



LORD CHIEF JUSTICE  
OF ENGLAND AND WALES

THE RIGHT HONOURABLE THE LORD BURNETT OF MALDON

Sir Robert Neill MP  
Chair of the Justice Select Committee  
House of Commons  
London  
SW1A 0AA

16 January 2023

Dear Sir Robert,

During my appearance before the Justice Select Committee on 8 November there were several questions which I undertook to discover fuller answers to.

In relation to Independent Domestic Violence Advocates (IDVAs) and Independent Sexual Violence Advocates (ISVAs) Dr Kieran Mullan MP wanted to understand the basis for reports that they were not being allowed into courtrooms to accompany someone to whom they had been assigned.

You, as Chair, were interested to know about the whiplash reforms and the online portal and what feedback there had been on the effectiveness of that portal and its throughput. I offered to send the figures to you setting out the number of cases that have started in the portal and then the number that, so far as we know, have resulted in proceedings being issued.

Third, Maria Eagle MP asked about reports of delays in the Court of Protection in terms of the payment of solicitors and the timeliness of the receipt of court orders.

Finally for the purposes of this letter, I was asked about delays in the immigration tribunal. As I said, the Senior President of Tribunals is best placed to answer and I understand that plans are in train to seek evidence from him.

**Independent Domestic Violence Advocates (IDVAs) and Independent Sexual Violence Advocates (ISVAs)**

In answer to a request for information made by the Senior Presiding Judge, we had detailed responses on IDVAs and ISVAs from Resident Judges in Bristol, Sheffield, Swindon and Winchester. Their response on the usefulness of these advocates was entirely positive; none reports any instance of their exclusion from proceedings. If the Committee is aware of specific instances of such exclusion I would welcome further details.

I copy here some of the comments made by these judges:

‘...we have the most amazing service ... of which I cannot speak highly enough’.

‘In our experience they are perfectly aware of their responsibilities and are impeccable in appreciating the necessary boundaries in a trial. Without exception we have allowed witnesses to have that familiar person (who has supported them throughout their long CJS journey) with them during their questioning.’

‘...there have been many cases ... where complainants simply would not have seen through their complaints without the support they have been given from ISVAs. ’

‘No one at [our court] has encountered an ISVA being excluded from a court and cannot see how that would be lawful – as it is a public court – unless, in highly unusual circumstances, the ISVA has become a witness in the case for some very odd reason.’

‘I have said that the default position is that they are welcome to attend court, but that their role is strictly limited to providing moral/emotional support. In addition, subject to any representations, they are allowed to sit near to the witness if the witness asks for this. When that occurs, I agree a form of words of explanation to the jury which simply explains that the complainant has asked to have a person present to support them, because giving evidence is a stressful experience, and that this is a normal procedure. We have encountered no difficulties with doing this, to date.’

‘In the two years since I have been the RJ ... we have used ISVAs on numerous occasions and on the whole our experience of them has been very good... By and large the ISVAs who have been used in cases have engaged very well with this Court. They understand their remit and the role of support to the witness. They do not seek to trespass on other organisations territory and our experience of them is positive and helpful at all times.’

### **Whiplash reforms and the online portal**

Further data has subsequently been published by the Ministry of Justice, on the 29 November. Their report can be found here:

<https://www.gov.uk/government/publications/whiplash-reform-programme-information-and-faq>.

The Official Injury Claims service also publishes quarterly statistics which can be found here:

[Data \(officialinjuryclaim https://www.officialinjuryclaim.org.uk/resources-for-professionals/data/.org.uk\)](https://www.officialinjuryclaim.org.uk/resources-for-professionals/data/.org.uk)

I understand also that the Court of Appeal is currently considering a test case which relates to mixed injury claims, and the correct approach to be taken in such circumstances.

## Court of Protection

To give some context, between 2017 to 2021 there was a 23% increase in the number of applications received by the Court of Protection and a 79% increase in the number of orders made. There were 8,623 applications made in April to June 2021, up by 50% from 2020. During the same period there were 11,437 orders made, up by 4%. As these statistics demonstrate the work of the court has dramatically increased over the last 5 years.

Without a Lasting Power of Attorney (LPA) (Property & Affairs or Health & Welfare) an application needs to be made to the Court of Protection. It is likely that what Ms Eagle referred to is a Property & Affairs (P&A) case.

