House of Commons

Justice Committee

Oral evidence: Probate, HC 520

Tuesday 30 April 2024

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Watch the meeting

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

Questions 111-150

Witnesses

I: Ian Bond, Chair of the Law Society's Probate Professional User Group; Sophie Wales, Regulatory Policy Director, ICAEW; Mark Walley, CEO, Society of Trust and Estate Practitioners; and Stephen Ward, Director of Strategy and External Relations, CLC.

Written evidence from witnesses:

Society of Trust and Estate Practitioners (STEP) (PRO0069)

Institute of Chartered Accountants in England and Wales (PRO0084)

Council for Licensed Conveyancers (PRO0088)

HOUSE OF COMMONS

Examination of witnesses

Witnesses: Ian Bond, Sophie Wales, Mark Walley and Stephen Ward.

Chair: Welcome to this session of the Justice Committee, continuing with evidence for our inquiry on the probate service. Welcome to our panel of witnesses; I am grateful to you all for coming to assist us today. We briefly have to deal with Members' declarations of interest. I am a non-practising barrister and a former consultant to a law firm.

Edward Timpson: I am a barrister with a current practising certificate, but not undertaking any direct court work. I am a former Solicitor General, former chair of CAFCASS and former chair of the national Child Safeguarding Practice Review Panel, and my brother is chair of the Prison Reform Trust. I also advise Ministers on family justice policy.

Q111 **Chair:** Will our witnesses please introduce themselves and their organisation?

Sophie Wales: I am Sophie Wales, the director of regulatory policy at the Institute of Chartered Accountants in England and Wales. We are an authorised regulator for probate.

Stephen Ward: I am Stephen Ward, director of strategy and external relations at the Council for Licensed Conveyancers. We are the specialist regulator of specialised conveyancing and probate practices.

Ian Bond: I am Ian Bond, the former chair of the Law Society wills and equity committee and a partner at Irwin Mitchell.

Mark Walley: I am Mark Walley, CEO at STEP, the Society of Trust and Estate Practitioners.

Q112 **Chair:** Thank you very much. All your organisations and, I think, you individually on their behalf have submitted written evidence to us, for which I am very grateful. Obviously, sometimes things develop after the initial call for evidence. Initially, when all the evidence was coming in, from around January onwards, your organisations were pretty negative about the performance of the probate registry. We now have some information that there has been an improvement, and we would be interested to know how much and to what degree. Would the suggestion that is put to us—that the registry's performance has improved in recent months—chime with the experience of you and your members, and if so, to what extent?

Mark Walley: Yes, the experience has improved, but from a very low base. We are nowhere near the service that used to be available, but we recognise an improvement. We are concerned about the sustainability of the improvement.

Q113 **Chair:** That was the other point. What causes you to be concerned about the sustainability?

Mark Walley: We surveyed well over 100 members—or well over 100 responded—so we have a very big base from which to look at it. They are still seeing cases that take well over the average time. It might be nine months or more. I cannot think of another service where you cannot submit an inquiry for four months—16 weeks—and where I cannot find an answer for four months. It is ridiculous.

Q114 **Chair:** We will come on to the detail. What would make you think the improvement was sustainable? Is there anything?

Mark Walley: There is a little bit for me. I used to be a retail banker so I used to deal with probate loan requests and all the associated details, more than 30 years ago. Back then, if we had a loan outstanding for more than a month, something had gone horribly wrong. Fast forward, and we are now talking about four months just to ask a question about a submission and potentially nine or more months to get something done. It doesn't feel like progress.

Chair: Okay. Ian?

Ian Bond: For the Law Society, yes, we have seen improvements, but we still feel it is very fragile. We have had six months' worth of data where they have issued more grants than they received applications, but that is on the back of five quarters when it was the opposite way around. We are concerned. Yes, they have turned things around, but it is still fragile and it is yet to be something we see as sustainable for the long term.

Chair: You want five quarters going the right way, for that.

Ian Bond: Yes.

Chair: Okay. Stephen?

Stephen Ward: We would echo that. We have not surveyed our regulated community again in the past few months, but the key point to pick up on is that the averages and the improvements belie some of the longer periods that we see for certain cases, which can be extremely drawn out. We need to take that into account as well, and not just the overall average that we see improving. We share the concerns about the fragility of the improvements, and whether they are truly sustainable. The proof of the pudding will be in the eating, won't it?

Sophie Wales: For us it is very similar. We see some improvement, but only in the last couple of months really, and it is very unpredictable. A firm said to us, "We sent one in and it came back very quickly—in a matter of weeks—but a similar one went into the ether, and it could be months." Firms do not yet want to say to their clients, "It's improved, and you'll get it more quickly," because they do not know, and you cannot manage expectations.

Q115 **Chair:** Again, a common feature of all the submissions that you helpfully sent us was concern that there are not enough staff to be able to deliver the level of service that would reasonably be expected. Looking at the

background, you can see that there were 300-odd in about 2005-06. Then, I gather that there was a restructuring of the operating model in 2008, which caused a reduction in staff. You can see that on the graph. Then it drifts down to a low level in about 2017, as I see it. Then, unless I am wrong, since about 2021 or so, or 2022, you see an increase in staffing again. There are rather more in ’22-23, with an increase in ’24. Have those increases in staff, which from the raw data seem to be there, played through in the experience that you and your members and their clients are getting?

Mark Walley: In a mixed way. We cannot dispute the numbers; they are what they are. The quality of the experience is still very mixed. It depends on who happens to pick up a case or answer a query. There are ranges of competence and experience in those numbers. If you had looked at the numbers and found out how many of the people had been there for X, Y or Z period, I am not sure whether it would paint quite such a rosy picture.

Q116 **Chair:** I wasn’t aware that you hadn’t seen the numbers, Mark. I got the figures from the Ministry of Justice evidence to us, and I can tell you what they are if that helps. They say that from the restructuring in 2008, there was a reduction from a level of around 300 to 153 at the start of the reform project in 2017. Let me quote the whole lot to you, and you can see what you make of it: “Alongside the lead in time to train new staff on the probate process, this lower baseline level of staff limited the resilience of the service to meet changes in demand.” They seem to accept that. They now say that they are holding staffing levels to around 280 full-time equivalents.

