

PROBATE SERVICES REVIEW GROUP

REPORT TO THE COURTS SERVICE
SENIOR MANAGEMENT TEAM

FEBRUARY 2018

CONTENTS

Chapter 1	Introduction	Page 2
Chapter 2	Legislative framework, organisation and process	Page 9
Chapter 3	Survey of External and Internal Customers	Page 34
Chapter 4	Potential for Process Improvement and Reform and Development of ICT	Page 47
Chapter 5	Summary of Conclusions and Recommendations	Page 60
Appendix 1		
	A. Caseload and caseflow, Probate Office Dublin and District Probate Registries 2016	Page 65
	B. Caseload and caseflow 2014 to 2016	
Appendix 2		Page 69
	A. Probate Office process map	
	B. District Probate Registries process map	
Appendix 3		Page 71
	Survey questionnaire (External Stakeholders)	
Appendix 4		Page 72
	External institutional and representative stakeholders surveyed	
Appendix 5		Page 73
	Review Group's recommendations for revision of Order 80, Rules of the Superior Courts (The District Probate Registries)	
Appendix 6		Page 80
	Schedule of meetings between Courts Service representatives and Revenue in the course of the Review Group's deliberations	

1. INTRODUCTION

Terms of Reference and composition

The Probate Services Review Group (“the Review Group”) was established by the Chief Executive Officer of the Courts Service in June 2016 with the following terms of reference:

1. to assess the current Probate Service¹ in this jurisdiction in terms of its processes, legislation, rules of court and structures with a view to improvement of the delivery of the service to the next of kin of deceased persons;
2. to consult internal and external stakeholders on all aspects of the current arrangements for delivery of the Probate service and to invite submissions on the future delivery of the service and the role for technology in that regard;
3. to assess the opportunities for the utilisation of information and communication technology and incorporation of online services in the delivery of the probate function;
4. to make recommendations to the Senior Management Team in the context of the options available for the future effective and efficient delivery of the probate function; and
5. to provide a final report and recommendations to the Senior Management Team by 30 November 2016 or such other date as it shall decide.

It will be noted that the Terms of Reference do not purport to encompass a consideration of the substantive law of succession.

Membership of the Review Group was comprised as follows:

- Noel Rubotham, Head of Reform and Development Directorate, Courts Service, Chairperson
- Geraldine Hurley, Head of Superior Courts Operations Directorate (from February 2017)
- Annette O'Connell, Probate Officer
- Patricia Troy, Assistant Probate Officer
- Margaret O'Neill, Principal Officer, Circuit and District Operations, Courts Service
- Mairéad Ahern District Probate Registrar for Louth and Monaghan*

¹Strictly speaking “Probate” may be said to refer to the process of admitting a will to proof as valid for the purpose of enabling a deceased testator's estate to be administered. However, that term is commonly employed – and for the purposes of this report will be employed - to refer to the process of granting representation to -

- estates in respect of which a will has been made - through the issue of a grant of probate or (where the executor(s) under the will is/are not administering the estate) a grant of letters of administration with will annexed or
- estates where the deceased has died intestate (i.e. without having made a valid will) - through the issue of a grant of letters of administration intestate.

- Marie Garahy District Probate Registrar for Wexford*
- Fintan Murphy District Probate Registrar for Mayo
- Noel A Doherty, Principal Officer, Reform and Development, Courts Service
- Audrey Leonard, Principal Officer, Change Management Unit, Courts Service
- Fiona O'Reilly, Combined Court Office Manager for County Cavan (location for the District Probate Registry for Cavan and Longford)
- Angela Breen, Revenue representative
- Gerry Dwyer, Revenue representative
- Geraldine Morrissey, Revenue representative
- Michael Holohan, Assistant Principal Officer, Civil Law Reform Division, Department of Justice and Equality
- Yvonne Walsh, Assistant Principal Officer, Courts Policy Division, Department of Justice and Equality.

Secretary: Edel Thompson, Higher Executive Officer, Probate Office.

* Ms Ahern and Ms Garahy acted as alternates for each other.