The Court of Protection Central Registry in London deals with all P&A applications. Without being able to identify the case it is hard to comment on specifics but for a case to take a year there would very likely have been additional factors such as an objection, a transfer to a regional court, perhaps a non-compliance or delay to documents being received.

The court is taking proactive steps to reduce any delays. There has been a Property & Affairs upfront notification pilot running since September 2021, with an increasing number of practitioners able to take part. This enables digital upfront notification of property and affairs cases, allowing a more streamlined application process where cases are agreed.

From January 2023, the new upfront notification process is due to become the standard process for all Property and Affairs deputyship applications, following a successful pilot. The Practice Direction is in the final stages of being approved.

Benefits of the new process include:

- less paperwork to complete and faster processing times
- increased initial engagement reducing delays caused by objections
- forms CoP20a and COP20b no longer need to be completed
- a new easy to use online service that supports better accuracy of applications

Senior Courts Costs Office (SCCO):

When a professional makes an application to the COP the final order will also include, in most cases, their entitlement to be paid in respect of the work done on the application. This could be fixed costs, agreed costs, or costs subject to a detailed assessment by the Senior Courts Costs Office, or even a combination. By way of example, in a final deputy order when a lay applicant is appointed and has been represented by a professional, the cost clause is usually:

*The deputy is authorised to pay x Solicitors fixed costs for this application, or, where the amount exceeds the fixed costs allowed, the deputy is authorised to agree the costs for making this application and to pay them from funds belonging to P. In default of agreement, or if the deputy or the solicitors would prefer the costs to be assessed, and provided that P's net estate is not less than £16,000, this order is to be treated as authority to the Senior Courts Costs Office to carry out a detailed assessment on the standard basis.*

The professional can choose to have their costs assessed, if the costs incurred have exceeded fixed costs (which is usually the case), provided authority has been given to the SCCO within the order. They will then make an application with the SCCO.

The SCCO sends out a bi-weekly updates to CoP customers regarding the timeframe for processing assessment requests (the latest version is attached). The Costs Officers are currently being assigned bills of costs for which supporting papers were received around the end of May.

A handwritten signature in black ink, reading "Burnett of Maldon". The script is cursive and fluid, with the "of" written in a smaller, more compact style.

THE RT HON THE LORD BURNETT OF MALDON

## Notice to customers regarding Court of Protection bills

Further to the previous update circulated on 28<sup>th</sup> November 2022, thank you to all our customers for your ongoing support, which is greatly appreciated by staff

Please find below the latest update with regard to dates being worked on:

The Costs Officers are currently being assigned bills of costs for which supporting papers were received around the **end of May**.

*(We would like to clarify that there will be some delay between the bill being assigned to the Costs Officer and it being sent out by the Admin Team. Therefore, whilst bills pre-dating the end of May are likely to have been assessed, they may not necessarily have reached the despatch stage yet. If a bill for which papers were submitted in the preceding weeks has not yet reached you, please be aware that it is likely to be awaiting processing by the Admin Team).*

The Admin Team is currently sending out assessed bills returned to them by the Costs Officers during **2<sup>nd</sup> week of December** (Please note that we have no control over delivery times following despatch).

In terms of e-filings that have been submitted, but not yet accepted or rejected, we are currently working on new bill filings submitted around **3<sup>rd</sup> week of November** and certificates submitted during **3<sup>rd</sup> week of November**

In view of the above and in order to maximise the time that is spent working to reduce the backlog, we are politely requesting that you continue not to make enquiries about the progress of the following:

- Any bills for which supporting paperwork was submitted from **late May** onwards.
- Any e-filing not yet accepted/rejected that was submitted during or after **3<sup>rd</sup> week of November**
- Final Costs Certificates where less than 2 weeks have passed since you received confirmation of acceptance.

Please bear in mind that any information provided regarding individual bills is an estimate and our staff cannot make guarantees as to when a particular case will be dealt with.

We do understand how frustrating delays can be for our customers and staff are working hard to improve the situation. The reduction in chase-up queries is helping us to continue focusing the maximum resource possible on clearing the backlog.

Measures are being taken which should hopefully improve the situation in the longer-term, but in the meantime, your continuing assistance in restricting queries to urgent matters is greatly appreciated and helps us to deal with your bills as efficiently as possible.

The Senior Courts Costs Office

12 December 2022