Ian Bond: I have seen the numbers; we have read that. The difficulty is that, as Mark was saying, they have gone from having almost 300 staff who had 20 years’ experience, and reduced that. The 300 equivalent staff now have 20 weeks’ experience. Putting lots of new staff in at one point in time means that you take the staff who have knowledge away from issuing grants of probate. They are training staff, which means things go backwards in the initial phases. Yes, it is good that they have staff, but the staff’s quality and experience is what matters. The decimation of the experienced staff who left registries around the country had this impact. They do not, any more, have staff of the quality, and with the experience, to deal with some of the complex applications.

Q117 **Chair:** Is that the real problem, as far as you are concerned—centralisation?

Ian Bond: There is nothing wrong with centralisation. The probate service can be provided from anywhere. Centralisation is not the problem: it is the letting go of experienced staff. We all now know from the experience of covid that you can work on an application from pretty much anywhere. They did not have to be aligned to buildings, but when the registry buildings around the country closed, the staff left and were redeployed in other areas, such as magistrates courts.

Q118 **Chair:** Right. Is that because in fact, physically, they were trying to

centralise it, in Birmingham?

Ian Bond: Previously there were different registries up and down the country—probate registries and sub-registries. You had a physical registry and there were 30 different sites, but there are not 30 sites now. There is a big CTSC centre—the contact centre—in Birmingham. Those people—those numbers in Birmingham—are not the same people who worked in the registries.

Chair: No, indeed.

Ian Bond: A person from Plymouth has no incentive to come all the way to Birmingham.

Chair: Which you would think would be pretty obvious to any organisation that was doing restructuring. Mark, do you have any more observations on those numbers?

Mark Walley: No, I was content with the numbers. It is exactly the point about the experience within those numbers.

Q119 **Chair:** You agree. Some of you or some of your members will have spoken to the staff at the time when the regional centres were closing down. What were they saying about why they weren't going to move to Birmingham, or wherever, or where they were going to go? What options were they given? Can you remember?

Ian Bond: They are employees of HMCTS and they want to remain employed, so they would redeploy to the magistrates or family courts, or whatever it was, because there are centres up and down the country for the courts and tribunal services. If their role in probate was coming to an end and they did not want to relocate, they would just take another opportunity within the service. As you know, in the civil service they all have grades, so to a certain extent they can transfer across the organisation, and that is what they did. Those people stayed within HMCTS—why not?—but that experience in probate was lost.

Q120 **Chair:** It wasn't realistic for many of them to move, so they took an equivalent job where they were. Stephen, are there any other points around staffing levels?

Stephen Ward: It is not a numbers game, as colleagues here have said—it is about experience and so on—but we see parallel problems in the Office for Legal Complaints, for example. It feels as though they have fished out the pond of available talent, also in Birmingham. There could be an argument for decentralisation in that respect, to have access to more staff, but at this stage we're not going to get those experienced staff back. It is about looking to the future. How do you build up that experience and make sure it is retained as there is churn in the organisation?

Q121 **Chair:** We are going to come on to that point on experience in a second. Sophie and the others may want to pick it up. HMCTS said to us that they are now providing "a more resilient resourcing model"—says the MoJ.

Part of what they say is that to do that they have introduced a system in which staff can be moved temporarily from other services to the probate registry, to address spikes in demand. I suppose the point is that they are not going to know much about the work of the probate registry when they move there temporarily.

Sophie Wales: That is part of the bigger issue. Clearly, a lot of knowledge walked out of the door when the experienced staff left, and a computer system has not replicated that knowledge. It might help with the allocation of cases but it doesn't have that knowledge, so there is a gap, and it will take time to build it up again. It is good that they are trying to do that, but HMCTS employees are not homogeneous: you cannot just take one from one place and put them in another if they do not have the skills and knowledge. That is borne out by our firms, who say it is hard for them to know whether there are still pockets of that good knowledge, because they wait up to an hour for a call to be answered, and probably the person they speak to doesn't know the answer and cannot help them. Somebody somewhere else might know, but that is not the person they are talking to.

Chair: That is very helpful.

Q122 **Rachel Hopkins:** Pushing a bit on that knowledge and experience that we have heard is so vital, what would you regard as a sufficient level of qualification or experience? What would you expect for staff to be able to process applications efficiently and well?

Ian Bond: A certain level of it is experience in the service—just doing numbers and going through the different processes. With the way the work is allocated at CTSCs, different members of staff are trained on different parts of the application, whereas previously all staff would do all applications. When the piece of paper dropped through the letter box, in the old-fashioned way, that was your piece of work, and you did it. Whatever came in, you had to know the process that would get it to a state where you could give it to a registrar to sign off and say, "That grant can be issued."

Now, with the different allocations, different people can perhaps have different areas that they specialise in. Then they can see that certain grants will go through more quickly than others, and certain members of staff will say, "I've opened it and looked at this application. It's not within my remit. I've closed it. I've put it down and put it back in the queue." That has wasted their time and has not progressed the matter.

They all have to have a minimum staff level, so that they can issue all the applications and deal with all the types of work. If not, they have to make sure that they can allocate the work to the people who have the skills to do it. When they know what types of work are coming in, and the numbers, they have to have the right number of people to do it. At the moment, with the complex work that is going to the registrar, they don't have enough to get that through the door, whereas they have a lot of staff who can do the simple and straightforward things.

Q123 **Rachel Hopkins:** That was a very thorough answer. Do others agree, or would you like to add anything?

Mark Walley: It is like triage in A&E. You need to see somebody who knows where to send you.

Sophie Wales: I agree with what has been said, but I think more registrars are needed. My understanding is that there is a very small number nationally, which has to be a bottleneck.

Stephen Ward: I think this is one of the arguments in favour of seconding in some experienced probate practitioners who could perhaps do some knowledge transfer to some of the staff in HMCTS.

Q124 **Rachel Hopkins:** You mentioned complex cases. HMCTS has given us two examples of the types of cases that it considers to be complex: where the deceased was living abroad, and where the original will is missing. Do you agree? Are you satisfied that they are complex cases and should therefore take a bit longer to process?

