the phone lines. What impact has that had? Do you think that has been a good measure that should continue?

Jo Summers: I think it did work. My initial reaction was, "Oh, they are even trying not to talk to us on the phone now", but they kept the web chat and it was announced, so you knew you just had to call in the morning.

The feedback I have got is that it has not extended the time it takes to get someone on the phone to pick up, which is useful. It has seemed to reallocate people, and ironically, HMCTS was looking for somebody to say, "Yes, we think this is a good thing". It came to me as one of the people, and I said, "In an ideal world, you would have enough people to do both, but I understand you do not, so I think it has been a good allocation of resources".

Stuart Simpson: I agree with the allocation of resources. As practitioners, it has an impact on us. It has changed our working practices. It does mean then that a number of my colleagues come in and the first thing they do is make the phone calls and things. That changes our working day and our practices around that. If you think more about the public, if you are constricting to during the working day, actually we are not supporting the individual members of the public. Thinking more broadly than ourselves as practitioners, I do not think it is positive or sustainable on a long-term position from that perspective.

Q88 **Dr Mullan:** Because you would always have to do your probate stuff in the morning.

Stuart Simpson: Or if you are a member of the public, you have to phone up during your lunch time. That is their busy hour, so then you are waiting for those calls. You do not get that opportunity to make those calls at other times.

Q89 **Edward Timpson:** I want to go back to the issue of delays and the seemingly significant lack of transparency around both the compounded backlog of cases and how long applications are taking to process. Let us try to look at this from two angles: first, from that of the bereaved families who are waiting for closure and the outcome and also from that of practitioners and professional firms dealing with bereaved families.

Are there any experiences that you can share of how delays have had impact, or any evidence that you have managed to accumulate through the work that you have done that demonstrates the sorts of impact that it is having on bereaved families when there is a delay that no one really knows how long it is going to be?

Jo Summers: Yeah, particularly house sales, if you have got an estate with a property in it—mum was living it with dad; dad died; mum has died. It is an empty property and you do not know how long it is going to be before you can sell it, because you have no idea how long it is going to take to get probate.



You have suddenly got to have unoccupied property insurance because the insurance company will not cover it. You end up paying for property managers to go in or the family have to take that job and you see the property prices going down; if you had sold it last week, you would have got this much, and next month it will be less. That is a really tricky thing to help a family through.

I am lucky; I do not deal with people who have real financial need and are starving. I do not have that kind of client base, but I see people who have had to take out and borrow money to pay the inheritance tax. They are paying interest for the whole period they are waiting for that, and interest rates are going up, generally speaking, so they are paying more. We are seeing real financial problems. There are people who cannot access portfolios and would have sold them because it is all going down, and they are losing however much on that. It has not been pretty.

Stuart Simpson: I echo all that, but my view is that not everybody who inherits from an estate is wealthy at the outset. They are not those people who had the wealth: it is passed on to them. We had a case this winter during the economic and cost of living crisis where a gentleman gave us a call and said, "Is there any way that you can release funds before you get probate, because my mum cannot turn on the heating?" There are those types of things. Until we have probate, we do not have the legal authority to distribute those funds, so do we lend money? How do we go through those? From a customer care position for a vulnerable customer, it is about managing those and managing the expectations of individuals.

Anecdotally, I have spoken to my friend down the pub and said, "When mum died, it only took five weeks to get probate." Now, it is taking such a long period of time, and actually they do not have those funds. We have seen, not in lots of cases, those property sales where wrongly the family have put the property up for sale. However, it does not then just have an impact on the beneficiaries of the estate. When that chain collapses, it has another knock-on effect; if you think about the whole economy, it can knock down and lose those as well.

More broadly, what we are looking at here is vulnerable customers and that crisis. There are people taking out loans that they have never taken out, and they have an open end to them in a period effectively until probate is there and they can pay those inheritance tax loans off. Unfortunately, we have seen some individuals, because of the delays, who then had to pay more inheritance tax, because the timescales have taken them over a threshold. Those are the knock-ons that I think are unfair, particularly when it is not through the individual's doing. It is not avoidance: it is because of the situation out there.

Jo Summers: And HMRC are still sticking to their normal deadlines, as if there has been no change, so you are still required to do everything just as you did before. Whether it takes four weeks, four months or a year, HMRC does not change anything.

Q90 **Edward Timpson:** What consequences does that have for you as



practitioners in trying to run a professional firm where there may be a squeezed timeline, but also where you may be getting more complaints about the probate system and are in the dark about how long each application will take? How has that affected your own working environment and the way in which you must operate and how you allocate resources?

