

Supplementary written evidence submitted by the Ministry of Justice (PRO0094)

Executive Summary

- 1) This evidence, in addition to that submitted to the enquiry on 23 January 2024, follows on from the letter from the chair of the committee, Sir Robert Neill MP, on 12 December 2023.
- 2) Since that submission, another month (December 2023) of data is available which shows that the total number of workable cases waiting in the system has continued to fall by a further 4,008 cases in December 2023, bringing the total reduction since the end of August 2023 to 15,308 (23%).
- 3) January to March traditionally sees a peak in probate applications being received. To mitigate the impact of that anticipated increase and further support the reduction in outstanding caseload HMCTS has been operating reduced call opening times for a period of 3 months (subject to a 6-week review) since w/c 12 February 2024. Call lines are closed between 1pm to 5pm Monday to Friday and the staff reallocated to boost grant production numbers.
- 4) HMCTS open caseload data uses internal management information which is not currently published by HMCTS or the Ministry of Justice. This means it is subject to the data quality issues associated with large administrative systems and has not gone through the same level of quality assurance and analysis as published statistics.
- 5) The committee has asked for monthly reports on the number of applications in the open caseload broken down by how long the applications have been open. HMCTS is exploring publication of this data, subject to satisfactory data quality checks and governance.

Grants of Representation: Delays and backlogs

What is the current definition of a case that is in the “backlog”?

- 6) HMCTS cannot act on digital probate cases until the original Will is received in hardcopy. In addition, HMCTS cannot act on cases which it has assessed and needed to stop for further information from the applicant until that applicant replies. HMCTS therefore uses a workable backlog figure to measure its performance. Workable backlog is defined as:
 - any case submitted which has not had its grant issued, been made dormant or withdrawn by the applicant; and
 - any newly issued case, where the necessary documents (the Will for example) to work on the case have been received by HMCTS; and
 - any stopped case, where a response has been received from the applicant.
- 7) HMCTS also monitors the total outstanding caseload (backlog), which includes any case submitted on paper or digitally which has not had its grant issued, been made dormant or withdrawn by the applicant.
- 8) An application is made dormant if there is no activity for 6 months, which includes contact from the customer by email, phone call or upload of evidence that has been sent for scanning. Applications are reactivated if any activity, such as telephone contact, happens in the future.

What assessment has been made of why the number of grants of representation did not keep up with the number of applications in 2017 and 2019?

- 9) Prior to the HMCTS Reform programme, which digitised the probate process, a modernisation project was started in 2008 which looked to improve the ways of working for administrative staff to maximise performance levels for users whilst reducing the cost to the taxpayer. These improvements included providing the option for personal applicants to pay to swear the oath on their probate application before a solicitor rather than travelling to a city centre location to swear it before a probate member of staff and generally improving the performance management of processing times.
- 10) This modernisation project, completed in 2013, saw a 113 FTE reduction in the number of substantive staff within the service. Whilst this enabled the service to provide a good level of service when faced with normal levels of receipts it is now evident that it removed some of the resilience that was previously in the service to deal with peaks in demand.
- 11) The difficulties in 2019 were compounded by the launch of a new case management system in March 2019. Teething issues with the internal case management system coupled with the impact of training all staff on the system meant that grant production levels did not keep up with demand.

What assessment has been made of the extent to which current delays are caused by backlogs that developed from 2017 onwards?

- 12) In 2017 receipts were 25,711 above the disposal levels (260,660) and would have caused the outstanding caseload to rise more than previous years. This was not recovered in 2018 and then was compounded by the further fee rise proposal, which caused a significant spike in applications, and launch of the new Case Management System.

When does the MOJ expect performance of the service to return to pre-2017 levels?

- 13) Since the introduction of the Probate Recovery plan in July 2023, we have seen the workable caseload reduce each month since September 2023 with a total reduction since the end of August 2023 of 15,308 (23%).
- 14) The number of grants issued for recent months has been at record levels, with 22% more grants issued during September to December 2023 than the same period in 2022.
- 15) HMCTS's current forecast plans to have reduced average waiting times to 8 weeks by the end of August 2024. At the end of August, we expect the open caseload to be approximately 30,000, which is what the service would normally expect to hold when considering the number of cases which we are waiting for replies from the applicants on queries that have been raised.

Why does the system appear to no longer be able to keep up with spikes in applications?

What assessment has been made of whether there is sufficient resilience in the system to deal with such spikes in applications in the future?

- 16) Following the increase in staffing levels the service is now able to keep up with the spikes in workload that are being experienced, in addition to reducing the caseload of applications which have built up. A restructure of the operating model in 2008 saw a gradual reduction in the number of staff within the service (from 290 in 2005 to 153 by the start of the Reform project in 2017). Alongside the lead in time to train new staff on

the probate process, this lower baseline level of staff limited the resilience of the service to meet changes in demand.

- 17) Lessons have been learned from this and the operating model for national services within HMCTS now provides a much more resilient resourcing model, where staff can be temporarily moved from other services to address spikes in demand. This has happened to support probate where staff recruited for other services have been used to boost capacity quickly to avoid time consuming recruitment. The agility of the new digital service, which makes it much easier to move work to whatever location a member of staff is located rather than being confined to a geographical location, also helps to react to changes in demand.