Mark Walley: Those two examples would be complex cases. You could add to the list multiple properties, as a start point. I am sure that my colleagues could keep adding to the list. It is not just a two-stop shop. Why does a case have to take longer because it is complex? Give it to somebody who is appropriately qualified and they might be able to do it in a similar time.

Rachel Hopkins: That goes back to the point we talked about earlier, about people leaving.

Mark Walley: There are some very complex cases that of course will take a bit longer to work through.

Stephen Ward: They are going to become more complex, we think, as life becomes more complex, families are more complicated, and the way people want to hand on their possessions becomes less straightforward.

Mark Walley: From my organisation's and our members' perspective, the very nature of the types of clients they are dealing with makes most of their cases complex.

Chair: That is why they have gone to an estates planning practitioner.

Mark Walley: Indeed.

Chair: That's very important.

Ian Bond: At the moment, 80% of applications go online and are deemed simple. Paper applications are deemed complex. Paper applications are not all complex by nature. Power of attorney applications and trust corporation applications are on paper. They are not complex at all, but they have been put into that category, so they get delayed, because they are on paper and paper applications take longer. Fewer people are looking at them.

There has to be a move away from saying, "Paper is complex." As they say, the only things that are really complex are jurisdiction matters, such as foreign domiciles, assets abroad or a will written in French, and factors such as documentation that is missing or damaged. That is the true complexity, but the current system where paper is equated with complexity masks the problem.

Q125 **Rachel Hopkins:** I am going to push this question out as a bit of a flip, just to test everything, because we want to scrutinise this and we value your input. You represent professional people who are very qualified. The person on the street might say, "Shouldn't they be able to complete the application on behalf of clients without relying on advice from probate registry staff." Could part of the reason for some of the complaints about the new system be that under the old system, with very experienced practitioners, they relied too much on those registrars?

Mark Walley: I think it is about stakeholder management. If you have a complex case, there might be a number of nuances. Picking up the telephone and speaking to the person who is going to look at it, to pre-position what is coming in so they know what to expect, and to talk it through—"This is what I see and this is how I believe it should be handled"—feels like a really good thing to do. I cannot think of a type of meeting I would go into where I would not have spoken to stakeholders beforehand. To me it is the same. It is a complex case.

Ian Bond: I agree. Part of it is collaboration. We have a set of rules. I will give an example. Last week, Irwin Mitchell had a complex matter that I wanted to put through and talk through, saying, "I understand the rules. This is how I want to do it." There is some ambiguity in the rules. I can do it a different way, but I don't want to put it in on paper, because of the nature of the application, and wait until it gets stopped. I want to have a conversation with someone and say, "This is what I am doing. I want you to give me some input. You will know and expect it. We will agree this is the way forward, because I want this grant to be issued as quickly as possible, because there is a grieving family and a loved one behind this."

It doesn't matter whether I am right or the registrar is right; we work together to get the family the grant of probate. I am not here for one-upmanship about whether the registrar knows more than I do, or I know more than the registrar. The family is the important thing and they are being let down because I cannot speak to the registrar and say, "This is the way I want to do it. Is this right?" I am not saying, "I don't know what I am doing; please help me." That is not the reason why we want to speak to registrars and talk about our applications. We do a lot of education of our members, across the board, on how to put applications through. That is not why we talk to registrars.

Sophie Wales: Ultimately, it is the prerogative of HMCTS to determine how certain applications are done. On the point that has just been made, you could go by your best guess and do what you think is appropriate, and not hear anything for several months, only to be told that that was

not how they wanted it, and you have to start again, which is not great. There are some grey areas, so it is better for everybody concerned, and a more efficient probate process, if you can discuss it and come to an agreement that everyone thinks is the right way to go.

Q126 **Rachel Hopkins:** If I said that there has been a shift from a relational to a transactional process, would that be a fair reflection?

Ian Bond: Yes, the collaboration has gone.

Rachel Hopkins: Okay. Thank you.

Q127 **Chair:** That encapsulates it well. Thank you. Sophie, you were right when you mentioned that there are not many registrars. For the record, STEP's evidence says that there are now 2.6 full-time equivalent as opposed to 30.

Sophie Wales: For the country.

Chair: Indeed, for the country—for England and Wales.

Q128 **Dr Mullan:** Building on the questions from my colleague, you talked about examples where there are genuine grey areas. I don't think anyone would argue that that was a matter of lack of knowledge on the practitioner's behalf, but are you saying there was never a time—you have never heard of a case, or had a colleague who dealt with something a certain way—when you thought, "That was just the wrong way to do it and it wasn't good practice"? Can you give some examples of where the service prevented that before, to your benefit?

Ian Bond: I would say yes, there are. Not every application can be perfect, and there will be those where there are issues. It comes back to our wanting communication between all the organisations and HMCTS, because through the probate user group they give us information about what the stops are—what things we get wrong—and what the common issues are. Then we go out and, as I have done, do webinars and seminars, and write articles and blogs. We all do that for all our members, saying "This is how we improve." If you give us the data and information, and share that with us, we share it with our members.

Every application goes in and the feedback is to that one applicant, whichever profession it is, so we never learn. In planes they have a black box. If you crash the plane, the black box is listened to and that is disseminated through the whole industry. Everyone learns and gets better. If the data and the sharing of information were better—the collaboration between all the organisations on this panel and HMCTS, and the communication between us—we would make sure that our members made better applications. Work with us and we will make them better. We are not perfect, but we could be better with the information they give us.

Q129 **Dr Mullan:** There was, I think, previously a consultation on a proposal that did not progress, which was to charge a fee if you wanted pre-lodgement advice. How would you respond to the idea of a reform of the

fee structure, so that there was a lower flat fee but those who had a contact would have to pay?

Ian Bond: If they provide a service, we will pay for the service. That will lead to, "Do I genuinely need to make this pre-lodgement inquiry?" Ultimately, our fees are paid by the clients. It might therefore drive up quality and standards in the industry. Ultimately, if something is really knotty and we want to get it right, we will pay for that service, and that service will cover its own costs. Whatever the number is, it will be proportionate to the time that the registrar spends with us. They will not lose funds through doing that; they will gain funds.

