



## Justice Committee

**Mike Freer MP**

**Parliamentary Under Secretary of State**

**Ministry of Justice**

By email only

23 May 2024

Dear Minister Freer

Thank you for attending the Committee's evidence session on Tuesday 21 May. We did not know then that the inquiry would be brought to such a swift end. In the spirit of collaboration and out of respect to those who took the time to write and speak to the Committee, I'd like to use this opportunity to set out some key findings and suggestions for improvement.

Prior to 2017, the probate service worked. The project to digitise the probate process is often cited by the legal press as the cause of the backlog and delays, while the pandemic usually takes the blame in the mainstream press. However, technology did not cause huge delays. The digital portal and the pandemic created additional issues, but fundamentally the cause of the collapse of the Probate Registry was a failure to understand the magnitude of the centralisation and digitisation projects and a failure to appreciate the importance of an experienced and skilled workforce.

As you said to the Committee, HMCTS tried to do too much too soon, with too little testing and the Department lacked the skill to manage complex IT and business reengineering projects simultaneously.

In this context, your apology before the Committee for the level of service failure is to be welcomed. As you said, going through probate while bereaved is an extremely difficult time in people's lives. It is clear that you and the wider team have devoted time and energy to understanding what has gone wrong and on working on the recovery plan. I sincerely hope your predictions for the sustained recovery of the



## Justice Committee

service by September 2024 will be borne out. There is more to be done to get the probate service on to a sustainable path and to win back the confidence of those who use the service.

The Probate Registry was described in our evidence sessions as “loved” – an unusual descriptor for a courts service. However that is a testament to the value that the legal sector, and wider society, place in a well-functioning justice system.

On behalf of the Committee, I thank everyone who submitted evidence to our inquiry and in particular those bereaved people who took the time to meet with us. Due to the timing of the election, we are unable to produce a report reflecting the full range of the concerns we heard. I will limit this letter to the areas where our findings can most assist HMCTS and to highlighting those solutions for which I believe there to be broad support.

### **Cause of the delays**

I was grateful for your candour in explaining that the department had been overly ambitious and made a mistake in not completing the reorganisation/centralisation before the digital portal project. The reflections on the impact, not only of the loss of experienced staff, but also of not listening to the staff who remained, were useful to hear.

Your commitment to return the Probate Registry to pre-pandemic standards could be said to betray a concerning lack of understanding about the failures at the Probate Registry. HMCTS’s own statistics show that in the past the Probate Registry could meet demands greater than those required by the pandemic. We heard that the failures were not caused by the pandemic, but by poor decision-making, around the project to centralise the service and the announcements to increase fees by up to 6,000%.

2023 saw the second highest number of applications for probate (302,363) in the time period for which we have available figures. The highest number of applications was made in 2006 (311,127). Until 2017 the Probate Registry was able to keep up with the number of applications, including significant spikes in demand. The year when the relationship between the number of applications in and the number of grants out diverged (2017) correlates with the beginning of the centralisation programme, which saw the closure of probate registries and sub-registries.<sup>1</sup>

*Suggested response from HMCTS:*

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<sup>1</sup> Data for 2023 and data on the number of grants issued prior to 2012 is based on HMCTS Management Information, and is not therefore subject to the same rigour as Official Statistics.



## Justice Committee

1. I suggest HMCTS conduct and publish a lessons learned exercise to ensure that the causes of failure are fully understood across the department.

### Impact

The Ministry of Justice's written evidence to the inquiry provides the following overview of the impact of delays:

"The government recognises that without a grant of probate, executors cannot administer estates properly and therefore it may delay them accessing estate funds to pay off debts, finalise taxes, distribute bequests and assets as intended until probate is granted and therefore may lead to increased costs through interest on inheritance tax and estate costs."<sup>2</sup>

This is a rather narrow assessment of the impact of problems at the Probate Registry. The evidence the Committee has received reveals far wider impacts: Cancer Research UK had to delay 44 cancer research projects; council adult social care teams are chasing millions in debt; and individuals have considered suicide due to being put under significant financial pressure while grieving.

#### Impact on local authorities

Written evidence suggests that councils with adult social care responsibilities are experiencing budget pressures in the form of millions of pounds of debt relating to deceased service user's care charges due to delays at the Probate Registry. Additionally, evidence from the Empty Homes Network suggests that probate is having an impact on the number of empty homes and council tax revenue, creating additional pressures on local authorities.

House of Commons Scrutiny Unit analysis states that:

"In 2023 over 740 thousand dwellings were exempt from Council Tax, 19% more than in 2019. Of these 18% were due to 'Class F' exemptions which are 'dwellings left empty by deceased person'. Class F has risen by 52% since 2019, more than any other category of exemptions."

This increase is disproportionate to the number of deaths in England. According to the Office for National Statistics the number of deaths rose by 9% between 2019 and 2022<sup>3</sup>.