HMCTS Reform programme and probate

What standards did HMCTS require the system met before it could be deemed complete?

- 18) The HMCTS Reform Programme had a 7-step delivery framework which each service had to go through to be deemed complete. This included project start up, through to design, piloting of the service with professional, citizen and HMCTS users and national roll out. Key decisions points along these steps were agreed at the Programme board and appropriate evidence provided to reassure the board that the system was ready to move to the next stage.
- 19) This evidence included results from Government Digital Services assessments which provided independent reviews of multiple elements of the service from the design and technology used to the user research and user needs being met, IT health checks (to ensure the system is secure), testing of the system (performance is as expected), design reviews, training needs analysis and operational readiness. These controls are conducted regularly to ensure the system continues to meet the required standard.
- 20) When the new system was first launched, case workers had to manually import case data of submitted applications from the previous case management system and this added approximately 15 minutes per case, which created an extra pressure on resourcing. The issue diminished with time as the number of cases that needed importing decreased.
- 21) Whilst the system met the minimum requirements expected, HMCTS is committed to continually improving the service and has been investing in the service since the system was launched. One area which was quickly identified following the national roll out of the new case management system was the length of time it was taking for paper cases to be manually created on the system compared to old case management system. This process was redesigned, and improvements implemented within 6 months of the system going live and since then the need to manually create paper cases has been removed using optical character recognition software through the bulk scanning process.

What delays or changes in scope were there to any of the projects, such as case management system, that were identified as key dependencies for the probate portal?

- 22) At the point of project closure in December 2019 all key elements of the agreed scope had been delivered except for automated integration with HMRC and Home Office systems for IHT and death event queries. HMCTS subsequently integrated with the Life Event Service, in September 2021, where death records can be automatically verified. HMCTS has also recently worked with the HMRC to introduce an IHT code to remove the need to have a fully automated link between the two organisations.
- 23) Where strategic solutions were not available, such as the work allocation tool, tactical solutions were implemented to ensure that the service could operate.

- 24) Overall whilst a digital channel was delivered for 80% of probate applications there remains 20% which cannot yet be made online and HMCTS is working to reduce this during the next 12 months by enabling more types of intestacy applications to be made online.

What proportion of applications required manual intervention in the most recent period for which figures are available?

- 25) It is an inherent part of the probate process that every application must be manually examined to confirm it complies with the relevant legislation. Over 78% of applications come to HMCTS digitally and approximately 25% of those applications are stopped at the examining stage as further information or documentation is required. HMCTS works hard with its users to help them provide all the information required and is continually improving both the online and paper process to reduce the reasons HMCTS cannot issue a grant on the first examination.

Is there a target for the proportion of applications requiring manual intervention in 12 months' time?

- 26) HMCTS is working hard to increase the Digital Take Up (DTU) rate as a digitally submitted application requires less manual intervention than if submitted on paper.
- 27) The current DTU (December 2023) is 79% for practitioners and 75% for citizens. HMCTS plans to make more journeys available digitally by increasing the people who can apply for intestacy (where a Will is not required) beyond spouse, civil partners and a sole child in 2024/2025, which is estimated to increase the DTU to approximately 90%.

What user needs is the portal intended to meet and what assessment has been made whether the portal signed off as complete in 2020 met those needs?

- 28) The following user needs were identified in 2016 as part of the Reform research which the digital application process is intended to meet:
- I need info upfront, so I know what I need to complete my application first time
 - I need to understand the level of details that I will need to provide/complete in an application
 - I need to know how far I am through the process
 - I need to know where I am in the process and how long it will take.
 - I need to know where to send/ upload documents (i.e. which registry).
 - I need to know my application / payment has been received by the registry.
 - I need to double check my data before submitting it.
 - I need to be able to save/print/application (pages)/SOT/records.
 - I need to complete the application at my convenience (save and retrieve).

The digital application process was designed around these needs and then passed a GDS assessment on that basis.

Since then, our teams continue to do user research and data analysis to iterate and improve the service. We are prioritising service improvements, so they meet user needs. For example, user research, insight and data analysis showed that personal digital applicants had no way to get an update on their application post-submission

without calling us, and this was a big driver for contact. In April 2023 we released a feature, called the Citizen Hub, enabling personal applicants who have applied online to get an update on their application without having to call or email, which responded to those research findings.

Since the release of this feature, we have seen evidence for an increasing number of people using it, and a reduction in “progress chasing” contact via email.

Analysis of contact from users has identified areas where design work could further reduce contact, such as improvements to the log-in journey. Design work has been done and tested with users; the design solutions are yet to be released into the service/are on the service backlog with an estimated delivery of Autumn 2024.

What assurance did HMCTS get that the portal project was ready to be rolled out to all professional users in 2020?