Dr Mullan: What do the other representatives think about that idea?

Stephen Ward: I want to underline that it is acceptable, but at the same time what we would like from the probate registry side would be improvement in output of information, advice and guidance. Together we can make those improvements, make the whole system more efficient and reduce the number of questions and stops. That is going to require the probate registry to be a bit more porous, if I may put it like that.

Sophie Wales: I agree that if it was not a massive additional fee people would much rather pay a bit more and know that things would be done smoothly. We must not forget that a lot of people do this themselves as consumers, so you would still need to make sure there was a route for those people to get help without extra cost, because I think that would deter them from getting the help they need.

Dr Mullan: I guess if they choose to do that and they have not pulled it off, and they have to wait longer, that is their choice.

Sophie Wales: Yes.

Mark Walley: It is a choice. An alternative option might be a complex estates team, rather than it just landing—

Chair: A separate fee.

Mark Walley: A team within a team. Most organisations have people who deal with basic stuff and people who deal with more complex stuff.

Q130 **Dr Mullan:** As Ms Hopkins alluded to, has this lack of in-house expertise shown that there is perhaps to some extent a lack of expertise or effective practitioners on the other side? Are there two things happening?

Mark Walley: As Ian said, it would be remiss of us to suggest that every application that went in was perfect—that is just not the real world—but it feels wrong to suggest that if a handful of cases are not great, the blame is therefore on us. The answer is to share the information with us. Tell us what is stopping things being processed. Collaboratively, as organisations, with all our members, we can get that message out really quickly. That is what we are set up to do.

Q131 **Dr Mullan:** Ultimately, it doesn't cause the registry harm, financial or otherwise, if some people wait a long time. There are no consequences

for it. The consequences are all on the applicants. If there is a fee that it can charge only if it is providing a good service, perhaps that will create incentives at the registry end to live up to a higher standard on some of the complexity—if they want those fees.

Mark Walley: To pick up on the point that Ian made, it is almost as if we are forgetting that there are grieving families waiting for answers, who cannot settle bills and are getting into financial hardship and perhaps blaming their adviser for the delays, because they do not understand. We are getting that feedback from our members; they are taking it from the client, who thinks it is their fault, when it is just stuck in a queue.

Q132 **Dr Mullan:** Perhaps another way in which we might address this issue, which we have touched on briefly already, is the suggestion from STEP and the Council for Licensed Conveyancers that you might bring in more third-party support to tackle the bulge of difficulty that we are still in, or more generally as a way of doing this. Does anyone particularly support that proposal, and if so why?

Stephen Ward: I suppose we were one of the respondents who put it forward. We think there is a lot of expertise out there in the marketplace that could be brought to bear to help to get the backlog down and build resilience. Things are improving but I think we are all a little worried about whether it is robust. Some knowledge transfer from very experienced probate practitioners to perhaps newer HMCTS staff in the probate registry is worth looking at. We have something of a parallel in the way we appoint intervention agents when we close down a law firm. Those intervention agents then carry on the transactions that were live in the law firm. We have some experience of managing a similar process.

Q133 **Dr Mullan:** Do you have a dedicated team who do that for you, or other law firms?

Stephen Ward: We have a panel of law firms. While I can see that there might be concerns, it seems potentially like a very good way to eat into the backlog and build more resilience. If the backlog doesn't continue to be tackled then, come another spike, problems could escalate quite quickly.

Mark Walley: From STEP's perspective we have the same view. We see this very much as a temporary solution: get a panel together for the benefit of the end client, the practitioners and the service. Everybody wins out of that, but it feels like a short-term solution to the backlog and not something that carries on forever.

Q134 **Dr Mullan:** In terms of value for money, have you looked at the pay scales and grades for the civil servants working on this at the minute, compared with what your members might charge to come and give some advice?

Stephen Ward: Have I made that comparison? I am not sure what the rates of pay are for the particular civil servants working in the probate registry. It may be more expensive, or it may be that a deal could be

reached, but it still has great potential for tackling the short-term problem.

Dr Mullan: I think the baseline salary for someone working there is £22,000.

Mark Walley: But you are comparing qualified professionals with Government employees. We all know that the private sector pays more than the public sector to do the same job and we are not comparing the same job.

Q135 **Dr Mullan:** The counter-argument to doing this might be that the issue we have all talked about, which is the loss of learning that over time you hope would gradually return, and coming up with another way of doing things, even on a temporary basis, will obviously take up management time. We have all talked about that. The evidence points to the fact that they need to be focusing on other things and getting the job done, rather than having to organise a whole new way of working with the sector.

Sophie Wales: There is probably a way you could structure it so that a proportion of the staff worked with an experienced, knowledgeable practitioner so there was knowledge transfer. It is really important that it would not just be outsourcing completely so that somebody is doing the work and staff don't learn; it has to be very much, "Teach a man to fish," rather than giving them a fish, which solves the problem today but not going forward. Conceivably, you can see it being redesigned so that a third of the staff do this on rotation and the other two thirds are processing things. You would think you could cover that off in a fairly short period—maybe a year.

Dr Mullan: Almost like little training courses.

Sophie Wales: Yes.

Q136 **Dr Mullan:** Stephen, in your evidence you touched on a similar exercise undertaken in the home selling and buying sector that the Council for Licensed Conveyancers had been involved in. Is there anything you could learn from that? Does that ring any bell?

Stephen Ward: That didn't relate to this particular issue; it wasn't around capacity at, for example, the Land Registry. But I suppose it is worth saying at this stage that there are parallels in the Land Registry in tackling a backlog, having lost some experienced staff, and how that is being dealt with. It may be that the probate registry could talk to the Land Registry about how they are going about rebuilding expertise in the organisation.

Dr Mullan: Didn't that involve the profession as well and companies taking part in that? It was not just the Land Registry doing it on its own.

Stephen Ward: I was saying that the Land Registry is a very good model for how the probate registry could be more engaged with the sector. I think the lesson I would draw across from there is about knowledge sharing, understanding what is going wrong in applications to

the Land Registry and communicating that back to the sector so that everybody learns and the whole process becomes more efficient, as we would like to achieve in this field too.