Jo Summers: It is tricky. The hardest bit is when a client says, "How long is it going to take?", and you literally do not know what to say. "How long is a piece of string?" is not a good answer, but it is the only answer that I have right now. I was saying just before I came in that if you could say that it is guaranteed that it would be eight weeks, that is not as good as it used to be, but we could all have some consistency and tell clients that that is what to expect. However, we literally do not know.

A colleague of mine said that they got one application back within two weeks—that is quicker than any that we have had. There does not seem to be any consistency as to how they are being dealt with at the other end. They do not seem to be in date order, because somebody who has applied after me gets it first. I do not understand that. The hardest thing is the communication with the client, because we do not know what to say to them.

Q91 **Edward Timpson:** Do you think it would be helpful—this has been submitted to us by other professionals working in probate through their written evidence—if minimum service levels for the probate registry were introduced to try to provide some certainty about exactly what both you and the families coming into contact with the service would expect at the very least, including timescales and the processing of their application?

Stuart Simpson: In private industry I am very used to having key performance indicators, minimum service standards and things like that. If we do not adhere to those, our corporate contracts have penalties against them. I do not think that you have to go into penalties, but why can we not have that level of standard and commitment?

Going back to your earlier question, the impact that we have seen has been from disinformation, if I can call it that. HMCTS has put out the information about its delivery and timescales—

Edward Timpson: On its website?

Stuart Simpson: Yes, but we see very different timescales. My staff have been called liars—"We trust the civil service, HMCTS, and your are telling us different", and things like that. That has an emotional effect on people who are professionals. It is about those minimum service standards so that we could all say, "Yes, this is where it is. It is in the public domain, and everybody knows about it." That is absolutely key.

Q92 **Edward Timpson:** Has that been thrown out there before? Is it a new idea or have you been waiting for it for a long time?

Jo Summers: Well, you had the 18 weeks and then you could use the acceleration service, but that was abolished by HMCTS—it removed that.



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We have actually gone the other way: away from having any kind of deadline that it has to stick to.

As a solicitor, I could be hauled before my regulator if I have undue delays on many clients. If I was lackadaisical, they could complain—there is an ombudsman and a regulator. I have nothing. There is nothing I can do to force HMCTS to look at an application that I sent in 25 weeks ago or whatever. There is nothing I can do.

Stuart Simpson: When you look back five years ago, when we were getting them in four to six weeks, that was consistent—you probably did not think we needed a service level. Now, because of where we are, I think that standard would be really helpful.

Q93 **Chair:** I am interested in another point. STEP and a number of other people have produced some evidence about the delays encouraging folk to go to unregulated providers operating online and elsewhere. What is the extent of that problem, do you think?

Jo Summers: We have seen people popping up advertising products that they say avoid probate delays because they avoid the need for probate. Ironically, America has a similar system—there are quite a few techniques in America that they use to avoid probate, in some states more than others. They generally involve setting up a trust, putting assets into it and those being owned by a trustee rather than you when you die so that you do not need probate. But they completely ignore a number of major things such as tax. Frequently, they are creating tax liabilities that they have no knowledge of.

It is a particular bugbear of mine that anybody can set themselves up as a trust or tax adviser without any regulation whatever—your plumber could do it tomorrow, if they fancied it, although they would probably make less money than plumbing. It is a wild west of people who can just pop up with these fancy schemes. They all seem to be pretty much of a muchness, when you actually read through them.

Stuart Simpson: My concern as well is that the people who will go to those operators will be in a vulnerable position and want to access the funds from the estate as quickly as possible. They may not have the knowledge of the implications of what they are undertaking. If they do that, they are open to potential fraud and the things that go with it.

Q94 **Chair:** What do you suggest as the solution—a regulatory one? Should they be brought within a regulatory framework or can we do more in terms of consumer protection and education?

Jo Summers: A mixture, maybe. Education, definitely. We always try to make sure that clients understand that if it sounds too good to be true, it is. There may eventually be an argument for the regulation of all these things, but that is not going to stop the probate delays. The quickest solution would be to make sure that there are no probate delays. That would remove all the need for these.



Stuart Simpson: I was thinking exactly the same. If you remove that issue, people will not seize the opportunity to step into a market that has been created.

Q95 **Chair:** I understand. Going back to the points that Mr Daly was raising about scanning and so forth, it has been suggested to us that it would be possible for the solicitors to scan and certify that you have a copy.