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<sup>2</sup> <https://committees.parliament.uk/writtenevidence/128618/pdf/>

<sup>3</sup> [Deaths registered in England and Wales - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/deaths-registered-in-england-and-wales)



## Justice Committee

The average annual council tax payment per household in the England was £1,578<sup>4</sup>. Class F represented £214 million lost revenue in 2023.

*Suggested response from HMCTS:*

2. I urge HMCTS to work with the Department for Levelling Up, Housing and Communities, local authorities and empty home stakeholders to consider what HMCTS can do to ensure that probate is not a cause of care home debt or empty homes either due to delays at the Probate Registry or due to unintentional incentives for properties to remain in Class F.

### Impact on charities

Cancer Research UK estimated in March that they were awaiting approximately £30 million in funds from bequests awaiting probate. In oral evidence on 12 March 2024 Angela Morrison, Chief Operating Officer, Cancer Research UK described the impact of probate delays:

“We have gone through budgeting rounds where we have taken money from capital investment. We have had research this year that we have not invested in. There are 44 projects that we could have invested in this year that we have not invested in.”

At the same evidence session Devon Air Ambulance described needing to delay replacing aircraft.

The Institute of Legacy Management and Remember A Charity state that the complex services that charities provide will often require multi-year funding. The relative certainty of legacy income makes it a significant part of their long-term funding.<sup>5</sup> Charities have told us that they are unable to make informed investment decisions in capital, services or people as a direct result of delays. We have been told of examples of cancellation or delay to:

- Hiring new staff
- Medical research
- Leasing new work sites
- Purchasing equipment

Written evidence states that the delays of the past few years have created a sustained period of uncertainty where charities cannot accurately forecast their legacy income and consequently are unable make informed decisions on how to budget for the

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<sup>4</sup> Council Taxes Requirement: Council Tax per dwelling Live Table, England, April 2024 to March 2025, Published by the Department for Levelling Up, Housing and Communities (DLUHC) on 21 March 2024 [Average Council Tax per dwelling 1993-2023](#)

<sup>5</sup> PRO0056



## Justice Committee

future. This uncertainty could have been somewhat mitigated by greater transparency from HMCTS around the caseload and a more proactive attitude to data sharing.

### Impact on individuals

The psychological impact of grieving people being forced to battle with a failing bureaucracy should not be underestimated. In oral evidence, we heard:

“we have had people who have contacted us to say, “I am suicidal and I have thoughts around how do I live. Because of the delays I can’t get the funds I need.”<sup>6</sup>

Written evidence from individuals and informal evidence gathered during the private roundtable with people who recently applied for probate give examples of a wide range of negative impacts of the delays and uncertainty, from emotional to financial. They include:

- Being stuck in grief by the inability to complete the necessary bureaucracy associated with the death of a loved on.
- Interest becoming payable on assets and tax after a certain amount of time – six months on unpaid inheritance tax or 12 months on cash legacies, so delays can mean costs in interest payments.
- Property transactions falling through.
- Estates being forced to hold on to unoccupied properties for longer, with insurance of empty properties being difficult or costly to obtain, while service charges and bills, such as standing charges to utilities, need to be paid even if no-one is consuming services.
- Changing market conditions and falling house prices leading to a downward renegotiation of the sale price.

### Impact on practitioners

Practitioners state that they have experienced significant stress as a result of the delays. We heard that the delays were impacting firms’ cashflow as they are unable to charge for cases and that firms are also blamed by clients for the delays. The Law Society states that firms are at increased risk of claims, which, even when unfounded, can significantly increase the cost of their professional insurance.

The lack of transparency from HMCTS around how long applications are taking, means there is a discrepancy between how long individuals believe a grant of probate will take and practitioners’ experience. We heard that this discrepancy has led to distrust between clients and practitioners, as clients do not believe that

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<sup>6</sup> <https://committees.parliament.uk/oralevidence/14619/html/>



## Justice Committee

probate can take so much longer than HMCTS guidance claims. Written evidence also describes professional firms needing to allocate more resources to handling cases and complaints that arise as a result of delays.

### *Suggested response from HMCTS*

3. I note that Ms Measures stated that if the probate service is not recovered by autumn, “we will adjust our resource if we need to” and “if the demand wasn’t being met, we would look at that [the number of registrars] again”. Given the depth and breadth of the impacts on the bereaved, charities, care services and local authorities, I trust there is sufficient evidence of the benefits of a well-functioning Probate Registry for additional resource to be acquired if needed.
4. To that end, I suggest publishing the performance targets you expect the Probate Registry to achieve would suggest that you are indeed confident that the Probate Registry can meet the expected standards.
5. It is unusual for Select Committees to come across a cost-effective response to problems that can be implemented at speed without political difficulty. However, on this occasion, there is such a response: release the data. Government evidence makes clear that HMCTS believe there to be sufficient data in the public realm. Given that even those organisations working most closely with HMCTS, such as the Law Society and the Institute of Legacy Management, feel that data sharing and publishing should be improved, I suggest that HMCTS engage more, listen harder and publish as much data as is practicable as frequently as feasible. The charitable, legal and financial sectors have significant analysis capability. Publishing more data and opening it up to greater analysis would:
  - allow the legal sector to manage their clients’ expectations and communicate with the public;
  - allow the charitable sector to create robust financial forecasts that enable them to spend money on their charitable purposes; and
  - increase confidence and trust through transparency.