Q137 **Dr Mullan:** That doesn't happen at all at the minute. There isn't any strategic engagement with the sector: "In the last few months these are the five things that were causing us issues." There is none of that, or did it just happen more?

Ian Bond: We have the probate practitioners user group. We have been meeting regularly since 2018 when the issues started to come out.

Dr Mullan: Do they come to that meeting?

Ian Bond: HMCTS comes to the meeting; we have the organisations here and other organisations and charities you have had evidence from previously. We have regular meetings, every six to eight weeks, with feedback in both directions. Some of the things that have come out of those meetings are the webinars, seminars, blogs, articles and things we have done and disseminated to the profession as things are changing. The service had changes to their phone service recently and they discussed that with us before they did it. They sought our opinions as organisations. Part way through that we had a stock take. How has it worked? Will it continue? It has got a lot better recently because there has been more collaboration between us and communication has worked a lot better.

In 2018 when we started having these meetings, it was very much a them and us, frosty reception, and blame was being thrown across. We have had to work hard to get to this situation. We have had some success. There have been changes in management structures at HMCTS, with new personnel coming in, and it is about engaging with them. I have been fortunate in being there right the way through at all those meetings and have seen how we engaged with them. As professionals we are trying to get a service that works for us to get the grants. All we want is our grant of probate to be issued, and we want it to be done quickly.

Q138 **Edward Timpson:** On average, about 50% of deaths lead to a probate application. In 2023 we saw the second highest ever number of probate applications—302,363, which you will know is just behind the figure in 2006. I am sure you were all diligently working in this field back then, with all the experience that you have. That puts added pressure on the probate registry. The forecast is that by 2030 there will be over 700,000 deaths per year. Of course, people are living longer. If my maths is correct, that means about 350,000 applications, so it is a significant uplift from where we are in the struggle over the backlog that we have already heard about. You have already intimated some of the ways they could help tackle the capacity restrictions that exist currently within the registry. From the conversations you have had and the evidence you are on the receiving end of, how well do you think the probate registry and HMCTS are alive to and prepared for the challenges that will inevitably face them over the next 10 to 15 years?

Ian Bond: They do their forecasting. They have been very clear that they are doing forecasting, so they are aware of the statistics and the increasing number of deaths. One thing we have not talked about is that part of the reason we are here is that the opportunities to modernise the service have just focused on, "If we digitise everything and put everything online, we'll all be happy." What we have not done is look at the black-letter law; we have not looked at the probate rules that set it all out to say, "What are the things we can do to those rules?" The black-letter law is the Senior Courts Act 1981. The non-contentious probate rules that govern everything we do date from 1987. They are 30 years old.

If I may be indulged for 30 seconds, in 2008 and 2009 there was a working party to look at the rules and it said they were not fit for purpose. The probate rules were the only part of the courts service that was left behind. Unlike the civil procedure rules and the things you are familiar with—practice directions, modern language and very clear processes where everything was set out—probate was left behind. We were left with Latin terms; we were left with affidavits and oaths; we were left with two-track systems, one for citizens and one for professionals. We had two sets of different fees. We were left behind.

In 2009 we recognised that and had a working party. In 2013 it produced a set of rules that were designed to get rid of all the Latin and all the issues we had. A consultation was put out and then stopped, and 2016 did not build on that. They just said, "We'll digitise the old 1987 rules," and they lost all of that. We are trying to say to them that you cannot digitise a process when the black-letter law says that the physical will has to arrive in the registry, and the grant that has come from abroad that has to be resealed has to be a physical grant in the registrar's hands. All of those things were not looked at. All that paperwork is required by the probate rules to be put in. If you are digitising something, you have a paper hand-off. It cannot ever be fully digitised with the rules as they stand. No one took into account the fact that the rules needed to be changed.

You are asking about what goes forward. The Wills Act is 1837. The Law Commission is looking at a new wills Bill next year. They will be talking about not just the wills measure that we have had for 180 years, but digital wills, video wills, wills made by text message and wills made by email. The probate rules as they stand at the moment do not and will not cope with that. We need to have a serious look at those rules before we do anything. Given the 300,000 extra deaths and the new legislation coming from the Law Commission, without something happening to the probate registry it will fall over when new rules come into play. Nothing in 1987 prepared us for video wills, email wills, text messages and all the things that the Law Commission will bring in for us. There needs to be a serious amount of work. They need to collaborate with every single person on this panel and bring those rules up to date.

Edward Timpson: I see quite a lot of nodding going on. Is that a shared

view? Does anybody have their own take on it?

Mark Walley: I have nothing to add.

Q139 **Edward Timpson:** Referring to the issue around registrars, we heard some figures earlier and the call from Sophie, I think, that that may be one of the solutions. Can you expand a little further on how you think, in the new world where the registry needs to work to meet the demand we place on it, the role that registrars could play would help them to navigate their way through that?

Sophie Wales: A lot of what has been said about what wills might look like in the future is a big issue, as is the need for will writing to be regulated so that there is a better quality of wills in the first place. Having a poorly drafted will causes problems. It is coming at it from both perspectives: making sure that the wills produced are of good quality and make sense when they come in, and that you have more registrars who are familiar with all the types of wills. It feels like there are a few steps to go down.

Q140 **Edward Timpson:** Is there another jurisdiction that any of you are aware of that has already gone through the process of moving from the analogue to the digital, while also recognising that the laws that underpin it need to be revised and modernised for it to function correctly? Is there any way that we as a Committee should be looking at not necessarily a full blueprint but at least a way of demonstrating the art of the possible?

Ian Bond: In other jurisdictions—for example, New Zealand, Canada and South Africa—they all took our wills and probate as the basis of their legislation when they became independent, and have done interesting and wonderful things with them. The Law Commission had a look at those for will writing and their probate registries. You can admit a digital will, or a will by email, in Australia. They have had wills via text messages and unsent text messages.