Jo Summers: We did suggest that right at the start, and HMCTS said that our scanners were not going to be good enough. But I think that in this day and age they could come up with minimum requirements—it has to be a jpeg or pdf, this quality or that—and we could meet them. I am sure that you guys probably could, Stuart.

Stuart Simpson: Yes, you could ask regulated or licensed people to authenticate that a document was real, using DocuSign or DigiSign or something that says that I have seen this document and I am personally responsible and put my name against it. We heard in the previous session that there may be unscrupulous people, but they would be much fewer. We would lose our livelihoods, and you just wouldn't do that.

Q96 **Chair:** You or the client would retain the original for inspection, if needed?

Jo Summers: Yes.

Stuart Simpson: For audit purposes, you could come back and say, "We want to audit this document. Please can you send the original to us?"

Jo Summers: Which, ironically, would deal with another consultation that HMCTS has out about shredding wills and not storing the originals. They have, however, many hundreds of wills in storage—and they would be in our storage rather than theirs if we went down this route.

Q97 **Chair:** That is an interesting point.

You talked about vulnerable clients, such as those who might be financially vulnerable or pushed to go into that sector for those reasons. What about the general treatment of people who are dealing with this when they have lost a loved one? That could be under tragic circumstances in certain instances, or they may be vulnerable for health reasons, or they may be disabled or whatever.

What is your assessment? Stuart, I know you are the executive responsible in your organisation for dealing with vulnerable people. What is your assessment of the way the probate registry does or does not handle people in that sort of situation?

Stuart Simpson: As I mentioned, my view is that bringing in the contact centre times does not take into account the needs of the customer. Digitally excluded people are not thought about. I do agree with digitisation as a general principle and moving towards that, but not offering or seemingly penalising those people who do paper applications is a challenge.



You might be trying to get hold of the customer service centre or the contact centre and you are not able to do that. You might have a situation where we know that you keep trying or you try and escalate it. You might not be somebody who is used to this situation. I have spoken to people who are extremely competent—finance directors and things—but who have gone through a bereavement and have just said, “I don’t want to deal with the day-to-day managing of the affairs of somebody I love.”

Also, there is a concern that “I am dealing with an estate on behalf of my family and friends, so I have the responsibility for that.” That adds an extra pressure. If you then cannot respond to their queries in a period of time because you cannot get through to a contact centre to answer that, on a fundamental level, for somebody who is bereaved, that is a challenge around vulnerability and how you do that.

You then take that forward into somebody who has a disability in a wider sense, or a reliance on somebody. We have seen people where the main income earner in that relationship has passed away but they cannot receive the funds they need to live on because they are locked up until you have probate or they have not transferred over. If that person is vulnerable for health or financial reasons at that point, again, the lengthy delays only exacerbate that problem. That can also cause concern and things like that.

Thankfully we get very few, but we have had people who have contacted us to say, “I am suicidal and I have thoughts around how do I live. Because of the delays I can’t get the funds I need.” Fortunately, our teams are trained in that—we train people to deal with those things—but that is an ongoing concern and we get those coming through.

Q98 Chair: How about when you go back to the probate registry in a case like that? People come to you and your team are trying to help them and calm and reassure them. What sort of response do you get from the probate registry? Do they understand it or not?

Stuart Simpson: I would say that if you go through to the contact centre line, no. If you use the webchat, very much no. It is stock answers coming back to you.

Jo Summers: You wonder if it’s AI, don’t you?

Stuart Simpson: Yes, and maybe it is. Again, that is not a bad thing sometimes. We found one of the probate courts with an individual who was really helpful to us and we have selectively used that in a small number of cases to say that we need to escalate because there are certain circumstances that mean we need to do that. Once you have those individuals, they are really helpful. It goes back to saying that there is a systemic position that sits behind this that needs addressing for us to have that consistent approach.

At the moment, we are told that for those cases where we are acting as a trust, because they are stocked under that, we cannot escalate them. So, we can’t even have that conversation to say, “There is a very vulnerable



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person who sits behind it”, because as soon as we say the case reference, our conversation is stopped at that point, until we get to the 16 weeks.

Jo Summers: It is a different team that deals with your applications, yes. Also, I think there is an access to justice issue, because if you’re saying, “Digital applications are going to go through quicker”, that’s forcing people to get legal advice or to go to a licensed probate practitioner or a lawyer, whereas otherwise they could do it themselves. Anybody who is doing it themselves is likely to be doing it on paper, and that feels like you’re disadvantaging them.