The objective of Revenue's participation in the Review Group – and of the Courts Service's invitation to it to participate – was to speedily advance collaboration between the Probate Office and Revenue in relation to the development of an enhanced IT platform as had been envisaged in the context of legislative changes introduced by the Finance Act, 2010 and emphasised in the Terms of Reference. The details of Revenue's participation is outlined in Chapter 4 Section III, and at Appendix 6.

At an early stage in its deliberations, the Review Group determined to engage in a comprehensive survey of internal and external stakeholders, extending to practitioners and personal applicants with recent experience of applying for grants, and additional consultations with certain external stakeholders, as detailed later in this report. This necessitated the extension of the deadline abovementioned for provision of the final report.

Background to the Review Group's establishment

When a person dies, leaving real/personal property in his/her sole name, permission must be obtained from the High Court to access this property (i.e estate) for the purposes of its distribution either in accordance with the wishes of the deceased if he/she left a will or in accordance with law if the deceased dies without leaving a will (i.e. intestate). The permission comes in the form of a legal document called a Grant of Representation which is issued in a deceased person's estate either by the High Court Probate Office in Dublin or, if the deceased died within the area of a District Registry, in any one of the 14 District Probate Registries which are situated in various cities and towns across the State.

Between 13,000 and 16,000 Grants of Representation to deceased persons' estates are issued each year from this national network of Probate registries, with just in excess of 50% issuing from the main registry, the Probate Office in Dublin.

A prompt and efficient Probate service enables:

- family members of a deceased person to access bank and other financial accounts of the deceased person and so minimise possible financial stress at a difficult time
- the completion of sales and/or transfer of title of properties in a timely manner
- sole traders and farmers to continue their business activities without the worry of delay in access to business accounts
- where applicable, the timely processing of entitlements under EU and Department of Agriculture schemes
- the prompt payment of any debts the deceased person may have left at the time of his/her death
- prompt payment of any taxes which may become due and owing to the State on foot of the death of a person. In 2017, Revenue generated €460 million in Capital Acquisitions Tax.² Any delays in processing of probate applications will delay the collection of tax under this heading
- the prompt distribution of the deceased's estate to those entitled either under the will of a deceased or in accordance with law where the deceased dies intestate.

It will be apparent from the above that the Probate service is a critically important service to members of the public, and one of which most, if not all, persons will have need, usually in difficult personal circumstances. Central to the establishment of the Review Group was a recognition of the need to deliver an improved service availing of the most up to date technology.

Recent years have seen a number of trends and developments affecting, or with potential to impact on, expedition in the delivery of Probate services:

1. A substantial increase in waiting times for the issue of Grants at a number of registries, in particular in the Probate Office, with waiting times on occasion as long as 24 weeks. In addition, waiting times in District Probate Registries vary significantly, as do the amount, grading and degree of experience and expertise of personnel deployed in those registries to deliver Probate services, prompting local practitioners and lay applicants to bring applications in Dublin, and contributing further to delays in the Probate Office;

This has, understandably, resulted in increasing levels of customer dissatisfaction and has been the subject of complaints or representations from diverse interest groups including members of the public, political representatives and the Law Society;

2. Changes to the method of evaluation of the Inland Revenue Affidavit/ High Court (Probate) Form CA24 under section 147 of the Finance Act 2010 (whereby Section 48 of the Capital Acquisitions Tax Consolidation Act 2003 was amended) which are perceived as having created delays in the Probate Office/Registries in the consideration and processing of applications. This development is explained in detail in Chapter 2;

² Revenue 2017 Headline Results:

<https://www.revenue.ie/en/corporate/press-office/annual-report/2017/headline-results-2017.pdf>

3. A significant growth in inward and outward migration has led to a marked increase in the number of more complex estates involving a consideration of cross-border succession law issues;
4. Demand from customers of the Probate service for an on-line alternative to the current predominantly paper-based mode of delivery, supported by an IT platform which was built in the 1980s;
5. The introduction in early 2012 of postal and drop-in box lodgement of grant applications as an alternative to lodging applications at the public counter;
6. A significant level of unavoidable staff absences in the Probate Office due to long-term illness. An interrelated issue is the high level of staff turnover in the Probate Office with the unavoidable loss of knowledge and expertise built up over many years.
7. Acknowledgement within the public service that as stated in the Public Service ICT Strategy of 2015:
“[s]ignificant scope exists to expand existing shared services initiatives and create new opportunities for the elimination of duplication and to create greater efficiencies across the system. The provision of a more integrated infrastructure and common systems will make it easier for Public Bodies to collaborate and share information.”³.