Other jurisdictions have had the ability to use what was the basis of our probate rules in their probate registries, but have given their registrars discretion. It comes back to changing the rules. The issue for registrars is that the rules written in 1987 basically said that everything had to go to a registrar to look at. If you look at those rules, not everything requires a registrar. You can say, "This is the stuff registrars need to look at." As for the other stuff, which at the moment they look at, because that was what the rules said in 1987, they can hand it all down and get suitably qualified staff to do those bits and issue those grants. You look at the rules again and say, "What do they really need to see?" The top people look at the top things and then you triage it down. That is where the rules need to be looked at and changed. Giving judicial discretion to registrars is what other jurisdictions have done. They are Commonwealth jurisdictions, so they will be very familiar to you and easy to look at.

Mark Walley: Of our members, two thirds are outside the UK. We can go and ask those questions. Ian has given some examples, but I am very happy to ask for examples and write back with suggestions for you.

Edward Timpson: That would be helpful.

Stephen Ward: It is very important that we don't forget that this is not just the legal sector. The financial sector needs to be brought in as well. We have to see joined-up thinking across those two parts so that we make the best use now of the tools that were not available in the 1980s. Are we making the best use of open banking technology? Are there new ways to use it that might be brought in? We have to bring in not just the people here but people from financial services as well to think about how we would build it now, and not make the classic mistake of digitising a system that is not perfect. We need to think about how we can change that.

Chair: We have just been told that potentially we have five votes coming. Each takes a quarter of an hour, so we may need to speed on.

Q141 **Edward Timpson:** If I may, I will add a couple of brief questions. The key to achieving that will be improved communication, which we have already spoken about during this session, but part of it includes, as some professionals that have submitted evidence to this Committee have suggested, the introduction of minimum service level standards for the probate registry. This could be a sort of double-edged sword, inasmuch as it could set out something that they could be judged against because it is more transparent, but it potentially carries the risk of being displacement activity that doesn't resolve the underlying problem. Is that something that you and/or your members would support? If so, how should it be instituted so that it is successful and helpful?

Ian Bond: The Law Society position is that for the last five years we have said there should be a minimum service level. If a client comes to us and asks us to do something and we do not do it, there are consequences. Your colleague said that there are no consequences if the probate registry takes 16, 18 or 20 weeks. If there was something like a fee remission and the grant was not issued within a set time, or there was an issue that was not an issue and it was erroneously stopped, you would have a part-refund of your fee. That works both ways in terms of service level.

Say an application by the practitioner does not come in and does not hit the standard and is rejected. Take the example of registering lasting powers of attorney with the Office of the Public Guardian, where if an application is rejected it is sent back to you and you have to do it again and you have to pay half the fee again to get it redone, because you didn't get it right first time. For the probate registry it works both ways. If we hold the probate registry to account and it does not deliver the grant as it says it will, we get a reduction. If we put in a rubbish application and it gets rejected and we are told to do it again, we pay again for doing that. We would have to pay that, not our clients. Therefore, it can work both ways. It is not just us saying, "Here's a big whip to beat the probate registry with and if they don't deliver in 16 weeks we want our money back." It is about raising all standards.

Sophie Wales: You could take a holistic approach. There are four main areas you would cover in minimum service standards. You would come up with some realistic processing times for different types of applications and publish those, so that people know what to expect. There should be a maximum number of working days in which you should be able to get a response to a question. It would not necessarily have to be a substantive response, perhaps if it required more thought, but it could be that within 10 working days somebody from the probate office would respond to your query. Practitioners I have spoken to have said that it could be any number as long as they know they will get a response and it is not how long is a piece of string.

There needs to be the ability, once the application is being processed, to speak to the person dealing with your case. If that needs to be by appointment, I think people would accept that. At the moment, there is a block and communication is not getting through.

Lastly, as others have said, there needs to be the ability to talk to somebody within the first 16 weeks. Four months is a long time for you to have to say to a grieving family member, "I don't know. Not a clue. Can't help you." Even if it was just, "It's been accepted and allocated to somebody and you will be contacted in however long," there are some quite simple things that could be done that would make a massive difference to managing the expectations of users of the service.

Q142 **Edward Timpson:** You refer to HMCTS. I am told that they have trialled surgeries where practitioners whose stopped cases have been with them for longer than 16 weeks can request a 20-minute appointment with a registrar or an experienced probate manager. First, is that the case? Secondly, what feedback have you had from people who have accessed that service?

Ian Bond: It is the case. Last week I was at Newcastle probate registry and we discussed those surgeries. They had 90 surgeries which were booked very quickly. It was like a Take That concert. As soon as tickets come up, they go. When those appointments were created, they found they could issue 35 of the grants before the appointments took place and they were able to reopen that and bring in other practitioners. There was an allotted time to speak to a practitioner about a case. Because there was an appointment, the registrar looked at the application and said, "I've got everything I need here to issue the grant. I don't need to have this. I'm just going to issue it and reopen it elsewhere."

Those surgeries will work. It was done on a trial basis and the feedback is, "Yes, that's brilliant. Do more." When I phone and ask a question, the first thing they have to do is find me on the system. You have to kill time and then read the bits and pieces. That is not a constructive conversation. They are on the back foot because I have called them, whereas the registrar has a dedicated time to call the practitioner. They have read the papers and say, "Right, Ian, this is what I need from you. Do that and I'll issue your grant. Can you do that?" Okay. "Can you send it to me via an email now?" Yes. "Okay. I'll issue it as soon as I get your

email." The surgeries are there to clear up those issues. Be proactive and on the front foot. Collaborate with the person who has put in the application. Don't be afraid of us. We'll get the grant issued.

Q143 **Rachel Hopkins:** On processing and information, lots of respondents, including the Law Society, said that they wanted to see more transparency and improvements to data collection and data sharing. What difference would more transparency and more timely information from HMCTS make?

Ian Bond: If we take the Land Registry as an example, the Land Registry gets an awful lot of data: on different types of applications, different organisations, which organisations do the most, which organisations do the least. You will remember from your evidence from Jo that she says, "We do about six applications a year, but they are usually the most complex—people with hundreds of millions of pounds and assets all over the world." That then goes up against other organisations. Irwin Mitchell would probably be comfortably in the top five of the number of applications we put in. We would be able to have transparent data about which organisations do the most and which organisations have the most stops.