Q99 **Chair:** You’re forcing them, because they may not have the digital skills, and therefore they are being forced into the cost of representation?

Jo Summers: Yes, and you are going to be dealing with these people at the most traumatic time—you know, we always have the box of tissues in the office for when somebody is crying. It is really tough. They have just lost somebody and then they have all of this on top. It is the worst possible time—kicking them when they are down with probate delays.

Stuart Simpson: We do get the other side as well, actually—those people who are not connected but they want the money really quickly. Those people are easier to understand, and they are not vulnerable people. But they want money quicker, and things like that.

I know that you have already spoken to the charities. There is a big impact on charities—on the funding and the things that they have had.

Jo Summers: Yes, absolutely.

Q100 **Edward Timpson:** One of the core purposes of doing this inquiry and having these evidence sessions is—believe it or not—to try and be helpful, to the Government and to those working in probate, particularly the probate registry, in trying to find and offer solutions to some of the problems and challenges that they are facing, not least the backlog and trying to get on top of a much more efficient and reliable system that we can have confidence in.

Earlier, Jo, you mentioned—I wouldn’t quite say it was a throwaway comment, but you floated the idea of—

Jo Summers: Locking retired registrars—

Q101 **Edward Timpson:** Yes—retired registrars coming back to help with that. But there is something in it and the suggestion that I think you have also made around secondments, and also in outsourcing, at least in the short term, to try to help to deal with the backlog. Could you perhaps just say a little more about how you think that might work in practice and what it would entail?

Jo Summers: I have been approached, because of my work with STEP, by a few practitioners saying, “Where do I volunteer to help?” And they will have a different variety of motives. Some will be doing it because they think there is a bit of kudos involved; some will be doing it because they

are hoping that their application is the one they get to look at and they can clear it. Generally speaking, however, it is because people want to help.

If there was a way for a whole pile of experienced probate lawyers to roll their sleeves up all together and go in and help out, they would do it. I don't know what the cost of that would be, if any, but if you could get rid of that backlog I think that the system would work pretty much, unless they do something else like announcing that they are going to increase the probate fees again. The system as it is would work well without that backlog. Then your waiting times would come down considerably, because you would not be doing the old ones.

Stuart Simpson: I think the system is probably in a better position than it was, but it is the backlog that you work around and things like that.

If it was my organisation, I would not be too fond of lots of people coming in and offering their help, but that may be a way around it. I think it is actually giving the resource and bringing that in, and making sure that the resource is allocated in an appropriate way.

One of the challenges that I see around the communication from last year was that we were consistently told that HMCTS was recruiting 100 new staff. Actually, digging behind that, it was not 100 new staff; it was 60 staff who were new and 40 to replace headcount that had been lost. These were not qualified staff; these were people who were there to take phone calls. That exacerbates the problem.

If you bring in qualified people to remove the backlog, that is saying, "Actually, let's put the right resource in the right area to address the problem." It is not about headcount; it is not about numbers of bums on seats, although that is helpful. Actually, it is saying, "Have we got the right people in the right place to be able to do that?"

I think we are all in sort of agreement about fair communication. We don't need this to go back to two weeks, or four weeks; what we need is consistent delivery on that timescale of things coming through.

I am not answering your question directly, Edward, but I am saying that we want to see progress. Yes, people going in, rightly qualified, are the ex-staff from the registries, or opening them up for a time period where they are capable to do that, to clear that backlog and then reset the marker would be a really good position for us, I think.

Q102 **Edward Timpson:** Would one of the other benefits of that opening up, whether it is bringing that resource in from the charitable sector or the private sector, be the potential experience in there to deal with some of the more complex cases, which often take up quite a lot of the capacity within the registry?

Jo Summers: Yes, I expect so. I would think that somebody at my end who deals with the international side would know how to deal with something much more quickly than somebody who has never seen one



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before, just by dint of experience. If you can get people in who have that kind of experience, that will make a huge difference. We were talking about the 100 new employees that they had hired.

The other thing you have to bear in mind is that it was the existing people who had to train them—there was nobody coming in from outside. Taking on 100 new people took people away from doing the applications because they were training those people. There was a time when those new staff made it worse before they started making it better again. You have to think about who the people are and get the right people.

Stuart Simpson: Again, I accept that there is a time lag on these things—bringing them in for training and doing that—but it would help if we understood that a timescale would say, “At this point in time we will see an improvement.” I do not think that was clearly communicated last year. We are seeing those improvements come through, but they need to be much better and more consistent and give us the comfort that that is going to be maintained.

