



# Justice Committee

## Oral evidence: Probate, HC 520

Tuesday 21 May 2024

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Members present: Sir Robert Neill KC (Chair); Tahir Ali; Andy Carter; Bambos Charalambous; Dehenna Davison; Yasmin Qureshi; Edward Timpson KC.

Questions 151 - 261

### Witnesses

**I:** Mike Freer MP, Minister for Courts and Legal Services; Helen Measures, National Services Director, HMCTS.

Written evidence from witnesses:

[Ministry of Justice \(PRO0092\)](#)

[Ministry of Justice \(PRO0094\)](#)

[Ministry of Justice \(PRO0095\)](#)



## Examination of witnesses

Witnesses: Mike Freer and Helen Measures.

Q151 **Chair:** Welcome to our witnesses, we are grateful to see you both. Minister and Ms Measures, I will come to you in a moment, but first Committee members have to make their declarations of interest. I am a non-practising barrister and a 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 CAF/CASS and former chair of the Child Safeguarding Practice Review Panel. My brother is chair of the Prison Reform Trust and I am currently advising Ministers on family justice policy.

**Yasmin Qureshi:** I am a barrister, but not practising. I have a dual tenancy but not a practising certificate. I used to work with the Crown Prosecution Service and I was at the independent Bar for many years. I have two members of family who are practising lawyers at the moment.

**Chair:** Very comprehensive.

**Bambos Charalambous:** I am a non-practising solicitor.

**Andy Carter:** I am currently a member of the Merseyside Bench.

**Dehenna Davison:** Nothing relevant to declare, you will be pleased to know.

Q152 **Chair:** Right. Perhaps you would like to introduce yourself and Ms Measures please, Minister.

**Mike Freer:** I am the Minister for Courts and Legal Services. That is quite a wide-ranging portfolio, but for the purpose of today, it includes the oversight of the probate service. Helen Measures is a relatively new appointment. Is it operations?

**Helen Measures:** National services director.

**Mike Freer:** National services director. Ms Measures has been appointed within the last couple of months to help us with the recovery plan for the probate service.

Q153 **Chair:** Ms Measures, I understand that you are new to this particular area, but you will appreciate that we will be asking questions throughout, which I hope you will be able to answer from within your corporate knowledge, if I can put it that way.

The first thing I wanted to do, Minister, is to start off with where we are. We have all seen the evidence, and your Department, among others, has submitted evidence about the situation. Nobody seems to dispute that there has been a serious backlog. We are told that that backlog has



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improved. Equally, we have had some evidence to raise concerns about how that is going to be sustained, so let us look at the current position: what is the current position on performance at the probate registry?

**Mike Freer:** First, if I may, Sir Bob, I have had this service in my portfolio ever since I was appointed to the MOJ. It is true to say that both the Department and the team looking after it recognise it has not been delivering, certainly in the past, although I believe we are now on a good trajectory.

We are very unhappy about the level of service failures and we apologise profusely. We realise that when people are going through probate, it can be an extremely difficult time in their lives while they are dealing with bereavement.

From my point of view, I have spent a significant amount of time on this service, trying to understand some of the key metrics and what has been going wrong. I have been working quite closely with senior officials to put a recovery plan in place to improve the level of productivity and ensure recruitment. We have recruited a significant number of people—over 100 people in the past year—to boost the number of full-time staff.

Quite a lot of work has gone into understanding the processes and where they have been going wrong, but if I may be honest, one of my concerns was driven by the postbag from colleagues. Certainly, when I took on this role, about 60% of my postbag was complaints about probate. The officials know—I am not speaking out of turn—I was extremely unhappy with the level of delays between receipt and processing and grants.

In terms of where we are today, we have seen a significant turnaround in the answering of phones. For instance, when I took on the portfolio, the average time waiting to have the phone answered was 56 minutes. It is now usually under 12, and while that is still too high, it is a significant improvement.

We have cleared a significant amount of the backlog. Ms Measures will be able to tell you the exact figures but broadly speaking, for the last seven months, grants of probate have outstripped receipts, which is a significant improvement. As well as seeing productivity improve, there has been an awful lot of work going on to clear the backlog, going into the oldest cases first to find out what has gone wrong, and then fixing it.

To be blunt, some of that has been down to the failure of the service, where things have simply fallen through the cracks and some has been due to a lack of knowledge or skill. I have been to see the team in Birmingham. It is quite a dedicated team, but they were perhaps not well trained. That has been rectified.

On top of that, we continue to have problems where people submit incomplete applications. We have looked at the digital system and the forms used for both professional and, if you like, domestic applicants, to



make sure it is as clear as possible, so that as soon as we get all the information we need, we can process it as fast as possible. At the moment, the average time for all applications is about nine weeks. For digital it is eight weeks, and for paper, it is about 18 weeks. That is a significant improvement on where it was. It is still not where we want it to be and I am hoping that by September, we will get back down to where we were pre-covid.

Q154 **Chair:** As you say, that is an improvement, but it is starting from an unsatisfactory base. In terms of, if you like, the probate recovery plan, I would be interested to know what are the key elements and the performance indicators? Ms Measures, if you can help us with that, or yourself, Minister?

**Helen Measures:** There were four areas of the recovery plan, which we introduced in June, July last year. The first area was capability—bringing up the capability of the teams involved—and the Minister has touched on the training we needed to do for the team.

The second area was productivity. Rather than spending a long time answering queries on the phone, we needed to put more people on examining cases to increase productivity and the grant output. Thirdly, and related to that, we had a stronger drive on performance: setting expectations of what we needed the team to do. Finally, we looked at resources, and that is partly why we increased the number of people working in the service, to improve our ability to get through more cases.

They were the main areas we looked at and the recovery plan is structured around them. There are a range of things we use in order to measure success. This includes the fact that we want to dispose of more cases than we are receiving. We also look at average waiting time, and the Minister has touched on some of the data relating to that. We look at the age distribution—with our very oldest cases, why they are there and how many we have. As a result of looking at that, we are targeting our oldest cases first.

Two final points: we look at the average speed to answer—the Minister has already mentioned that—and we look at the speed with which we respond to correspondence. We have significantly improved that area as well; we are responding to everything within 10 days.

Q155 **Chair:** Is 10 days a firm target?

**Helen Measures:** Yes, and we are achieving it at the moment.

Q156 **Chair:** Are we going to get rid of this four-month—16 weeks—wait before people answer queries?

**Helen Measures:** We are looking at that. We set it at 16 weeks because it gives us a bit of space, if I am being honest, but it is reasonable to say that when we are in a steady state, we could bring that forward. People



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can still contact us before the 16-week point. There are ways they can contact us.

**Yasmin Qureshi:** It is not working.

**Helen Measures:** Yes.

Q157 **Chair:** But experience tells us that they are not going to find out very much, are they?

**Mike Freer:** I can tell you about one of the problems we looked at. I probably spend a disproportionate amount of my time on this service and one of the issues was people were phoning up and asking, "Have you got it? Have you issued it? What's the problem?" Of course, that slowed down the whole process, so it became self-defeating. If you are answering the phone, you cannot be clearing the backlog. By extending the no contact period to 16 weeks, it gave the team some breathing space, and that is why we have seen this significant improvement of the grants outstripping receipts.

The other thing that has made a difference is the reduction in telephone operating hours. As Helen will know, I took some persuading to do that. I wanted to be absolutely convinced that restricting telephone operating hours would have an impact on productivity because, as we know, that has not been seen in other parts of government.

We have had feedback from stakeholders that they have seen a marked improvement in the service because we are closing the phone lines in the afternoons, Monday to Friday, which allows the teams to focus on grants. If we can continue this trajectory of grants outstripping receipts, the 16 weeks should be able to come back to the norm.

Q158 **Chair:** We have known each other a long time. Before you came into politics, you had senior roles in business. In business, nobody would last in any customer-facing service if there was a 16-week wait for a response as to what is happening, would they?

**Mike Freer:** As you know, Sir Bob, I am a bit of a statto, so I did spend quite a lot of time with the team going through the actual processes and let us just say there were some frank and robust conversations between myself and the senior management team.