If an organisation puts in 100 applications but 50 of those are stopped, as a member of the public and as a consumer you can look at that data and say, "I'm not going to use them." It drives up standards. That data is a gold mine. The charities talk to you about all the things they could find about it. As professionals, as representative bodies, we would be able to find an awful lot of data and be able to talk to our members about which firms do the most and what type of applications they are good at. Consumers would be able to make an informed choice rather than just on price or recommendation. They would be able to see that I am an expert and I do thousands of these as an organisation each year. I know what I am talking about. Use us. That is what the Land Registry does; that is what the probate registry could do.

Mark Walley: Historically, our members loved the probate service. They could not say enough good things about it. The reason why they want data is so that they can work together to restore that position. There is almost a sense that, "We don't want to release data because we're going to get beaten up." No, we just want to help and to have some transparency.

Rachel Hopkins: Any other comments?

Stephen Ward: As a regulator, I would really like that information about stops. We use the information that we get from the Land Registry as one of the risk criteria as we look at firms in the round, to understand how frequently we should visit them and inspect them and encourage them and so on. Having that sort of information is the kind of thing I was talking about when I talked about the probate registry becoming more porous—just being very transparent about that sort of thing—because all of that sort of data nowadays can be used in all sorts of different ways by

all sorts of different parties to improve access and to improve outcomes for citizens.

Sophie Wales: From our perspective, data that gives a fuller picture of what is going on in terms of timescales will be really beneficial so that you can manage expectations. Saying, "This is the average," does not really help somebody who is right up here or right down there. The evidence that we collected is that the biggest harm that clients were facing was emotional and psychological frustration. If you could say, "This is the picture and this is where you sit in the overall piece," that would help.

Q144 **Chair:** Thanks very much. Looking at the regulatory situation, I noticed this morning—this was very timely—that the Competition and Markets Authority has launched a draft consultation on draft consumer protection law compliance guidance for unregulated businesses providing will writing, online divorce, prepaid probate services, and so on—some of the areas that we are interested in. Against that background and the previous history, which I think you are all familiar with, of the regulatory landscape, is the framework around reserved activities on probate, will writing and estates admin broadly correct? Or should there be changes?

Ian Bond: That is a very big question. The Law Society has its stated positions, which we can send in to you, on all those things. The fact is that it was looked at in 2013 and the decision was made that there was evidence of consumer detriment. As organisations, we have to do more for public legal education now. All the organisations here have done a lot to educate our members and a lot to educate the public. Is it time to look back at it again? Potentially, because there are still harms. At the moment, there are bad actors and nefarious companies coming in and exploiting.

People are scared. They see probate delays in the papers and they get offered a product that says, "We can avoid you having to get probate." As always with things in life, if it looks too good to be true it probably is. There are all sorts of unintended consequences, but there are vulnerable people out there who say, "I don't want to have my family waiting 16 weeks to get hold of probate to get access to my funds." They may be, rightly or wrongly, concerned about inheritance tax. All those things are there. There are bad actors in the industry who will prey on those vulnerable people and say, "Well, I can solve all that for you. Let's go down this route." Prepaid probate is one thing, but there are others who are selling all sorts of things. All the organisations here will tell you that they have had consequences where when they go wrong, they go spectacularly wrong, and consumers are very badly hit from that perspective.

Mark Walley: The bad actors have no professional insurance either. There is no safety net.

Q145 **Chair:** Should we revisit the 2013 LSB inquiry into those areas?

Stephen Ward: We at the CLC think yes, certainly. We were very disappointed and surprised about the decision in 2013. As ICAEW has just said, one of the drivers of some of the challenges in probate is badly written wills, so we need to address that at the very beginning, as well as the wider issue of estate administration. People are dealing with this at a very difficult time in their lives. They are, by definition, vulnerable clients, and we think this is a classic area for regulation to protect those vulnerable people.

Chair: Adding those areas to the reserved activities, basically.

Sophie Wales: Absolutely. It seems very odd that you have to be regulated to do the probate but not to write the will. It is the most important document you are ever going to have written for you, bar a few others, so it is a bit odd that anybody can write it for you. It causes harm. The firms tell us that if a firm then has to step in after someone's death and deal with a poorly drafted will, it ends up costing the family more than if it had just been paid for and done properly in the first place. There is a real mismatch that needs to be addressed.

Q146 **Tahir Ali:** On that final point, it is absolutely right that anyone can write wills, but the cost will put off some people. Should there be a cap on the cost of writing wills? At the moment, someone can charge £50 and others can charge £300. There will be others who will then exploit the vulnerable to say, "This is how much it's going to cost you." If it is regulated, there needs to be a cap on what needs to be charged.

Sophie Wales: It is about giving consumers choice. If you made it so that they were aware of all the providers and they had transparency over the pricing, the competition should mean that it brings the prices down. Paying a very small amount for a bad service and a bad document is not in the interest of consumers.

Q147 **Dr Mullan:** Very quickly, I guess the thing that is slightly different about this dynamic compared to, say, home sales is that you can do your own will. That is why it is a bit more complicated. You could imagine a whole load of people, who at the minute might be getting some advice that might not be good or might be okay, who would then just be getting any advice, so you might create a worse situation unintentionally.

Sophie Wales: You have to get the right balance, don't you? You have to think about how you can bring in regulation that passes on the minimum of cost to the consumer so that they are not deterred from getting professional advice. It is a bit wild west out there at the minute.

Q148 **Edward Timpson:** We talked before about the projects to digitise and centralise the work of the probate office. I am looking specifically at Ian, but others are very welcome to comment if they wish to. Prior to that, there was the probate modernisation project, which I believe you had some involvement in. Could you say a little bit about what that was, what it hoped to achieve and whether it achieved anything that we should take note of?

Ian Bond: The working party was set up in 2009 to look at the probate rules. It had members from organisations here and the senior judiciary. It had registrars. It produced a set of modernised rules that were based very much on the civil procedure rules, and in the same practice took out all the arcane language, the different types of Latin that we use, the different types of grants. They took out the different processes between citizen and professional. They looked at what documents should and should not be sent in. They produced a draft set of rules that went out for consultation. The consultation closed and no outcome was ever published. It was never taken anywhere. We can write to the Clerks and let you have that piece of work. It still sits on the various different websites for the judiciary with the draft set. That was the basis.