Jo Summers: At the moment, it is almost like a professional jealousy. Someone says, “I got mine back in nine days,” and you think, “How did you do that?” You end up with lots of people comparing notes, and we have no clue as to why one was dealt with quicker than another.

Q103 **Chair:** You have given us a number of suggestions for how things could be improved. Stuart mentioned family and friends earlier. Would either of you be happy letting family and friends navigate the system without professional help at the moment?

Jo Summers: Oh, gosh, no. If something happened to my dad, I would not let my mum do probate—gosh, no. No, I would get one of my paralegals to do it.

Stuart Simpson: I am lead executor and would probably ask somebody else to do it for me.

Q104 **Chair:** That is a very good point. Are there any other suggestions you would like to make to us that we have not covered?

Jo Summers: We do occasionally get somebody who comes to us who has started doing probate by themselves and not appreciated quite how hard it was going to be, coming up against this wall of, “Oh my God, where’s it gone in the probate registry? I have no answer.” They come to us and ask whether we can take over their case. At the current time, unless it has changed recently, we cannot. If we ring up about a layperson’s application, HMCTS will not talk to us, because it is not our application. We cannot get any more information out of them and we cannot pass it on—it is crazy.

Q105 **Chair:** You could send them a letter authorising all that.

Jo Summers: Yes, you get the client to sign the engagement letter. You do all the normal things in getting passports and utility bills.



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Q106 **Dr Mullan:** I assume that your involvement in a case probably makes it go slightly more quickly than if a layperson does it, so it is in their interest to have you step in.

Jo Summers: Yes.

Q107 **Edward Timpson:** Do you have a sense of scale of how many of those sorts of cases there are?

Jo Summers: I don't know how many. We have had a few. We have just basically given them some advice, rather than trying to take over, because we know we cannot. Multiply that by however many law firms are out there—I guess each law firm is probably coming across a few.

Being with STEP, I was on the radio and there was a call-in for "You and Yours". The number of people who called in saying, "I have been trying to get probate, and I haven't got anywhere," was huge. The phone lines were jammed, apparently—they only put a few of the calls through. It is a big thing.

Stuart Simpson: If you are lay executor, you are financially and legally responsible for it. If you get it wrong, it can come back in years later that you have to pay that.

Jo Summers: Yes, the liability.

Stuart Simpson: It does not have to be a professional, but the individual has to have the support to get it right.

Jo Summers: I have actually asked HMCTS, because the other thing is that a lot of people do not know when you need probate. Part of the problem is that banks often have different rules on how much they will release without probate—what they call their sort of small funds limit sometimes varies.

I have asked HMCTS, and they do get quite a few calls of people saying so-and-so has died, asking whether they need probate. If there were a different way of those calls being dealt with that was not at HMCTS, at the probate registry, so that they can just deal with the probate applications that they actually have to deal with, not somebody ringing up finding out if they do or do not need probate—

Q108 **Chair:** What different way might you use for that?

Jo Summers: There is the "Tell Us Once" service on gov.uk. There could be something tied to that saying, "Do I need probate? Click here" in a webchat or phone or whatever.

Stuart Simpson: I find the gov.uk website quite helpful. Better signposting of that for the public would be really helpful, so people can find it. It is about that, "Do I need probate? What does that mean and where does that fit in?" I agree with that.

Q109 **Chair:** That is very useful. Is there anything else we have missed?



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Stuart Simpson: We have had some instances where MPs may have stepped forward to offer support. I have mixed views on that, if I am honest. Sometimes it has helped people to jump the queue, but sometimes I think we have seen individuals come to us with that and just by quirk of timing, it is at the point where they grant a probate. Since they have got to the point of raising an issue with their MP, it is so far down the line that actually the probate is coming back. We had one where an MP phoned us one day, and miraculously the grant appeared the next day in our postbag.

Jo Summers: We are not entirely sure it was the MP's involvement, but maybe!

Edward Timpson: None of us have any egos.

Stuart Simpson: The best thing would be if we all had a standard of timeliness that we could deliver through and get it right. That would mean you guys do not have to be involved in it, from that perspective.

Q110 **Chair:** That is very helpful. Thank you very much for taking the time and trouble to come and give evidence to us. It has been very useful indeed. We have covered a good bit of ground there. If you do think of anything else, do not hesitate to send in any further written evidence. We are always open to that. Thank you also for your patience while we dealt with the other matter.

Jo Summers: That is all right, we were interested to listen in.

Chair: It was interesting, wasn't it? The session is concluded.