**Chair:** Glad to hear it. Mr Carter?

Q159 **Andy Carter:** Minister, you mentioned learning from other areas in government. I have just renewed my passport and I had an update every day from the Passport Office, telling me they had received it, they were processing it, and it was back with me within a week. Is the Department looking at other areas, such as the Passport Office, to learn how to communicate with its stakeholders to ensure they do not need to make a phone call? I did not need to call anybody at the Passport Office because they were communicating with me exactly what was going on.



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**Helen Measures:** At the moment, we are putting all our energy into improving the service so that people do not need to be waiting. We want our resource to go into examining the cases and issuing as many grants as we can. If other Government Departments are doing different things, we are open-minded on that. We have introduced a range of different methods of engaging with the stakeholders—we have had all sorts of webinars and suchlike—but I do see your point.

Q160 **Andy Carter:** If you do not mind, can I just push back? You do not need to reinvent the wheel. There is a very, very good system working in the Passport Office. It was not 12 months ago, but they now have it right. Is this an opportunity to go and look at what they are doing and perhaps bring that straight in?

**Mike Freer:** Yes.

**Andy Carter:** Thank you.

Q161 **Chair:** That is a good start. Can you help me on one other thing? I can see you have done work, with efforts to get the backlog down. But what we picked up from many practitioners is that—I will not say death is seasonal—there are periods of time when, particularly during the winter and with an ageing population, sadly more people will die. That means that in due course, the probate comes through. All the practitioners we spoke to said April, March is a peak time, when the number of applications goes up. How has that fared in relation to the latest performance?

**Mike Freer:** The broad answer is that we have not seen the death rate go back to pre-covid levels. The death rate has remained high, and that is why we have resourced up, but so far we have not seen a sudden influx in April or May.

**Helen Measures:** We have seen a very modest increase, but it is not significant. We have statisticians who work in our workforce management team and we look at the death rate data to forecast our receipts. At the moment, receipts are actually tracking below forecast, but it is something we monitor very closely.

Q162 **Chair:** I suppose the question is, what assurances can you give us that this downward trajectory is going to continue over the next two, three months and be sustained? That is the real question that people are raising.

**Mike Freer:** Well, nothing is ever cast in stone, but given that we have seen the phones consistently answered in under 12 minutes and grants consistently outstripping receipts in the last seven months, I am confident that by September we will get back to the normal service levels we had pre-covid. If there was to be a natural disaster in terms of another pandemic, or if other things happen, that could change. But given what I know today, I am confident the service is on an even keel to deliver what we want to deliver, not what it has been delivering.



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Q163 **Chair:** We spoke to some users—ordinary laypeople—earlier today on Teams. Of the various people we spoke to—only a small sample—applications were mostly made online, only one on paper. September 2023, nothing yet; December 2023—yes, actually, in March 2024. All the others—January 2024, March 2024—nothing so far. It is interesting that the one person who got an answer was the one who eventually managed to speak to someone on the phone. Have we cut back too much on the availability of personal contact and staff who can actually deal with people one to one to sort things out? That used to be what happened in the old days with the probate registries.

**Mike Freer:** Helen will be able to give you more detail, but all I can say is I have spent quite a lot of time in Birmingham listening to the call handlers, and the calls do take quite a lot of time, because often the queries are complex. When I started seeing the correspondence saying, “I sent it in on this month, it took two months for the service to look at it, then another four months to actually deal with it,” I really started digging to find out why.

There can be a variety of reasons. It is absolutely true to say there were some complete failures, where things fell through the cracks, but what is also true is that sometimes the application is not complete, so you do not get the original will or there are pages missing. Sometimes the forms are not complete. One of the big problems we encountered, which we have now addressed by direct feed from the Revenue, is despite the paper form stating it should not be sent in without the IHT code, people would send it in incomplete. Then we would have to wait for the IHT code.

Hand on heart, sometimes the delays are entirely down to the service getting it wrong. Equally, the forms and the applications are sometimes incomplete and the service will go back to the customer and request clarification or further information. That might come in very promptly and the grant can flow quickly or it might take a while to come back. There can be a variety of issues. I am not going to try to defend the service entirely, but it is not entirely to blame. It can be a mixture of reasons why things are slow.

Q164 **Chair:** Of course, since, I think January of this year, you do not send an IHT421 form any more.

**Mike Freer:** Yes, that is a direct feed now.

Q165 **Chair:** You have the direct feed with the code, which is surprising, given that we spoke to one gentleman who made a paper application in March 2024 and received an email on 22 April requesting further information. What did they ask for? An IHT421 form, which they stopped using in January. He tells us, fairly, that the probate registry does not know its own processes.

**Mike Freer:** If you let me know the particulars of the case, I can dig the file out and write back to you with the details.



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Q166 **Chair:** Thank you. But if people have not been trained up on the new system, that is troubling. We will get that detail to you.

Finally, Ms Measures, you very helpfully gave us the average wait times. What is the total amount of the backlog, in terms of figures?

**Helen Measures:** It is just over 69,000. It has reduced by 30,000 in the last seven months. Not all those cases are what we call workable cases. Of the 69,000, about 37,000 of them are workable.

Q167 **Chair:** What is meant by workable cases?

**Helen Measures:** It means we have the information and can work on them, so it excludes stopped and dormant cases.

**Chair:** We will perhaps come back to those later. Thank you very much. Ms Qureshi.

Q168 **Yasmin Qureshi:** Thank you, Chair. Good afternoon, Minister and Ms Measures. We have received a number of documents in evidence from different users of the probate system, which you may have had copies of. While different reasons were given for why the delay was occurring, one reason was that digitisation started to take place at the same time as in-person facilities closed down, so people were not able to speak to anyone, not able to get advice and delays were caused as a result.

I understand that is being tackled, but one of the things we have received a lot of information about is the direct impact of the delays on different people—not just individuals but, for example, charities. We received information that about £30 million-worth of charitable donations were delayed. Councils' adult social care systems are chasing up debts as well, which is running into millions. Some individuals have even considered suicide due to the fact they cannot continue to live as they were. For example, if you think about it, the person who passed may have been the working person, the breadwinner. The house might be inhabited by the person who was not the breadwinner and they now have nowhere to live. There are a lot of real problems that happen. Is the Ministry aware of the devastating impact this can have on many people, and are there any systems in place to deal with and mitigate that type of situation?

**Mike Freer:** Broadly speaking, the Department is very conscious of the human impact of delays, such as cases where someone is trying to get the estate dealt with because they have things such as care fees to deal with. I understand all those issues, and we do not minimise the human impact at all. That is why we have spent a lot of time and resources trying to get the service recovered so it is delivering for people.

On the charity issue, senior management spend a lot of time speaking to various stakeholders and organisations such as the Institute of Legacy Management to try to understand, because they can feed back directly to the team what they perceive to be the amount of money outstanding to charities. There are a variety of ways that the charitable sector can feed into the management team as to what they think is outstanding, but I will





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let Helen talk about how we can escalate specifically those quite difficult, human misery type cases, if that makes sense?

**Helen Measures:** First, it is important to acknowledge that there have been mistakes and we apologise for that. We completely understand the human impact of that, not just on individuals, but on the professional sector and the charitable sector. That is why, as the Minister said, we have engaged extensively with them. If somebody contacts us and provides the information, such as a scenario that you have just described, we have ways to expedite those cases and prioritise them. If somebody contacts us, we can do so.

Where we can see cases that have waited a long time, we are proactively contacting people and inviting them to, for example, surgeries, which we have been running recently for our very oldest cases. They are cases that can be stuck for one reason or another; we will perhaps be waiting for something and that kind of thing. So yes, we fully understand and appreciate the impact it has had; that is why we are working hard to recover the situation.

**Mike Freer:** It might also be helpful to say that, on the professional sector, the team have been doing clinics with some legal firms, so they can actually bring cases to them and ask why they have been waiting so long. There is also an educational aspect, in that we can talk with a professional about some common problems. It also allows the team to dig out the really thorny cases and resolve them.

Alongside that, one of the big problems you have—and Members will know this from correspondence—is sometimes the service is contacted by a relative or maybe the inheritor, but because they are not the applicant, particularly if they have used a solicitor, we have been unable to discuss the case with them. Historically, we have only been able to disclose information about the case to the applicant, and if the applicant was the solicitor, we were not able to discuss it with the executors. We have now changed that process—so as long as they are listed as executors, we can discuss the case with them, even if they are not technically the applicant. That should also mean those really troublesome cases can be escalated as well.

