

Written evidence submitted by The Institute of Legacy Management and Remember a Charity (PRO0056)

Introduction

The Institute of Legacy Management (ILM) and Remember A Charity are responding to this inquiry in our collective representative capacity for hundreds of UK charities that rely on charitable gifts in Wills as a crucial source of income, legacy management professionals. Our response also reflects the need to protect and preserve the intentions of those individuals whose final wishes include making a donation from their Will to the charities that are close to their heart.

Charitable bequests are the largest source of voluntary income for many charities and community-based organisations, accounting for £4 billion¹ of the sector's income, equating to 29% of the UK's voluntary income², making it a vital source of funding for some of society's most valued charitable services. Currently, gifts in Wills fund 6 in 10 lifeboat launches, over a third of Marie Curie hospices, and sustain arts organisations, mental health helplines and an increasing number of community-based charities and charitable services.

The Probate Registry plays an invaluable role in making sure legacy donations are distributed to charity beneficiaries so they can continue to support a range of diverse communities across England and Wales. A grant of probate is not only necessary to inform charities that they have been left a charitable bequest, it is a crucial component of financial compliance to prevent fraud, forming part on one of the three criteria for legacy accounting set out in the Charity Commission for England's Charities Statement of Recommended Practice (SORP). This combination of factors means that the speed of grant processing and the overall number of unprocessed applications has a direct impact on the income available to charities to fund their work.

ILM and Remember A Charity have been active members of the Probate Service Users Working Group, that was set up by His Majesty's Courts and Tribunal Service (HMCTS) in response to the unprecedented build-up of applications awaiting a grant at any given time. This forum has proven to be an effective and collaborative endeavour for which we are grateful to HMCTS. It has given our organisations the opportunity to highlight the impact that probate application delays and blockages have on charities' ability to plan and deliver services while also giving us and our members a better understanding of the challenges faced by the Probate service and the steps being taken to address these issues. This has enabled us to keep the charity sector informed of key service updates, so they can anticipate the impact on legacy income, and plan accordingly.

We also recognise that HMCTS is committed and determined to reduce the high number of outstanding grant applications, and that – although there remains a high volume of estates in the probate system – the number of grants issued increased considerably during the last quarter of 2023. We are also immensely grateful to HMCTS that, in November 2023, they agreed to include a mandatory form field on digital applications to indicate whether an estate includes a charitable bequest – a crucial addition that will enable charities to more accurately forecast income from gifts in Wills.

We are pleased that the Justice Committee has opened this inquiry and consider it a crucial next step towards returning the Probate Service's volume of unprocessed estates in the system to pre-2019 levels and look forward to working with HMCTS on achieving this.

The impact of delays in probate application on charities

From consultation with our members, it is clear these 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

¹ [Legacy Market Review, Legacy Foresight, 2023](#)

² [Legacy Futures, Data Dashboard, 2023](#)

decisions on how to budget for the future. Currently, we estimate that there is £800 million charitable legacy income contained within Wills awaiting a grant of probate, underlining the extent to which this backlog of applications awaiting a grant of probate is holding up charitable funds being put towards their intended purpose. The timing of this is particularly disadvantageous, as increases in charities' core operating costs, spikes in demand for their services and reduced income from other public and statutory sources are already putting pressure on their cashflow and financial forecasting.

Charities are tackling some of the most complex societal problems, so their services must be planned in advance and will often require multi-year funding. As such, knowing how much money a charity is due to receive is essential for their investment decisions and financial planning. A grant of probate is an integral part of this, not only does it mean that an estate can be distributed, it makes the Will a public document, at which point charities, or more typically a specialist legacy notification service, can obtain a copy and identify any charitable bequests.

Given that a grant of probate is a crucial step in the legacy financial planning process, these delays in processing probate applications are having a knock-on effect on charities' financial forecasting, as they are unable to accurately assess how much legacy income is in their pipeline. Our charity members have informed us that in many cases, their legacy income may appear low due at key moments in their budgeting calendar, creating concerns as to how the charity will fund their services, only for large amounts of income to come through at a later date.

