

Supplementary written evidence submitted by the Ministry of Justice (PRO0095)

Executive Summary

- 1) This evidence, in addition to that submitted to the enquiry on 23 January 2024 and 15 March 2024, follows on from the letter from the chair of the committee, Sir Robert Neill MP, on 20 February 2024.

Do probate fees cover the overheads of the probate service?

- 2) The probate application fee was increased in February 2022 to recover the costs of providing the service, including overheads. A single fee of £273 for professional and personal applicants was introduced at this time set to the 2018/19 unit cost (the estimated cost of providing the service) for applications, uprated by 4.15% to account for inflation between this point and introduction of the new fee. We have recently updated our methodology for calculating estimated HMCTS costs, and under this assess the overhead costs for probate applications to now exceed the existing £273 fee.

What proportion of staff are agency workers?

- 3) For March 2024, agency workers equate to 12% of the total workforce (33 full time equivalent staff).

Is this expected to change?

- 4) This is expected to remain steady as agency appointments are used both to retain flexibility within the workforce, and to fill capacity gaps ahead of filling roles through recruitment to permanent roles.

Please supply the range of wait times the probate application average statistics include.

- 5) The table below shows the range of wait times.

Probate Application Submission to Grant Issued Duration by Decile, April 2019 to September 2023

Percentile	Number of days	Number of weeks
5th	6	0.8
10th	11	1.6
20th	19	2.7
30th	27	3.9
40th	35	5.0
50th	44	6.3
60th	54	7.7
70th	69	9.9
80th	90	12.9
90th	137	19.6
95th	177	25.3

- 6) The minimum and maximum case durations have been excluded as on further examination there were extremely long cases which either had a historic receipt date where a legacy case had been wrongly reactivated or caveats have been in place stopping the grant being issued.
- 7) In addition to administrative delay, cases can take longer where more information is needed from the applicant, a caveat (a hold by another party to stop the grant being made) is in place or where cases are complex, such as the deceased lived abroad or the original will is missing.

What documents are you currently unable to accept electronically from a solicitor affirming authenticity?

- 8) It is a requirement when making an application for a grant of probate, set out in Section 124 of the Senior Courts Act 1981, that all original wills and other documents, such as codicils are deposited with the probate registry. Therefore, whilst the service could accept these documents digitally from a legal professional there would still be the need to receive the original documents at the point probate is granted so that it can be made available for inspection as a public record.
- 9) There are other documents, such as revocation of entitlement and letters revoking a will, which Probate Registrars (using the provisions available to them under rule 6 of the Non-Contentious Probate Rules 1987) require the original to be filed with the probate service.

What needs to happen to allow electronic copies of the documents to be accepted from a solicitor and/or individual applicant?

- 10) The current legal framework dates back to the Court of Probate Act 1857 which provided for a system of depositing wills and for their inspection. This provides a legal requirement for the High Court to receive the original documents as proof for probate so that the Registry can inspect them as part of the validation process before granting probate. Amending this requirement would need a change in primary legislation.
- 11) The recent Government consultation on the *Storage and Retention of original will documents* proposed that a digital copy of the will has the equivalent capacity as the paper will to establish the intention of the testator, meaning courts would be equally able to rely on digital copies of wills to challenge the validity of that will or another as they would be if relying on the paper will. The Government will be publishing its response to that consultation later this year.
- 12) HMCTS is considering whether other documents not covered by the Senior Courts Act 1981 could be accepted as an electronic copy from a solicitor and will be exploring this further with input from the Registrar's, Policy, Legal, Service and Operational representatives.

What is the cost of the Exela contract and what proportion relates to probate?

- 13) The annual cost of the Exela contract is circa £2.25 million, based on the fluctuating volume of documents that are scanned, of which probate accounts for approximately 60%.

How many documents are Exela processing?

- 14) In the period between June 2023 and December 2023, Exela opened 157,198 envelopes for probate. These envelopes would have included new paper applications (which are used to create a digital application on the case management system), supporting documents for digital applications such as the original will and further evidence that has been requested to enable HMCTS to process an application.
- 15) Where documents are received for digital cases, Exela will scan them, perform a forensic check for certain documents such as the will and then automatically assign them to the digital record for HMCTS to process the application.

What type of errors and problems are caused by mistakes at the Exela site?

- 16) In 2023, the error rate was under 0.4% (approx. 1,000 documents per year). Any error requires HMCTS to request Exela to rescan documents. The most common reasons for requesting a rescan are missing or incomplete documents and documents uploaded to the incorrect case.

What is being done prevent and progress dormant cases?

- 17) An application is made dormant if there is no activity for 6 months. Activity includes contact from the customer by email, phone call or upload of evidence that has been sent for scanning.
- 18) Applications are reactivated if any activity, such as telephone contact, happens in the future.
- 19) Applications where HMCTS has all the information available to issue a grant, either at the point of application or following a request for more information, are monitored daily to ensure that the oldest work is being done first to avoid cases becoming dormant.
- 20) Where HMCTS has asked for more information, but this has not been supplied for 6 months a case will be made dormant. However, this can be reactivated should a response or query be raised by the applicant.

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