Q169 **Yasmin Qureshi:** Can I ask whether any thought has been put into perhaps setting up a special unit, or even an MP hotline, such as we have with DWP or Immigration? I know from constituents who have come to me, who have been battling with this probate thing, that some have spent years trying to get the matter dealt with. We would ring, and it would take ages for someone to answer, they would not really be able to give us much help, and then you have to call again a month later and they are still tackling the same thing.

That is when individuals are doing it, but even for Members of Parliament, trying to get through to many numbers—for this and many other areas—I am sorry to say, Minister, is impossible. You get through to someone at a



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switchboard, who does not know who to send calls to and expects you to tell them, and you never know who you have spoken to. There is a complete loss in the system. Is there any way that you can have a system where, at least for Members of Parliament, we can have an MP hotline we can call on behalf of our constituents?

**Helen Measures:** We do not currently have that. When we receive such correspondence, we do prioritise it, but we would be happy to look at that, yes.

**Mike Freer:** I am usually your MP hotline.

**Chair:** That is probably right, actually. Thanks very much. Mr Charalambous.

Q170 **Bambos Charalambous:** We live in a data-driven world, and management information is one of the key things people use to measure. The information you gave earlier was about how you turned things around with the recovery plan, which involved various metrics and looking at productivity and that sort of thing. One key thing people have asked us about is whether the data that HMCTS has can be made more available, which could help inform what solicitors and practitioners could do, and help smooth things along. For example, if you knew that an electronic application would take eight weeks whereas a paper one would take 18 weeks, that could help inform what you do.

Looking at productivity, knowing how quickly emails are responded to and so on would really benefit solicitors and other practitioners and would give you lots of information and help the service run smoother. It is a big request we have had from users; is there a barrier to that data being available?

**Helen Measures:** I have noted the evidence that has previously been provided. There are two ways in which we already provide data. One is our quarterly statistics and, obviously, there is a lag to them. We also now produce monthly management information, which has only a six-week lag, and there is a huge amount of information there.

What we are finding is that not everybody knows about it or knows where to find it. The probate service is probably one of our services that provides the most information about the examples you have just given. What we do not publish—and again this is something we should be reflecting on—is what people can expect. I have listened to some of the evidence that has been provided to you, where people just do not know, but if they looked at the management information they could work it out. Arguably, we should be providing people with a clear expectation, so that is something we can consider.

Q171 **Bambos Charalambous:** I would not know where to find it, so maybe you can direct us to that?



**Helen Measures:** We can. I will not read out the list now, but yes, we can provide that to the Committee.

**Chair:** If you can, thanks.

Q172 **Bambos Charalambous:** Is there some sort of dashboard where you can look and see what the latest quarterly stats are?

**Mike Freer:** That is available.

**Helen Measures:** Yes.

**Mike Freer:** Whether it is in a dashboard format, I will double-check, but there is quite a lot of data there.

Q173 **Andy Carter:** Helen, I would like to offer some congratulations to you, because last time I saw you we were in Warrington at the magistrates court. Congratulations on your new role.

**Mike Freer:** That is where I poached her.

**Andy Carter:** You were there as well, absolutely. I was slightly worried that that may have been involved there. I went back and looked at correspondence that has come into the inquiry and there are one or two common themes. One is communication: every organisation that has given evidence has said communication from the probate registry is poor. In particular, it was the Law Society that said it never sees anything in the press, in the industry, or news media about what is going on at the probate registry. In fact, the only place it has really managed to get information is from an inquiry that is taking place in the House of Commons. I wonder whether you can set out what work you are doing in terms of informing the sector. I know you have the probate user group, in particular: could you just talk us through what that group was established to do, and how it is working?

**Helen Measures:** Yes. It was established to address the point you have raised and have a two-way conversation, so we can listen to the sector and respond to their feedback. We have these professional user groups, but we have a range of other methods as well. I can provide the Committee with exact details on the number of these sessions, if that is of interest. Just in the last 12 months, we have had five of these user groups, 10 charity and trust sector sessions, 20 or 30 meetings with other parts of the sector, three public webinars, and what we call lunch and learn sessions—those are informal conversations between staff and practitioners. We have also introduced the surgeries, or clinics, that Minister Freer has mentioned.

We have listened to the fact that people have said there has not been enough communication. Over the coming months, we are going to continue doing the surgeries, and these user groups and sessions that I have just described, but we are also going to introduce a monthly newsletter; that is a written update explaining where we are. I accept



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your point that we have not spoken enough about what we are already doing. We are also going to be updating gov.uk with more information on the status of the service right now and what we are doing to address it. There is a range of things we are doing to address that point and hopefully it should improve.

Q174 **Andy Carter:** The Law Society said in its evidence that collaboration has gone. How do you respond to that?

**Helen Measures:** I would argue politely that we are working really hard to collaborate with all parts of the sector. If that is how it feels, then we will have a conversation with it. We do not want it to feel that way. We are happy to talk to it about what we are doing, and to give it an update on the recovery plan. For example, we met recently with one charity that—a bit like the conversation we just had—could not find the management information, and we showed it where it is. In fact, we then put our analysts in touch with its analysts so that they could have a conversation. We are open to the feedback, and I would respectfully invite it to talk to us about that, and we can speak to it.

**Mike Freer:** I would also say that I am surprised to hear that from the Law Society, because the dialogue between the Ministry and the Law Society is frequent.

Q175 **Andy Carter:** Thank you. Do you have a set of internal minimum standards, and do you publish them? Do you share expectations with users?

**Helen Measures:** We do not. We have them internally, but we do not share them. I am interested in the Committee's view on this. We do not have an issue with sharing them. It relates to what we were talking about earlier about the information that we already share, and how people can use that. We would be interested in the Committee's views.

Q176 **Andy Carter:** There is one thing most MPs will appreciate. It is very helpful to say to constituents, "There are minimum service levels that you can expect to work with." My very quick feedback is it would be very helpful to have that. Do you think you have all the information you need to progress cases in a reasonable timescale? On complex and simple cases, do you differentiate between the two and publish that data, "Look, this is what you can expect from a simple case and this is what you can expect from a more complex case"?

**Helen Measures:** As I say, we do publish the data on expected waiting times for different types of cases: digital cases, which tend to be the more straightforward, although not always, and then paper cases, which tend to be more complex. We do publish that information, yes.

Q177 **Andy Carter:** Okay, final question for now: how do internal staff feel about where they are and how it is moving forward, and what work are you doing to rally the troops and keep everybody focused on the goal that is needed?



**Helen Measures:** It would be wrong for me to answer that question just with one description of the staff, because it depends on whether you are a member of staff in a probate registry, for example, who has worked in the service for a number of years, or whether you are new to the service and working in our Birmingham centre.

I would say that we have a new leadership team in place who are working very hard to engage the staff. We look at whether people are leaving the service, and we have a relatively low attrition rate. We have also converted a number of staff from agency contracts, and we have supported their applications to become permanent. We are doing a lot to bolster and improve the culture among the staff, but it is difficult. They are working very hard right now, and we are trying to keep morale up at the same time as keeping productivity up, which is a difficult balance.

Q178 **Bambos Charalambous:** My question is about staffing and the lack of experienced staff. Obviously, there was a loss of experienced staff and inexperienced staff were brought in; how much do you think that has contributed to the delay and the backlog that we currently have?

**Helen Measures:** When we recruited more people in the past, they were brought in and, of course, we needed to then divert experienced staff into training them. We are now at the point where the staff we have are largely competent in a range of different skills, so we are no longer bringing in inexperienced staff—we are trying to maintain a steady workforce. Where we may bring in additional resource—we are doing that right now—is for tasks such as post opening or case creation on the system. You do not need an enormous amount of experience to do that. We are not bringing in inexperienced staff to do work that requires specialist skills.

**Mike Freer:** I can give you some more reassurance. Clearly, when the reform programme hit and there was a centralisation, there was a loss of experienced staffers, people in different parts of the country. That has been addressed. I will just make sure I give you the broad figures: the number of staff who are trained to complete examining in non-professional applications—just from members of the public—has almost doubled since June 2023. The number of staff trained to deal with professional applications has doubled since June 2023. The number of staff who are trained to complete examining intestacy applications has more than tripled, and the number of staff trained to do the other complex aspects of the application has, again, nearly tripled. There has been a significant investment in staff and training.