In recognition of these factors and other difficulties affecting discharge of the Probate function, the Courts Service Strategic Plan (2014 – 2017) identified the Probate area as a key priority to be addressed under the heading “Case Management, Collaboration and Reform”, which contained a commitment to plan for and implement changes to the delivery of Probate services. The forthcoming Courts Service Strategic Plan (2017-2020) commits the Courts Service, under Strategic Priority 4 (Improve Processes and Case Management) to reforming the manner in which Probate Services are delivered, through implementation of agreed recommendations arising from this review.

This Review is the first stage in meeting these commitments.

Working Method

The Review Group held eight plenary meetings between the 16th June 2016 and the 15th December 2017.

In light of its Terms of Reference, the Review Group considered it appropriate to give distinct attention to the following areas and issues:

1. The legislative framework and organisational arrangements underpinning Probate services
2. Caseload and caseload analysis
3. The relationship between the Probate Office and the District Probate Registries
4. Potential for business process improvement

3 Public Service ICT Strategy, Department of Public Service and reform, January 2015, available at: <http://ictstrategy.per.gov.ie/ictstrategy/files/Public%20Service%20ICT%20Strategy.pdf>

5. Potential for ICT in introducing efficiencies/improving services.

To that end, the Review Group sought specific papers from its members on a number of those topics and attended presentations on others.

Research and Inquiry

Consultations

The Review Group considered it important that, at the outset of its deliberations, the views of users of the Probate service and of those charged with its delivery be canvassed by means of a survey exercise, which was undertaken between the 27th June 2016 and the 31st August 2016. This consisted of a public invitation to external users of the Probate service in Dublin and in the District Probate Registries - legal practitioners and members of the public, as well as external institutional and representative stakeholders such as Revenue, the Department of Social Protection, the Charities Regulatory Authority, the Health Service Executive and professional representative associations - to complete a questionnaire, available on the Courts Service's website and enclosed with grants of representation issued to solicitors and personal applicants. County Registrars (including all District Probate Registrars) and Courts Service staff were separately circulated with a questionnaire tailored to their role and experience. A dedicated e-mail address was established for receipt of responses.

The questionnaires were designed in particular to identify elements of the current Probate service which were deficient and could be improved and those elements which work well and should be retained, and to ascertain the areas in which service could be enhanced by employment of information and communications technology. Legal practitioners were asked to compare their experience of service delivered in Dublin and locally. Chapter 3 contains a summary of the results of the internal and external surveys.

In addition to the public consultation aforementioned, the chairperson and nominated members of the Review Group met on the 16th March 2017 with representatives of the Law Society of Ireland to receive the Society's views on the operation of the Probate service and the potential for its improvement.

Representatives of the Review Group also met on the 21st February 2017 with a team from Revenue for presentations on Revenue's approach to development and delivery of on-line services, for example e-stamping and on issues relevant to Revenue's interaction with the Probate process. A number of meetings were held thereafter in June, July and August 2017 between Revenue and Probate representatives on the Review Group and relevant Courts Service IT personnel and Revenue IT personnel to ascertain the nature of the collaboration possible between both organisations in developing an ICT solution for the future delivery of the Probate service across the State while maximising the potential for capturing information relevant to Revenue requirements. A full schedule of the meetings is at Appendix 6.