- 29) At the point of mandating that all professional users must use the online portal in November 2020, for those cases which it could accommodate, 34% of professional users were already using the service voluntarily. Applications made digitally at this time were being processed in under 5 weeks (from receipt of the Will) compared to 8 weeks when made on paper.
- 30) Over 21,000 digital probate applications had been made by professionals on the portal in addition to almost 99,000 personal applications by November 2020, showing the digital system, along with the underlying bulk scanning processes to deal with Wills and other documents, to be robust and able to handle large volumes of applications.
- 31) Extensive user research with professionals was undertaken during the design of the system and this continued during the long pilot period (starting in April 2017) to ensure the system was working as intended. The legislation which mandated its use also enabled users to request to use the paper process if they were experiencing difficulties with the online service.
- 32) In the 3 months that followed the mandating of the service the digital uptake by professionals rose from 34% to 78% in January 2021. Approximately 80% of probate application types can be made online so this almost represented 100% take up of the digital service for those application which could be made digitally.
- 33) The availability of the digital service proved vital during the restrictions of the Covid pandemic as it enabled users to make applications remotely and for probate staff to access work safely from any location. Despite the impact on many different court services from the pandemic the probate service was able to process 256,707 grants in 2020 followed by 273,349 in 2021 which is similar to the previous 6 years of published statistics.

What further work on the portal is expected and what milestones are attached to further work?

- 34) HMCTS are currently working on new enhancements for the portal to increase the Digital Take Up rate by opening more application types when there is no Will required, updating the Citizen hub to provide clearer messaging when further information is required and the progress of the application.
- 35) Internal changes are also being made to the case management system, to enable case workers to be more efficient and provide more detailed Management Information on performance. This work should conclude in late 2024/early 2025.

How is this work to be resourced?

- 36) The HMCTS Digital Technology Service (DTS) **Digital Delivery squads** continuously improve digital products which support HMCTS services, including the Probate service. Each digital squad's work is a mixture of technical stabilisation and continuous improvement, and priorities are agreed by the relevant Service Board, such as the Probate Service Board. Each Service Board brings together teams from across HMCTS - including digital - to track service performance, agree priorities and plan accordingly.

Costs and Benefits

What was the unit cost estimate for processing an application for probate (a) prior to the pandemic and (b) in the most recent period for which figures are available?

- 37) One of the results from the greater centralisation of the service during the Reform project is that it is possible to have a smaller management overhead in addition to ensuring that work is conducted at the appropriate administrative grade. This is illustrated by different management structures in 2017/18 compared to the current makeup of the service.

Grade	2017/18 Structure (from local management records)	2024 Structure
A/G6	1	1
A (G7)	3.4	2.4
B	12	4
C	13	13
D	44	26
Total	73.4	46.4

- 38) The unit cost data is a measurement of staffing and judicial costs. It does not include centralised or overhead costs. The table below shows the long term unit cost trend.

Year		Unit cost
2005/06	Historic	£34
2018/19	Pre-pandemic (most recent full year before the pandemic)	£23
2023/24	Latest available - Q2 23/24 (4-quarter rolling average)	£37
2024/25	Projected (based on agreed FTE reductions)	£25

- 39) It should be noted that the “pre-pandemic” year of 2018/19 was an historically low cost point, with FTEs having reduced from 290 at the end of 2005/06 to 153 at the end of 2018/19. The changes over the long term in grade mixture (as shown in paragraph 37 above) will also change the unit cost.

What estimate has the MOJ made of the unit cost in 12 months’ time?

- 40) Subject to the outstanding caseload reaching the projected levels during the next 6 months and based on the FTE needed to keep disposals at the level required to match projected receipts likely next financial year – the projected unit cost at Q4 of 2024/25 should be in the region of £25.

What estimate has been made of the expected overall savings from reforms to the Probate service?

- 41) It was expected that around £2m of annual recurring savings would be achieved by reform “end-state” in 2026/27. In addition, non-monetary savings have been realised by making the service more accessible for executors to apply for probate without professional assistance (if they choose to do so) and the associated cost to the estate as a result. It has also removed the need for over 120,000 visits per year by personal applicants to city centre locations to swear their oath on the application or pay a solicitor to do it for them as it can now be done online.

What was the FTE staff headcount for the probate service in each year since 2006?

- 42) The number of FTEs working in probate before 2014 is only available from historic local management sources and therefore may not be entirely accurate and is not available for all the years requested.

October 2005 = 290

January 2008 = 245

August 2010 = 228

June 2012 = 189

June 2013 = 177

- 43) The number of FTEs working in the probate service in each of the last ten years is as follows:

March 2014 = 156

March 2015 = 143

March 2016 = 144

March 2017 = 153

March 2018 = 153

March 2019 = 152

March 2020 = 153

March 2021 = 250

March 2022 = 246

March 2023 = 296

Operational errors

What communication has been had with providers of bulk scanning and other contractors about operational difficulties that could lead to stops, such as scanning two-sided documents as one-sided documents or adding staples to wills?

- 44) HMCTS uses key performance indicators and a service level agreement to manage the performance of our bulk scanning suppliers. These include the number of documents that have needed querying by HMCTS, such as the need for a rescan which can cause delay.
- 45) In January the Bulk Scan supplier was meeting the service level agreements which are in place for Probate. There are no bulk scan supplier process delays reported currently and therefore, no mitigation is presently required.

March 2024