Q179 **Bambos Charalambous:** I was going to ask, are these new staff or are they staff within HMCTS?

**Mike Freer:** They will be a mixture.

**Helen Measures:** These are all HMCTS staff.



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**Mike Freer:** Some of them were recruited from outside—there are new recruits.

**Helen Measures:** Yes, some have been.

Q180 **Bambos Charalambous:** But have they been taken from somewhere else in HMCTS?

**Helen Measures:** A small number have been, yes.

Q181 **Bambos Charalambous:** And has that had any impact on the service elsewhere in HMCTS? I assume they were not just sitting around waiting to be called up to do probate work.

**Helen Measures:** It is not unusual that within a Department you will have people who may move to different roles. The small number of people who used to work in probate, who have returned to the probate service, has not had an impact on the roles that they were doing, because they would effectively be backfilled in the roles that they had moved on to.

Q182 **Bambos Charalambous:** Do we know what the numbers are of staff who have been redeployed within HMCTS and the new ones who have been recruited?

**Helen Measures:** I do not have that figure. We can provide it if that is of interest.

Q183 **Dehenna Davison:** Thank you for joining us today. We spoke to some service users this morning, and I will not go over again some of the issues they have had with actual delivery, but we did discuss with them whether they considered the chargeable probate fee to be value for money based on that service level. What do you think?

**Mike Freer:** It depends on the experience you have had.

Q184 **Dehenna Davison:** Which is the very problem, is it not?

**Mike Freer:** Clearly, the vast bulk of applications go through with relative straightforwardness. If you have had a bad experience, then clearly, it does not matter whether it is £5 or £300, it will not be value for money. Certainly, when we look at the fee, it has to reflect the cost of operating the service and its cost recovery. The fee reflects the amount of work that goes in; there is an awful lot of work that goes in behind the scenes to grant a case. Before I agree to an increase in fee, particularly when a service is going through recovery, we do have a long consideration as to whether it is justifiable. But it is about cost recovery, so on the whole I would say yes.

Q185 **Dehenna Davison:** And are those costs being effectively recovered from the fees that are being brought in?

**Mike Freer:** Certainly, in the data we have, the analysis is that it is recovering the cost. There is one bit of service that we do for free, which



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is the pre-application advice, particularly for the professional service, and it is debatable whether that should be chargeable. At the moment, it is a free service. My personal opinion—this is not necessarily a departmental view yet—is that it saves the Department money, because if the application is received in a good state it will go through more smoothly. By giving advice for free at the front end, it actually goes through smoothly. The danger is that you could start charging for the service, and you just get a bit more money, but you do not get a better-quality product going into the system.

Q186 **Chair:** Is it pure cost recovery or is there any profit made?

**Mike Freer:** I do not think we are allowed to make a profit, Sir Bob.

Q187 **Chair:** So it is pure cost recovery?

**Mike Freer:** The analysis is it is cost recovery, and we look at it every year—every two years, I think.

**Helen Measures:** It is every two years.

Q188 **Edward Timpson:** Earlier you mentioned dormant cases and you also mentioned stopped cases. For those who are watching, could you just explain the difference between the two?

**Helen Measures:** Yes. Stopped cases are where we need to get more information, so we will put a stop on the case, and we will request more information. A dormant case is one that has been in the system for six months or longer where we have had no information, no action has been taken on the case, and it then falls into dormant. I need to say that no cases have become dormant as a consequence of the delays to the service, that is why we have been focusing on the oldest workable cases.

Q189 **Edward Timpson:** We will come on to that last point in a second. You said earlier that you had 69,000 cases currently in the system, of which 37,000 were workable, but the rest were stopped or dormant. Out of those that are either stopped or dormant, how many are dormant?

**Helen Measures:** I do not have that figure immediately to hand. We can provide that figure.

Q190 **Edward Timpson:** One of the issues that has been raised with us is the visibility of dormant cases, and those who have applied for probate knowing that their case is dormant. Is it right to say that the probate IT system cannot filter cases between them being active and dormant?

**Helen Measures:** No, we can filter them. If somebody contacts us relating to a case that is dormant, it will immediately go to the top of our oldest cases workable queue, if that makes sense. It can lie dormant for years, and as soon as we get contact it stops being dormant and goes into our workable queue.

Q191 **Edward Timpson:** How would an applicant know that a case is dormant unless they contacted the probate registry? Because they are not



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notified, are they, if it becomes dormant—i.e. six months of inactivity?

**Mike Freer:** But they will have been notified of a stop. They will have been requested to provide additional information. If that information is not provided, then it will eventually go dormant.

Q192 **Edward Timpson:** What happens if a case on application goes to a specialist within your team, who is then unable to reach that case for whatever reason—workload, perhaps—within that six-month period, which then triggers the dormant status of that case? How would the applicant know that?

**Helen Measures:** That should not happen because—

**Edward Timpson:** We have had other evidence that that has happened.

**Helen Measures:** I would be very keen to look at that case and any case that has had that experience, because until you said that, I was not aware of any cases that have become dormant because of a delay to the service.

Q193 **Edward Timpson:** Are you considering looking at enabling the notification of applicants upon a case becoming dormant? We have been told there is otherwise a risk that it becomes what is sometimes termed as a lost case.

**Helen Measures:** Yes. This is something we have given some thought to: whether we should write out to people who have a case that is dormant. If we did that right now, we would open the floodgates to more cases coming into a system that is already in recovery, and that could compromise the cases that are live now and our ability to get through them. Further down the line, let us say in September when the service is more stable, we would be open to proactively going out and contacting people who have cases that have fallen into the dormant status. We would want to consult our stakeholders before doing that. Some cases lie dormant for many, many years for all sorts of different reasons. It is something we are giving some thought to, but just not right now.

Q194 **Edward Timpson:** The proportion of applications that are dormant is a relevant consideration as to whether you should trigger that type of approach. You were looking for some figures earlier that I asked for; I do not know whether you managed to find those.

**Mike Freer:** The figures I have do not give me the dormant figures.

Q195 **Edward Timpson:** But do you track the proportion of cases that are dormant, as a proportion of the applications that are outstanding? Could you follow a number sequence or a chart that would show me, “Actually we’re eating into those dormant cases” or, “They’re growing as a proportion of the applications”?

**Helen Measures:** We would not be eating into the dormant cases unless we were contacted by a party relating to the case, which would then turn





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it into a live case. We are able to assess how many dormant cases we have, but they are dormant for a reason, usually because we are either waiting for something or there has been a decision from one of the parties not to pursue the application.

Q196 **Edward Timpson:** I am just trying to establish, as part of your recovery plan, what your strategy is to try to ensure that you do not end up with this ongoing level, and potentially growing level, of dormant cases. If you do not let the applicant know that their case is dormant, they will not then contact you to ask what is happening in the case they do not know is dormant. It therefore does not become active again, and it ends up in this vicious cycle of a growing number of dormant cases, which could hold the service back if they are not dealt with.

**Helen Measures:** Our strategy is to target the oldest cases first, and that is why we have been doing that. As I said earlier, because we are in a situation where our activity is not leading to more cases becoming dormant—until you spoke about the case you are aware of that has fallen into dormant—we do not have a strategy for dealing with the dormant caseload. One of my colleagues has reminded me that we plan to look at making people aware that their case has gone into dormant. But for the reasons I have already said, this is not something we want to do right now, because we want to get through the cases that are live now as a priority. When the service has stabilised, that is something we can look at. I am interested in the case you have referred to.

Q197 **Edward Timpson:** It may be by the time you come to respond to the report of this Committee into this inquiry, it will probably take us a little nearer to the September date of equilibrium within the service. Is there more that you can say as to how you are going to—

**Mike Freer:** I would also check quite why someone who is waiting for probate would keep waiting and waiting, without starting to bang on the door. My understanding is that if someone phones up and says, “What’s happened to my case?”, and makes an inquiry, the case handler will be able to bring the case up, and then it becomes not dormant. In fact, we were discussing the other day, the oldest case is 30 years old; why would you wait 30 years to suddenly contact us for a probate case? My understanding is that normally when someone contacts us after a period of time, the system will then pull it out of the dormant pile because it has been activated by an inquiry.