This is negatively impacting charities' ability to make informed investment decisions for their services and operations. One charity member informed us that, due to fewer notifications naming them in a Will, trustees were not confident the charity could afford to hire several new members of staff, which were urgently needed. By the end of the year, as probate performance improved their amount of legacy income signalled to them had doubled, meaning that the charity could have hired those new staff members. We believe this situation could have been avoided if probate grant applications were processed in a timelier manner, as charities would be notified of legacy gifts sooner.

Other members highlighted that these delays are also leading to delays in selling property or assets left to them, leaving them vulnerable to volatile market prices.

Working with HMCTS to mitigate the impact on charities

We recognise that HMCTS is aware of the challenges that delays at probate are creating for charities and appreciate their positive approach to working with the charity sector in recent years, which has already delivered significant outcomes. Early on when the backlog of probate applications was rising, the probate team at HMCTS listened to the concerns we raised about the potential suspension of the legacy notification service back in 2019 and recognised its importance to charities, ensuring this critical service could continue uninterrupted. This led to service improvements being made, such as the provision of a copy of the Will with each legacy notification received.

More recently, HMCTS agreed to take part in a series of sector-wide webinars to share data and briefings from the probate team. This information enables the charity sector to better understand what is going on behind the scenes at HMCTS and provides helpful updates to our sector partners and members. We look forward to continuing to coordinate these events with them.

We think it is important to also highlight that this situation was not created due to internal challenges within HMCTS, in fact the overall number of grants issued has not changed significantly since 2019, indicating that their productivity has not decreased over the past four years. Rather, these delays are the product of external factors increasing the number of applications for probate, including the proposed fee changes in 2019, and the increase in UK mortality rates, accelerated by the COVID-19 pandemic. The recent recruitment and upskilling programme that HMCTS has undertaken has already seemed to make positive steps forward towards resolving this, with the latest publicly available data suggesting that the level of probate applications is now exceeding the number of grants being issued on a monthly basis.

Leveraging technology and resources to create better outcomes for charitable estates

Through our collaborative work with HMCTS, the Probate Registry has agreed to the addition of a mandatory field to the grant application form where the personal representative must indicate whether the estate includes a charitable gift. This could be transformative in helping solve many of the challenges our members are facing when it comes to accurately financially forecasting and planning for legacy income by making it easier to identify the proportion of charitable estates at probate. We look forward to continuing working with HMCTS on this initiative and hope that the findings of this inquiry help its progress.

We also believe there is scope to introduce a specialist team within HMCTS that dedicated to processing and managing estates that include a charitable bequest. Charitable estates often come with their own unique challenges, notably, inheritance tax exemption, we therefore think fostering specialist knowledge within HMCTS will help applications be processed in a timelier manner.

Future output levels for the Probate Service

We understand from our discussions with HMCTS that they are working towards a target of c.30,000 probate applications in the system, which would mean it would take on average four to six weeks to receive a grant of probate. We agree that this would be a suitable level of output and it broadly aligns with many of our members' expectations.

In order to reach and maintain this target, however, we recognise that HMCTS will require sufficient resources to keep pace with the increasing number of deaths. By 2030, it is predicted that the number of deaths will reach over 700,000 people per year, given that on average 50% of deaths lead to an application for probate, this means there will likely be over 350,000 applications for probate per year and HMCTS will need to be appropriately funded and supported to respond to this. We hope the inquiry factors this into their long-term plans to avoid this the backlog of probate applications rising again.

About Remember A Charity

Remember A Charity was established in the year 2000 as a consortium of charities working to inspire more people to consider leaving a gift to charity in their Will. Now with almost 200 charity members, the campaign works with Government, the legal profession, and financial advisers to grow legacy giving. Remember A Charity Week takes place in September each year.

Remember A Charity is part of the Chartered Institute of Fundraising, which is incorporated by Royal Charter (RC000910) and is a charity registered in England and Wales (No. 1188764) and Scotland (No. SC050060).

About the Institute of Legacy Management

The ILM is the membership body for charity legacy professionals. Founded in 2000 we now have over 700 members, working for c.500 charities, who between them manage over £3bn of legacy income each year. We provide training and guidance to our members and executors, and work with Remember A Charity to positively influence the environment for legacy giving.