### **Other concerns**

We heard a number of other concerns that I highlight here in the spirit of ensuring that HMCTS are aware of matters that they may wish to conduct their own inquiries into. It may be that the future Justice Committee will also be minded to follow up on these points.



## Justice Committee

### Access to Justice assessments

I was pleased to hear that HMCTS is looking again at the access to justice assessment. The finding that cases from ethnic minority users take longer and are stopped more than white users and that reasonable adjustments are under used and under recorded is obviously of concern. I note your explanation that the problems for ethnic minority users are largely associated with documents that need to be translated or are written in scripts, such as Arabic, that can lead to names being spelt differently in English across different official documents and that also different naming conventions exist. I was pleased to hear that you will publish further information on access to justice later in the year.

### Dormant cases

The apparent lack of interest in dormant cases is concerning. I understand that an application is made dormant if the applicant does not contact HMCTS for six months. I would suggest consideration is given to examining this process and looking at whether people should be notified that a case is about to become dormant. Additionally you may wish to give some consideration to exploring whether the number of “dormant” applications has risen since the reform of the probate service.

### Regulating probate and will writing

We heard concerns about bad actors in the probate and will writing sectors. I note that the witnesses we heard from believe further regulation in this space is required. Ministers rejected the 2013 Legal Services Board recommendation to regulate will writing in favour of better consumer guidance. The Competition and Markets Authority (CMA) is now consulting on guidance for will writing and pre-paid probate services due to “harmful practices” in the sector. Some may view that as evidence that the consumer education approach is insufficient.

The Financial Conduct Authority issued a warning about pre-paid probate plans in 2023. It states that there has been increased marketing of pre-paid probate plans in recent months, including from firms and individuals associated with unregulated funeral plan firms. The Government legislated to regulate all pre-paid funeral plan providers and intermediaries in January 2021, bringing within the regulatory remit of the Financial Conduct Authority (FCA) with effect from 29 July 2022.

I understand that since regulation of the pre-paid funeral industry, some firms have moved out of the funeral market and begun offering “pre-paid probate” instead.





## Justice Committee

The timing of the election has meant that the Committee has had insufficient time to consider the best approach to concerns about the Will writing and pre-paid probate. We note the Minister's commitment to look carefully at the CMA consultation.

### Scanning

We received evidence that bulk scanning was a cause of error and delay. However, on our visit to Exela, the bulk scanning provider, we found an efficient and impressive operation. We must therefore conclude that errors and delays are more likely to be caused elsewhere in the process. It is damaging to public trust to allow false narratives to occur. Communications with the public should not assign blame to outside contractors where it is not warranted.

### Non-contentious probate rules 1987

Many of the issues we've heard about with the Probate Registry, and the HMCTS Reform Programme more broadly, seem to stem from a failure to understand what digitising services requires. It is clear that improved collaboration between legal professionals, policy makers and technologists was needed to ensure that legal processes are ready to be digitised. In the Committee evidence session, you explained the dangers of "putting new IT on a pretty ropey system", in the context of digitalisation and centralisation. I would not describe the non-contentious probate rules as "ropey", but the suggestion that the foundations had not been laid before the IT project was started rings as true for probate, as for other parts of the HMCTS Reform programme. The foundations are the non-contentious probate rules 1987. It may be time for the Law Commission to consider whether work is required to make the rules fit for the 21<sup>st</sup> century.

We understand the bulk scanning contract is being looked at by Government. I am disappointed that this news was not shared with the Committee, but rather dropped into conversation by the contractor's staff. Officials and Ministers should be well aware that Select Committees frequently deal with matters that require confidentiality and are experienced in acting with the appropriate discretion. I suggest that commercial confidentiality is better maintained through appropriate candour with Select Committees, rather than secrecy.

I know that you share my hope that the delay and error the Probate Registry experienced can be avoided in future reforms. To that end, staff, the public and the professional sectors must be listened to early and often.





## Justice Committee

Finally, I thank the officials of your department and all the staff who supported the inquiry with supplying evidence, documentation and supporting our fact-finding visits. You have been a frequent visitor to the Committee. I am grateful for your time and energy in engaging with us. I wish you well for the future.

A handwritten signature in black ink, appearing to read 'R. Neill', written over a light blue horizontal line.

**Sir Robert Neill KC (Hon) MP**  
**Chair, Justice Committee**