We will come back to you with more specifics on the percentage of the caseload that is dormant. When we are looking to introduce this trigger, at what point do we go back to people and say, “By the way, you’ve still got a case with us that we’ve not resolved yet”?

Q198 **Edward Timpson:** It would be good to understand a little more about how you would start tackling that particular challenge within the system. For instance, do you start off by trying to deal with some of the much older cases, take a sample, and then see what sort of response you get?



Maybe just a bit more meat on that bone would be helpful.

We have a lot of questions to get through, so I am going to move on to another issue, which is in relation to access to justice. You will be familiar with the assessment HMCTS made of the probate system and access to justice—some things that were at the heart of the Department’s core mission. In relation to probate, the findings from, I think about 100 probate users between 2016 and 2020, showed that cases from ethnic minority users take longer and are stopped more often than white users. We are now four years on: what action have you taken to try to tackle that aspect and what improvements has that brought about?

**Helen Measures:** We have done some research in response to the access to justice report, to understand why that was happening. What we have found is that ethnic minority groups tend to be disproportionately affected by a tendency to use different naming conventions. They might use those names in the will or in the application itself, and when we examine the case, the names must match exactly. What is happening disproportionately for ethnic minority groups is they may use first and middle names differently, or they may use a westernised version of the name, and then that means we have to put a stop on the case to go back to the applicant to seek clarity.

In response to that, we have updated the advice that is on gov.uk, and we are in the process of updating it further to make what is required clearer; that will happen in August of this year. For example, you can now put in your application the name that you are known by, and that is helping this issue. We will keep monitoring it, and in response to the access to justice report, we monitor a range of different data, so that we can track where we are up to in response to the report.

Q199 **Edward Timpson:** As part of your drive on capability, one of your four key improvement areas, has that led to any additional training for your staff to try to tackle this particular issue?

**Helen Measures:** Yes, we have been enhancing the training that is given to all staff in a range of different areas. They are aware that this is an issue, but when they examine the case, they have to examine it within the rules that we have; they will be examining it and having to apply that same test to every case. Really, we want the applications to come in to us correctly in the first place, and then that enables us to issue the grants.

Q200 **Edward Timpson:** As I said, it is now four years on since the last access to justice assessment of probate. Bearing in mind that—from what you say—there have been a number of measures taken in the intervening period, is it time to perhaps review it again to be able to have a clear marker of where you were against where you are now?

**Helen Measures:** Yes, the access to justice report covered not only probate but a number of other services, and we are due to publish an additional assessment later this year.



**Q201 Edward Timpson:** One more question from me on another subject; our favourite subject of the reform programme. The £1.3 billion—so far—programme to modernise and digitise much of the courts and tribunals service. The 2023 National Audit Office report on the programme more generally stated that HMCTS had reduced budgets in line with the expected savings of the programme, but without verifying whether the savings had been realised. Looking specifically at probate, what is the case for the probate element of the reform programme? Have you reduced budgets in line with expected savings? How can you demonstrate that those savings have been realised while also bringing about the intended benefits?

**Mike Freer:** It is before my time, so I do not know the business plan specifically for probate, but what I can tell you is we have invested in the probate service, and certainly headcount is up. Regarding the specifics of what was signed off when the original reform programme was signed off, I would have to come back to you with details on whether the expected savings have been found or found elsewhere, but certainly, we have invested quite heavily in recruitment to the probate service.

**Q202 Edward Timpson:** One of the general criticisms from the National Audit Office was it was very difficult to track where the savings had been made, but also whether that had led to the intended benefits.

**Mike Freer:** Broadly speaking, there have been savings across HMCT, but it is also true to say that the reform programme has been—to use the expression—re-profiled, i.e. scaled back. Frankly, it is honest to say that we bit off more than we could chew. It was a very ambitious programme, and now we have gone back to making sure that the core activity is being supported by the reform programme before we get too adventurous.

**Q203 Edward Timpson:** Perhaps the most helpful thing would be for you to write to the Committee with an update on the probate element of the reform programme, and where that currently sits within the overarching reform programme as we sit here today.

**Mike Freer:** Happy to.

**Helen Measures:** I can elaborate a bit if it is useful to the Committee. There are financial benefits and then there are benefits to the delivery and the efficiency of the service. We would say that the benefits of the programme in relation to probate have been partially met, in that we have introduced a new system that is easier for people to access: now 80% of all the applications are done digitally, people can apply from anywhere—they do not have to go to a probate registry. We would argue they are benefits to the way the service operates but, as the Minister has said, we have increased our headcount to support our recovery efforts, and of course, when we set out on the reform journey that was not the original intention. We can provide more detail as to how that has developed over time, but there are benefits in relation to people and benefits in relation to the service that is delivered.



Q204 **Dehenna Davison:** For fear of sounding like a prophet of doom, we have an ageing population at the moment, and we saw 2023 have the second highest number of probate applications on record. We expect those numbers to rise with that ageing population, and the number of contested cases to also rise. What kind of horizon scanning has been done and what plans are in place to expand the service and to increase capacity?

**Helen Measures:** We have people in my team who look at death rate data, and that is what leads to our calculation of a forecast of receipts. We track that very carefully; we have an expected number of receipts that come through to us. As we have already said, there has been an increase in the death rate, and therefore we need to adjust our workforce accordingly. If our forecasts were to show a spike in receipts, for example, or any other event that could lead to an increase, we would adjust our workforce in response to that. We have ways of doing that. At the moment, we have enough resource to deliver the service, excepting the delays that we are all aware of.

Q205 **Dehenna Davison:** You just said that there is flex built in if needed. Can you elaborate a little on how that would work?

**Helen Measures:** I currently have about 10% of a flexible workforce within my total workforce in probate. As I say, we have increased the proportion of the permanent workforce. The probate service is one of a number of services that are delivered under the national services directorate, for which I am responsible, and our allocations are set annually. If we were to say we were expecting an increase in demand, that would be the point at which we would make a decision within HMCTS on the appropriate resource for the service. For example, I might argue that we need more resource to deliver a higher output. These things happen annually, and we assess our budgets at that point.

Q206 **Dehenna Davison:** You talked about your crack team of statisticians who examine things like death data, but do they look at things like political scenarios? We have seen spikes in recent years with tax changes, for example.

**Helen Measures:** Yes, they do. If we thought there was a big risk that could lead to a spike in receipts, that would be something we would plan for and we would have a mitigation plan for that. At the moment, we are not seeing anything that we think will lead to a sudden spike in applications. If we did, we would respond to that.

Q207 **Dehenna Davison:** Can you elaborate for us on what type of events hypothetically could lead to those spikes?

**Helen Measures:** HMCTS, along with probably most organisations, has a national risk register for another pandemic, let us say. The probate service, of course, is an area that would be directly affected. That would be something that we would think about, but the death rate data is really the data that is most relevant to the probate service. As I said earlier,



our receipts are actually tracking below forecast. They are up, but they are not up as much as we expected them to be.

Q208 **Dehenna Davison:** On that point about workforce flexibility, which is reassuring to hear, when it comes to those more complicated cases, where there may be contests, is there a sufficiently skilled workforce to be able to fill in those gaps?

**Helen Measures:** That has been a problem area for us. We did not have enough people who could deal with those very complex cases, but part of the recovery plan has been to build up the capability. The Minister shared earlier the number of people who are skilled to do those cases, and we do now have enough people to do those more complex cases, yes.

Q209 **Dehenna Davison:** That is incredibly reassuring to hear. Can we talk a little about the rules behind probate? They are literally older than me; they are 37, I am a little below that. Sorry, guys. Do you think there is time and scope for examining some of those rules? Look at non-contentious probate, for example. We heard from a user today who gave an example where there are only two surviving children, no surviving partner, yet they were still facing complications as part of the application, when it seems quite clear-cut to an outsider like me that that should fly through without any complication.

**Helen Measures:** Yes. We have updated the non-contentious probate rules five times over the last few years. In a previous evidence session there was reference to a judicially set-up working group, and some findings of that have already been implemented. As I say, we have updated the rules on multiple occasions. We would be open to looking at whether we need to look at the rules again, but that would be a decision that would need to be taken by Ministers. At the moment, we can update the rules as and when we need to, within the normal confines of how that happens.

Q210 **Dehenna Davison:** Perhaps, Minister, I can bring you in to just check that you would be open to that as well potentially.