The whole point of that was to modernise the probate service—and it is a service, not a place. It could have used that as the basis for saying, "Right, there's the draft set of rules. Put those in place. Then we digitise those," because they were designed to be digitised. They were designed for a modern world. If you did them again now, you would take them even further because we have learned a lot more from covid. But we didn't; they were just shelved.

When we were sitting in the meetings we attended in 2016, it was a case of them saying, "No, we will just digitise what we've got," and us saying, "Well, this is backwards. You are asking for oaths and you are asking for affidavits and nothing has been updated, so you are just making things far more complex. You need to look back at this point of view." Of course, it is the profession being painted by HMCTS as being backwards and wanting to keep things as they are. We did not. The registrars who were there at the time were saying, "No, we need to look at the rules first before we digitise things." The management consultants who came in, the original set of staff who were dealing with this who got taken off the projects pretty quickly afterwards, soon realised they couldn't do what they set out to do. We like setting everything online with one process, but you have to change the rules to do that. The black-letter law applied and they didn't do anything about that.

Edward Timpson: It was a missed opportunity.

Ian Bond: Absolutely.

Edward Timpson: And it has all been done the wrong way round.

Ian Bond: The project was opened in 2016 and was supposed to finish in 2019. The project has been closed. It is not fully digitised; it is 80% there. The project has been closed and there is no money for it. There is no plan for how they are going to get the last bits done. They are throwing good money after bad. It is a case of saying they made an expensive mistake. The decisions that were made were not made by the current management system; they are just picking up the pieces of decisions that were made badly beforehand. They have made an expensive mistake. Let's not throw more money after it. We need to recognise that we did it wrong.

Get the Law Commission in. Redo the rules. Get them ready for 700,000 deaths. Get them ready for a new set of will rules. Get them ready for a modern world and then digitise and get it right; otherwise, we are just going to pump more money into it and we are going to fall over at another point and you are going to have another Committee session in a couple of years' time—hopefully, I will not be here at that stage—and it will be a case of saying, "What went wrong?" "We tried to fit a modern world on to a 1987 set of rules."

Q149 **Edward Timpson:** If, hopefully, someone in a position of power was to pick up the baton of the rules that you wrote over a decade ago, how long do you think it would take for them to integrate themselves into a new probate system? It may be very difficult to put a specific figure on that. We don't want to scare the horses.

Ian Bond: No, I don't think I could say how it would fit into the digitisation. Those rules are there. They are online. They were drafted. To pick them up and have another review, you could get a working committee through. You could get your registrars from Newcastle—except we want them issuing grants. You could get senior judiciary. You could get people from all these organisations. You could get stakeholders. You could get members of the public who are interested to say, "How does this work for us? What have we learned from the covid years? What have we learned from the intervening periods of time?" Let's work together, collaborate and get something that is usable for the future, because we are tinkering around the edges with a set of rules from 1987. We have fluffed them around here and there, but we need to come in and, as I say, have a proper look at this.

Just as the Law Commission is doing an absolute generational change for wills, you need to have the probate service, which is the natural follow-on from that wills legislation, looked at with the same gravity and the same importance; otherwise, we are going to have some very shiny new legislation for wills and no one will be able to grant probate.

Stephen Ward: There is a lot of free resource in the legal and financial sectors that will help to crack this and make sure that we take advantage of all the changes we have seen, particularly those driven by the pandemic and what we learned to do through remote working and the ways things were speeded up. There are also hundreds of start-ups champing at the bit to introduce new tools, but not for old processes. They give us great new opportunities of different ways of working that are better for the consumer and the citizen and would make the probate registry's role much easier and more resilient for those 700,000 deaths, as you say.

Edward Timpson: Thank you very much.

Q150 **Chair:** Thank you. That has been very helpful, everyone. I want, finally, to wrap up the various thoughts we have pulled together and the written evidence you have given us. You have highlighted how the intended reforms have caused significant problems. I think that is perhaps putting

it mildly. What are the key lessons? What do you think the key takeaways should be for us as a Committee and for HMCTS? Are they simply for the probate service? Or is there a broader application that might be suitable?

Sophie Wales: I have three closing thoughts. One is that you need to address the short-term problem around upskilling staff and getting the interventions to try to get things out. The second is about making it fit for the future with the minimum service standards. The third is: what can you do to mitigate some of the financial damage that has been caused to people who have suffered from the delays? There are things you could do around interest on inheritance tax instalments. There are things you could do around extending how long you have to get loss relief on share sales. I am happy to send the Committee more details of our thoughts on that if it is helpful.

Chair: Yes, you can. If there are any further thoughts on this, do please send them through.

Stephen Ward: At the risk of sounding like a broken record, we should harness the industries that are doing this work to build it for the future in a way that is going to be effective, and really take that forward and listen. Make sure that the probate registry is providing the information that will inform that process, too.

Ian Bond: To echo everything else, this has been a good learning process for HMCTS. Part of it is how not to do a project. The thing that they have to take away is that they need to communicate. They need to collaborate with those who have a stake in this, whether it is the public, the consumers, or the industry bodies. The online probate service is a good idea. The idea behind the whole process is right, but the execution is poor. It is not about the people who are there now. It is not their fault. They are just trying to make good decisions that were made previously and that they are picking up. With better collaboration between us as professionals and the industry, well-designed, well-thought-out processes, standardisation, service level agreements, transparency both ways, us upping our game, the probate registry knowing what they are going to receive from us, and better communications all round will mean that we can get through this issue. There have been lessons learned. They won’t make the same mistake again in other areas. It is just a sad thing that it had to happen with probate.

Chair: Indeed. I am very grateful to you all for your time. We have dispatched a lot of material very efficiently. We have just about beaten the bell, literally, because the Minister is winding up the debate, before we have the vote. I am grateful for your time today. Thanks for all the evidence you put in before. If there is any additional material you want to put in, that will be very gratefully received. The session is concluded.