

Written evidence submitted anonymously (PRO0032)

Delays - What are the principle causes of the delays in issuing grants of representation?

Unfortunately there is a weakness in the PA1P process which is causing severe delays, stretching to multi-year delays.

Section 3.6 option C allows a disingenuous executor to falsely state that their co-executor's power is reserved on a probate application, effectively forcing their co-executor out of the probate application against their wishes:

NOW - ENGLAND (PA1P):

3.6 Name any executors who are **not** making this application, and explain why.

Reasons for executors not applying:

A – They died before the person who has died.

B – They died after the person who has died (Please include the date they died by their name).

C – Power reserved: they have chosen not to apply, but reserve the right to do so later.

D – Renunciation: they have chosen not to apply, and give up all rights to apply. (Before you send off your application please **read NOTE REASON D**)

E – Power of attorney: they have appointed or wish to appoint another person to act as their attorney to take a Grant of Representation on their behalf (You will also need to complete Section 5 of this application). (Before you send off your application please **read NOTE REASON E**)

F – They lack capacity to act as executor.

Note 3.6 – Executors are the first person who can apply for a grant. We need to know why any executors aren't included in this application. This includes any executors who have pre-deceased. **If you do not provide all of the information this will delay your application.**

Full name(s) of executor(s) not applying	A, B, C, D, E or F

Reason C
If any executors are **having power reserved**, you **must** notify them of the application in writing. The Grant of Representation will only be issued to those people named as applicants in Section A.

Reason E
If you state that an executor wishes to appoint an attorney or they already have an attorney. We will need to send another form to you to give to the executor for them to sign, or you will need to provide one of

Reason F
If you state that an executor lacks capacity and are incapable of managing their property and financial affairs, when we receive this application we may send a medical certificate for the executors' doctor to sign.

The attorney of one executor and an executor acting in their own right may not jointly apply for a Grant of Representation.

Screenshot of current PA1P form, section 3.6

No verification checks are undertaken with the affected co-executor, as evidenced in the above screenshot by use of “**having** power reserved” on the PA1P form.

The Probate Registry are taking the word of disingenuous applicants.

The outcome from this is either:

1. A caveat having to be entered (and renewed for many years if the applicant never responds), delaying probate indefinitely
2. False probate applications being wrongly accepted and processed where honest co-executors are forcefully excluded against their wishes

I believe this is affecting many probate applications and may be more widespread than the Probate Registry realise as they would have no metrics regarding point 2 above.

Along with causing long delays, I can talk from personal experience that it inflicts immense stress and worry on bereaved families and honest co-executors.

Delays - What can be done to avoid stops?

I would kindly suggest the previous probate process, known as PA1, is reinstated with some additional verification checks similar to the current Northern Ireland NIPF1 process:

BEFORE - ENGLAND (PA1):

Section A

A1 Please enclose the original will and any codicils with your application (**not** a photocopy).

A6 Please state the names of any executors named in the will who are not applying for the Grant of Probate and show one of the following reasons for this:-

A The executor died before the deceased.

B The executor died after the deceased.

C The executor does not wish to apply for probate now but wishes to reserve the right to act as executor in the future if necessary – this option is referred to as having "power reserved".

D The executor does not wish to apply for probate at all. This is referred to as "renouncing". It means that they gives up all their rights to act as executor.

E The executor wants to appoint another person to act as their attorney to take the Grant of Representation out on their behalf. Please note, however, that the attorney of one executor cannot take a grant jointly with an executor acting in his own right.

If you give reason D or E, please send a letter signed by the executor stating their intention when you send the application to the Probate Registry. If option C, D, or E is stated the Probate Registry will, on receipt of your application, send you a form for the executor(s) to sign to confirm their intention. You should arrange for this to be completed and then return it to the Probate Registry as instructed.

Screenshot of previous PA1 form, section A6

NOW - NORTHERN IRELAND (NIPF1):

3.8 Name any executors who are **not** making this application, and explain why.

Reasons for executors not applying:

A – They died before the person who has died

B – They died after the person who has died. (Please include the date they died by their name)

C – Power reserved: they have chosen not to apply, but reserve the right to do so later. (See note Reason C)

D – Renunciation: they have chosen not to apply, and give up all rights to apply (See note Reason D)

E – Power of Attorney: they have appointed another person to act as attorney to take a Grant of Representation on their behalf (You will also need to complete Section 4 of this application). (See note Reason E)

F – They lack capacity to act as executor. (See note F)

Full name(s) of executor(s) not applying	A, B, C, D, E or F

Reason	Explanation
Reason C	If any executors are having power reserved, you must get them to complete and sign a Reserve Power form and send it to us with this application (not required for legal professionals)
Reason D	If you state that an executor has given up their right to apply, must get them to complete and sign a Renunciation form and send it to us with this application

Note 3.8 – Executors are the first person who can apply for a grant. We need to know why any executors are not included in this application. This includes any executors who have pre-deceased. If you do not provide all of the information this will delay your application.

Reason C form – can be accessed by searching 'probate reserve form' on nidirect

Screenshot of current NIPF1 form, section 3.8

As you can see from the PA1 screenshot above, the Probate Registry did previously verify the co-executor's intention. It should go a little further as per the NIPF1 form also shown above, by contacting the co-executor directly rather than relying on the applicant doing that.

This would remove the opportunity for disingenuous executors to cause long delays on probate applications as any false declaration around their co-executor's power would be protected against. Caveats would no longer need to be raised and unnecessary deadlocks in Estate administration could be avoided.

Innovation - What is the potential for technological change and innovation to improve the future operation of the probate system?

I suggest similar technology could be used as the UK visa and passport processes, such as biometrics. Each executor, as named in the Will, would have a biometric record with a registered address. That address and biometric is used to verify their intentions in relation to any probate application.

Additionally, the concept of “**first applicant**” should be removed. Disingenuous executors abuse this as another method of excluding their co-executor from all communications with the Probate Registry. All co-executors should be treated equally on the probate application, as per the deceased’s Will.

I would also urge caution that electronic innovation does not always equal an improved faster process. For example, I suspect the probate changes implemented from PA1 -> PA1P in regard to power reserved, were done with a priority on speed of processing applications over checking the legitimacy of those applications.

People’s Experience - How well are beneficiaries, executors and the bereaved protected and supported through the probate process?

With reference to this specific “power reserved” issue, currently there is little help provided by the Probate Registry. The standard response is “seek legal advice, we cannot help”. After a false application has unfortunately been accepted by the Probate Registry, they push the problem back on the bereaved family and honest co-executor.

The current “solution” appears to be to enter a long complex Court claim to seek removal of the disingenuous executor. That process is slow, extremely expensive, and there is no guarantee of a successful outcome.

Instead, the probate process should be improved as suggested above, to avoid needing to go to Court in the first place.

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