**Mike Freer:** I would be very happy to raise the threshold for when probate kicks in, and I would be very happy to see the inheritance tax threshold raised. For a variety of reasons, not least because it would ease the pressure on the Department, on the service.

Q211 **Dehenna Davison:** A similar potential reform is that the Law Commission is currently consulting on electronic wills which, as a tech-head millennial, to me seems like a very sensible proposal. What would that mean for the probate registry, and are you undertaking early preparations for that in case they are recommended?

**Mike Freer:** How long do you have?

**Dehenna Davison:** I have a while.



**Mike Freer:** Obviously, we have to wait for the Law Commission to report, but you may know we have started a consultation on the scrapping of paper wills; I store 110 million of them going back to 1858, even though we have digital copies of quite a lot of them as well. The consultation on removing the paper copy after a period of time, let us say, has stirred up a hornets' nest. Quite a few people have said that they still want the ability to go and physically touch the paper will. I think we have had about 1,600 responses, so that still has to be analysed. Storing paper copies back to 1858 costs £4.5 million a year. While I cannot prejudge the consultation, my views have been fairly well trailed.

I understand the genealogists and those who want to go and see the wills. The question is, what happens to someone who becomes famous after the proposed consultative cut-off? These are very valid challenges. But equally, these days do we need to have 110 million paper copies in an aircraft hangar? We look forward to seeing what the Law Commission says. Going fully digital has its problems: not least, do you choose a format that remains usable in 20 years' time? Had we chosen Betamax 30 years ago—before your time—we would now be in trouble. Had we chosen Blu-ray a few years ago, we would now be in trouble. That is always a difficulty with digitalisation—you have to constantly take a system and then completely readapt it as technology changes. It is something we are looking at very carefully, but it is not an easy one to get right.

Q212 **Dehenna Davison:** This is a bit broader, but do you think across Government we are good at making those sorts of decisions around future technologies?

**Mike Freer:** I am not. The problem is that the people who want paper copies have quite a niche interest in genealogy. The vast bulk of the population would never want to go and see a will, but it is an important part of our history to physically go and see the will of someone famous. Of course, the difficulty is if someone famous dies you know they are famous, but the case that often is used is Alan Turing. When he died, he was not famous; he is now, but we would have destroyed his will based on the consultation. That is where we have to learn, how do we flex? Are we the right people to be making decisions on future technology? No, we are the wrong age group. Unfortunately, we are the ones tasked with making those decisions.

**Dehenna Davison:** Thank you.

Q213 **Chair:** A lot of the process in the courts has been modernised. For example, if you think of the changes to the civil procedure rules, they have been rewritten to put them in modern language; we do not issue writs anymore, we do not talk about plaintiffs and so on. That has been common across most of the courts. The one place we have not done that is the probate rules; we are still using old-fashioned language and working on language from Victorian statutes that are not updated. Is it not about time we thought about that?



**Mike Freer:** Absolutely. If I had my way, I would have a tidying-up Bill in front of Parliament very quickly. It is not just probate; if we look at the coronial service, much of my portfolio dates back to Victorian legislation and much of what I want to change requires primary legislation. There is a very strong argument that the next Parliament has to do a bit of a tidy-up on various bits—the archaic bits of the justice system.

Q214 **Chair:** Changing the rules would not require legislation. We have been told there was a working party in 2008-09 that found the rules were not fit for purpose and recommended change, so you could bat on with that. For example, the Law Commission is working on electronic wills, so you could go to it and say, "Let's have a look at the rules as well."

**Mike Freer:** As we said, the rules have been changed on probate five times. I am always happy to look at that, but anything more fundamental may need legislation.

Q215 **Chair:** The idea is we want to make it more friendly to the individual—the lay person—without the need to go through a lawyer, and that was the whole point of the simplification of the language.

**Mike Freer:** I could not possibly comment on whether we would continue to need lawyers or not.

Q216 **Chair:** So you are not ruling out the idea that you could move swiftly on that, even if it is—

**Mike Freer:** I am sure we can always look at the rules, but I suspect there will always be a need for lawyers, Sir Bob.

Q217 **Chair:** Some of us will probably be reassured about that at any rate, Minister. Moving on, normally, you make an application online, sometimes by paper, but the original documents we have been talking about have to be sent to a scanning centre so they can be scanned and then married up with the online application. In fact, some of us went to see the centre up in Harlow. It is done by a commercial third-party provider; is that right?

**Helen Measures:** Yes.

Q218 **Chair:** Do you know how long that operation takes?

**Helen Measures:** Yes. They get about 1,200 cases a day, and they need to scan them all in within one day. They are meeting that service level agreement at the moment.

Q219 **Chair:** So the SLA is within one day.

**Helen Measures:** Yes.

Q220 **Chair:** Over a weekend, 48 hours would be enough to get it through.

**Mike Freer:** I may not have the right stat, but I think it is about 48,000 pages a day.



Q221 **Chair:** Yes, that is right; it is a substantial amount, and those who went were impressed with the efficiency of the operation. That is why I find it perplexing when we get evidence from highly experienced practitioners in this field saying there also appears to be a two to two-and-a-half-week delay between documents being received by the probate registry and these being recorded against the probate application. It is not that that delay is not happening in the scanning centre, that is for sure; as you say, that has been 24 to 48 hours. So where is the delay happening? Is it somewhere else in the HMCTS system?

**Helen Measures:** After it is scanned, it is immediately married up to an application number and the scanning firm does forensic checks.

Q222 **Chair:** It is all done within that period, is it not?

**Helen Measures:** Effectively, that then goes into our workable queue. When a case is applied for on paper, it will be opened in our Newcastle probate registry, and then, depending on the nature of that case, may be sent to Exela Technologies to be uploaded. So it could be those cases, but they are ones where the individual has chosen to submit a paper application, which is partly the reason why there is a difference between paper and digital timescales.

Q223 **Chair:** Are you saying there would be no such delay in relation to a digital application?

**Helen Measures:** If there was a digital application, all the information was there and it went to Exela Technologies, it could be uploaded on to our system within the day.

Q224 **Chair:** Moving on as far as those processes are concerned, can you help me with this point that seemed interesting? Do you keep statistics? Do you have some further information?

**Helen Measures:** If there is missing information when it goes to Exela Technologies, that might be why there is a delay, but most cases go through and get uploaded straightaway.

Q225 **Chair:** You told us about your service level, but do you have statistics about what percentage may fall into that category where there might be a delay rather than it being uploaded within the 24 hours? Perhaps you could send them to us if you do not have them today.

**Helen Measures:** Yes. We have some cases that need to be rescanned, and we do have that information. I can look it up and send it to you.

Q226 **Chair:** If you can look it up and send it to us, that would be interesting.

**Helen Measures:** It is a small proportion that needs to be rescanned. For example, when the registry or case examiner looks at it, they might find it has missing pages when it has been scanned and that will lead to a rescan request; cases such as that might fall into that category.

**Bambos Charalambous:** On our trip yesterday, we found it was a very





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professional operation. We watched some scanning, living the dream; it does not get more exciting than that. They were very diligent, they scanned quite carefully, and they talked us through the entire process.

On the point the Minister made about the storage of paper documents, they did have boxes of paper waiting to be stored because they were waiting for the grants probate before they could then send it off to Iron Mountain in Birmingham for storage, so they had another paper there. On the whole, we were very impressed with how well run it was, and we certainly saw no evidence of any delay on their part; they were hitting their targets, and we were very impressed with them.

Q227 **Chair:** It has sometimes been suggested by witnesses that there might be occasions where only one page of a double-sided will is copied or something is too big. They seem to have systems for coping with that. Do you track again? Do you have any figures or statistics to indicate when some further information might be required because a page is missing, which might be a copying error, or because there has been difficulty scanning folio or false gap wills? There are probably less of them now.

**Helen Measures:** Yes, we have information on the number of rescan requests. I think it is about 1,600 a year, but I will double-check that. Yes, it is 1,679 for the whole of 2023.

Q228 **Chair:** That is very helpful. I am told that Exela Technologies is not keeping the contract, and it is going to be moved to Iron Mountain. Is that right?

**Helen Measures:** There are negotiations and procedures going through now that I would not be able to talk about freely because they would be commercially sensitive, but the contract for this service is being looked at.

Q229 **Chair:** We were told about it quite openly, but the Department never bothered to tell us until we went there. Some of us might find that unsatisfactory, if it can be noted.

**Mike Freer:** We do not normally disclose contract negotiations.

Q230 **Chair:** We are not interested in the details of the contract negotiation, just the fact that there was a change. It was volunteered quite openly at the time, but none of us knew about it in advance.

**Helen Measures:** Okay, noted.

Q231 **Chair:** Looking at some ways in which we might deal with scanning going forward, there has been a suggestion in the past about whether it might be possible for practitioners to do the scanning and upload, in solicitors' offices, for example, and then send the certified copy. Has any more thought been given to that?

**Helen Measures:** We have looked at that. It is a requirement in legislation for the original will to be received by the registry and then



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deposited in the Probate Registry. The scanning firm then undertakes a forensic check of the original will. We have considered the evidence that has been provided to you. In the 2023 forensic check that was undertaken, 3,500 cases submitted by solicitors' firms had to be stopped because there was either missing information or it was not the original will. If we changed legislation for us to be able to do this, we would be concerned that we would be introducing risk into the system, because we already know that there is missing information in some cases that are submitted by solicitors. If we were to change that, we would need to change legislation, and that is not currently possible.

Q232 **Chair:** What percentage is that 3,500 of the total number of applications?

**Helen Measures:** It is 2.3% of all legal professional applications.

Q233 **Chair:** About 2%? Okay, so that is the element of risk that you are looking at.

**Helen Measures:** Yes.

Q234 **Chair:** And 98% is not a risk?

**Helen Measures:** Correct.

Q235 **Chair:** I do not know whether you looked at this. I know there has been some discussion about whether you could look at what is done by the Land Registry. You are aware of its system where the professional has an account—the firm of solicitors, conveyancers or whatever, sets up a secure single user account—they complete the application there, they can upload the scan of the original deeds, for example, and so on, and they confirm that they hold the original, and send it if required. Subject to the legislation, would a practical way forward be to adopt the same system? Again, that is not reinventing the wheel, but something another HMCTS agency uses already.

**Mike Freer:** I am always happy to look at best practice.

Q236 **Andy Carter:** Can I change tack slightly? Looking at written evidence we have received, there is a suggestion from the Empty Homes Network that delays in probate are causing problems with the number of empty homes in communities, and having a knock-on impact on the number of homes being reclassified to Class F, so council tax is then not payable.

I have a particular example in my constituency: Grappenhall Rectory has been empty for four years, under probate, and nobody can quite work out why nothing is moving forward on it, despite my and the council's attempts to make inquiries. It is a Grade II listed building and has been damaged by arson; it is in a terrible state. People who live around it want an answer, but the answer is it is in probate. I wonder if you can give more of a view on discussions you are having about probate in the context of empty homes.

**Helen Measures:** That is something we can talk about with our user groups. I am interested in the case you referred to. With our very oldest



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cases, we are finding that a number of different factors are leading to the delay, not just waiting for the probate grant. I would be very happy to look into the example you have just given.

**Q237 Andy Carter:** I look forward to writing to you on that. It seems to be a topic that is coming up in various areas of the press. For example, the *Swindon Advertiser* reports, "Housing experts at Swindon Borough Council say one of the main reasons why a house becomes empty is because of problems with probate." It follows that if somebody dies and it goes into probate, you cannot move into the house or do anything with it until the probate is granted.

**Mike Freer:** I would want to check that fact; I will contact my colleagues at the Department for Housing. As a former leader of a very large council in the country, probate was not a particularly big factor in the number of unoccupied dwellings.

**Q238 Andy Carter:** Perhaps it was not then, Minister, but perhaps it is now an area to look at, given there are 30,000 waiting cases and many will have houses involved.

**Mike Freer:** I am more than happy to have a look at it, but I have to say this is the first time it has been raised with me that it is contributing to empty homes not being used. I am more than happy to check with our colleagues in the Housing Department.

**Andy Carter:** Thank you very much.

**Q239 Edward Timpson:** Amazingly, fake wills are a thing, and fraud is something that pervades probate, as well as lots of other aspects of people's lives. How much insight do you have into the scale and prevalence of fraud, and how are you going about trying to identify, report, tackle, and try to prevent in the first place?

**Helen Measures:** We have a range of quality assurance processes relating to this service to try to identify potential fraud, and that includes the many checks that our examiners need to undertake to ensure the validity of the will, including the forensic check I have referred to.

I have looked into the extent of fraud in the service that we are aware of. Obviously, our role is limited to examining the will and issuing the grant, but a very small number of counter-fraud investigations have happened within HMCTS. I am happy to share with you that we recorded six last year, and we have had no such cases recorded this year. Our responsibility extends to the validity of the will, which is something we clearly take very seriously, and that is why we have so many checks.

**Q240 Edward Timpson:** There are other elements of probate in which fraud could play a part. You have touched on the will itself, and, of course, people forget it is a legal document with legal responsibilities; it is not something to play games with. Fraud could also be for people who are not paying bequests that are in a will, and there are also people



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fraudulently applying for the right to administer estates. Is there a role for the probate registry or working with other agencies in trying to bear down on that type of fraudulent behaviour?

**Helen Measures:** If that sort of fraudulent behaviour were to occur, it would be a criminal matter. HMCTS does not have a role in that respect.

Q241 **Edward Timpson:** Our understanding is that you do not have an ID verification on the digital probate system, which could leave it open to fraudulent activity. Is that correct? If so, are you going to do anything to try to ensure that you reduce the chances of that happening in the future?

**Helen Measures:** We assess the validity of the will, and we will look at the integrity of the signature, the signatures on the will, and the wording of the will. The examiners will look at things like the condition of that signature, whether it is shaky or not quite in the right place, that kind of thing. We do not cross-reference the signature to other identification checks; we would be interested in the Committee's views on that, but it would be very labour-intensive for us to introduce that check because it would involve needing to cross-reference with other systems. At the moment, we have no plans to introduce that.

Q242 **Edward Timpson:** I am perhaps interested in the Minister's view on this, bearing in mind we have brought in voter identification, which pretty much all of us remembered to take to the polling station, with the odd exception who had to go back and find it somewhere else. Accepting the very valid point about workload at a time when you are trying to push through the backlog, is it worth looking at some of the rules?

**Mike Freer:** There is a big challenge about the Tell Us Once service. We have a whole raft of data between HMRC, DWP and various Government Departments that we should be able to electronically cross-reference, which is a challenge. In different parts of my portfolio, I have been in a drawn-out process to get DWP and HMRC to talk to us and share data because of legislative barriers. It would be very valid to take it up with the Cabinet Office because there is probably a big piece of work for Government to do with Tell Us Once so you are able to verify yourself, whichever bit of Government you touch.

That is a very valid challenge. I am not sure that the probate team are best placed to drive that; it is a big piece of cross-Government work. When someone dies, you tell the Government once, and it cancels your council tax and pension, so it is not beyond the wit of Government to be able to pull a bit more of that data in. I will raise that with the Cabinet Office.

Q243 **Tahir Ali:** Last time I was asking a question of the Ministers we were close to the votes, and I have a message we might get votes shortly. There seems to be a pattern here. Ministers rejected the 2013 Legal Services Board recommendations to regulate will writing in favour of better consumer guides. The CMA—Competition and Markets Authority—



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is now consulting on whether more guidance for will writing and prepaid probate services is required because of harmful practices in the sector. Is that evidence that the consumer education approach has failed? If so, is it time to look again at regulating the sector?

**Mike Freer:** I would certainly have to look and see what the CMA comes out with, and if it has very strong evidence that there need to be further steps to look at how the sector regulates itself or whether it needs statutory regulation; I am very happy to look at that. We should never be too hard and fast on ruling things in and out, because things change; we have seen in other parts of my portfolio that what was thought to be the right approach several years ago is now not the right approach. I want to see what the CMA suggests it should do, how tough that regulation would be, and whether it would be self-regulation or statutory regulation. I am more than happy to look at it.

Q244 **Tahir Ali:** We have also heard concerns that delays have opened a gap in the market for advisers claiming they can help clients or avoid probate completely. Have you made any assessment of the extent of the problem?

**Mike Freer:** Not that I am aware of. Certainly, as I said earlier, we would expect the workable caseload to be back at around the 30,000 level by September, so hopefully that would, if you like, take away the imperative of people to use so-called advisers.

Q245 **Chair:** The reason we are particularly interested in that, Minister, is the growth of what is called prepaid probate plans. In 2023, the Financial Conduct Authority issued a warning about such plans. Do you remember the unregulated funeral plan provider companies? Once regulation was brought in around funeral plans, they moved into a currently unregulated sector around prepaid probate. Is there potentially a gap?

**Mike Freer:** Possibly; it depends on what the CMA recommends.

**Chair:** But, subject to that, you are happy to look at it? Okay.

Q246 **Dehenna Davison:** Minister, you talked earlier about inheritance tax, so I want to talk a little about that now. Roughly 40% of estates have to file an inheritance tax form, yet only around 4% will pay anything, which obviously incurs not just stress and time pressures, but also professional services costs in some cases. If there are delays in probate being granted, interest can also then be accrued on the actual amount owed. What consideration has been had? Have any discussions been had with HMRC about those delays, specifically on the point about interest?

**Helen Measures:** I am not sure whether we have discussed the specific points relating to interest with HMRC. We meet them very regularly; we met them on average about twice a month in the last 12 months. The new changes that were introduced have reduced the wait for people, so we have reduced the number of cases that are stopped because of the



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need for the code, and we are seeing more cases go through right first time because we now get that automatically.

Q247 **Dehenna Davison:** That is reassuring. Has any consideration been given to changing the sequencing? I know that creates a lot of stress, even if not actual financial pressure.

**Mike Freer:** My in-laws are currently going through probate and there will be housing tax to pay. It is an incredible barrier and burden, but it really is a matter for HMRC; it is not one that we would have any real influence on.

Q248 **Dehenna Davison:** You are a Minister; of course you have influence on it, with the right conversations.

**Mike Freer:** Have you met the Treasury?

**Dehenna Davison:** Fair point. No, thank you.

Q249 **Chair:** Looking back, do you think it is probably fair to say that too much was done too quickly and all at the same time when we had all these changes? For example, centralisation and digitisation, and there was probably not enough capacity. It was before your watch, but do you think that would be a fair observation?

**Mike Freer:** With the best will in the world, I can understand why the Department wanted to build a bespoke, all-singing, all-dancing answer to the universe. It is also fair to say the Department has held its hands up and said it was far too much, too quickly, and there was too little, if you like, early adopter testing. It is true to say that too much was tried in a rapid period of time. It is also true to say I am not sure the Department had the necessary skills to manage not just a large IT system but also a whole business process re-engineering at the same time.

Normally, you do one and then the other; you do not normally do the two at the same time. Otherwise, the danger is all you do is put new IT on a pretty ropey system. Normally, you change the system and then put the IT in to support it. We have heard criticisms from the National Audit Office and the PAC—and the PAC was perhaps a bit harsh because the Department fessed up to where it got it wrong—but, if we look back to the business plan, it was overly ambitious in my personal view.

Q250 **Chair:** Do you think we lost too many experienced staff as a consequence of this?

**Helen Measures:** Yes, we did. Another big lesson learned is that I do not think we were listening enough to the staff who were in the probate registries and who were working in probate and raising concerns. We have addressed that now, but we did lose a lot of experienced staff.

Q251 **Chair:** What are you planning to do to try to make sure we do not get into that again?



**Helen Measures:** As I said earlier, we have increased the number of staff we have, and we have increased the number of skills the staff we have are able to use. We intend that three quarters of our staff can assess both professional and citizen applications, as well as at least one other complex case type, and we should have that in place by the end of July or August. That is what we are doing to make the service sustainable.

Q252 **Edward Timpson:** Earlier today, when we spoke to people who had been or are going through probate, we asked what opportunities they had to feed back their experience of the service. They gave us, "Well, we get the standard survey at the end of the telephone call, but there do not seem to be many opportunities to do so." They would have perhaps given you some very valuable insights into what did not work well and perhaps what did work well. In looking forward to how you can improve communication, information flow, and the feedback you get from many people using the service, are there any other ways you are considering how you might be able to do that more effectively?

**Helen Measures:** Yes. We have now introduced what we call a user-centred design team, which is a team within HMCTS dedicated to engaging with a range of different stakeholders, including the public. I am listening to what you are saying about people who have used the service and whether they feel they could feed back their experience. Aside from writing to us, I accept there is not a brilliant channel of communication, but we are trying to address that with this user-centred group I have just referred to.

**Mike Freer:** There is a feedback link on gov.uk. If I can also reassure you, I went out to one of the probate registries and said, "What causes grief? Ask the users." We should build systems with the people who are using it, not do it to them, and they were the ones who told me IHT is one of their biggest causes of grief. When you ask the question, they say, "Oh, yes, it is all straightforward; it is on the form. Do not send." So I said, "Can I see the form?" "Yes, it is on the form, if you know where to look." It is in tiny script, "Do not send." That needs to be on the front page and in big print. Getting the users or the actual people in to process it and design the system is far better than trying to get some clever clogs from a consultancy trying to impose an IT system. I learned most about what we needed to change in the recovery programme by visiting the offices and seeing the forms for myself.

Q253 **Chair:** Some key people in the system are the registrars, are they not? We have about 2.6 at the moment, full-time equivalent. There used to be 30. Is that an area where perhaps things went too far, and we need to add more people back into the system?

**Helen Measures:** That is a key area where we lost a lot of expertise. We have adjusted the structure of the registrar, so we have deputy registrars, and then people working to those registrars. That is what we now have in place, and we think that is sufficient to meet the demand. As



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I say, we need more examiners who can assess more cases and more complex cases.

Q254 **Chair:** What FT equivalent would you reckon with the deputy registrars and so on?

**Helen Measures:** We are very close to achieving one registrar, three deputy registrars, and a further three or four deputies to those deputies, if that makes sense?

Q255 **Chair:** Are you confident that will do the job that was once done by 30?

**Helen Measures:** Yes, I am.

Q256 **Chair:** Why is that?

**Helen Measures:** We are increasing the overall resource of people who can look at those cases. We would look at that again if we started to see the demand was not being met.

Q257 **Chair:** We have both been doing a little travelling, Minister. We both went to Singapore earlier in the year to look at the probate service and things there. They have an entirely digitised system.

**Mike Freer:** In fact, I met the head of IT last week to discuss the digi pass, or Singpass.

**Chair:** That is very impressive, is it not?

**Mike Freer:** It is very impressive.

Q258 **Chair:** They are turning around probate in about seven days, are they not?

**Mike Freer:** The difficulty is I was not able to understand; I am assuming, as a Commonwealth country, it has a similar probate framework.

**Chair:** Yes, sure. It is a common law system.

**Mike Freer:** I do not know whether it is exactly the same as ours, but the compliance of the population in using the pass system is very strong. I am not sure we are at that point in the UK. It might have been an opportunity to build on it post-covid when we got to the vaccine pass, but we have moved away from that now.

Q259 **Chair:** Did you take away anything else?

**Mike Freer:** It is an amazing system, but it largely tends to be a much more compliant population in terms of technology and Government systems, and I am not quite sure the UK population is quite in the same place.

Q260 **Chair:** Making allowance for that, do you think we can learn other lessons from it?





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**Mike Freer:** I looked at a variety of issues across my portfolio in terms of their ability to do e-courts. We have discussed at length the strengths and weaknesses of Common Platform and the reform programme, and I have seen e-court systems in both Singapore and South Korea and simply thought, "Why did I not buy that?" They are not exactly the same, and obviously culture, the court system and the judiciary act in a different way, but certainly their ability to drive paper out of the system is quite phenomenal. If I could copy what Singapore does tomorrow, I would. Do not tell the Lady Chief Justice!

Q261 **Andy Carter:** Can I conclude? This will probably be the final question. When do you think you will have caught up? When will people putting in their probate applications have confidence that they will get them back within the timeframe you talked about?

**Helen Measures:** We should achieve that in September this year. At the moment, we are ahead of forecast. I do not want to be too overconfident given the background, but we are expecting to have recovered by September. We will keep a very close eye on that, so we will adjust our resource if we need to, but that is when we expect the service to have stabilised.

**Chair:** Thank you very much for your evidence today, it has been very helpful; we are very grateful to you.

**Mike Freer:** It was a pleasure.

**Chair:** Always a pleasure, Minister. The session is concluded.