Statistical analysis

The Review Group was provided with an analysis of caseload and caseflow data from both the Dublin Probate Office and the various District Probate Registries across the State in 2016 and data on business volume for the Probate Office and District Probate Registries (grants and caveats) for 2014 and 2015. The analysis is referred to in Chapter 2 and appended at **Appendix 1, Part A**, and describes the current probate network, the distribution of caseload across it and the average waiting times for issuing of a grant from each registry.

Queries analysis

A predominant theme emerging from the responses furnished in reply to the survey aforementioned was the high level of query and rejection rates of applications made to the Probate Office and the District Probate Registries which in turn led to unacceptable delays in the issue of the Grant of Representation in a deceased's estate. A high volume of queries and rejections may point to one or more possible deficiencies or issues, such as -

- insufficient familiarity with, or care or accuracy in complying with form content or procedural or other legal requirements on the part of those lodging applications for grants,
- lack of consistency or comprehensiveness in querying practice on the part of offices
- unnecessarily stringent scrutiny of applications on the part of offices
- a need for more effective dissemination of the requirements to be met in completing application forms.

The Review Group needed, therefore, to have an accurate understanding of the reasons for and incidence of queries. To this end, an analysis of queries raised by the Probate Office on applications for grants was conducted over a three week period, from the 21st November to the 9th December 2016. That analysis is described in detail in Chapter 2.

Structure of the Report

The remaining chapters of the Report seek as far as possible to follow the subject-matter breakdown referred to above under Working Method. Chapter 2 describes the legislative framework, organisational arrangements, processes underpinning the Probate function, and related caseload and case flow. Chapter 3 summarises the results of the survey undertaken and referred to above under Research and Inquiry. Chapter 4 considers the potential for reform by reference to:

- (a) improvements in existing processes;
- (b) restructuring of the relationship and of functions between the Probate Office and the District Probate Registries; and
- (c) the potential for ICT solutions in generating efficiencies and improving services.

Chapter 5 contains a summary of the Review Group's conclusions and recommendations, presented in the sequence in which they appear in the preceding chapters of the report - which sequencing is not indicative of the priority attaching to any individual conclusion or recommendation.

A note of appreciation

The Review Group wishes to express its gratitude to:

- (a) all those individuals, firms and organisations who, in giving of their time to complete the questionnaires, or to engage in consultations with the Review Group, have greatly assisted us with our deliberations.
- (b) all Probate staff and Courts Service staff who responded to the questionnaire and made concrete and valuable contributions to the review process.

We also wish to record our appreciation of the services our Secretary, Edel Thompson, who supported the Review Group most efficiently as Secretary while continuing to carry her busy workload in the Probate Seat Office.

2. LEGISLATIVE FRAMEWORK, ORGANISATION AND PROCESS

I. Legislative framework

The Succession Act 1965, which came into force on the 1st day of January 1967, *inter alia*, regulates the making of wills, devolution of real and personal property on death and distribution on intestacy, rights of partners and children on the death of a partner or parent, entitlement to extract representation to an estate under a will or intestacy, the functions of executors and administrators and administration of estates.

The Intestates' Estates Act 1954, The Administration of Estates Act 1959, and the Local Registration of Title Act 1891 also impact on the law of succession to this day as do common law and equitable principles. Consequently, all of the foregoing become pertinent at various junctures when the Probate authority in this jurisdiction is exercising its remit.

However, as indicated in the previous Chapter, the Review is not directly concerned with the substantive law of succession, and this chapter is concerned only with those statutory provisions which underpin the arrangements and processes for discharge of what is termed non-contentious probate business.

Court Jurisdiction

The underlying framework of the present Probate service was created during Victorian times with the enactment of The Probates and Letters of Administration Ireland Act (Ireland) 1857, which transferred jurisdiction regarding probate matters from the Ecclesiastical Courts to the High Court. It provided for the establishment of the Principal Registry in Dublin and for the establishment of 11 District Probate Registries throughout the country. Over time it appears that these registries dwindled in number and prior to the enactment of the Succession Act 1965 there were six registries: Castlebar, Cavan, Cork, Kilkenny, Limerick and Waterford. On the coming into operation of the 1965 Act on the 1st January 1967, a total of 14 District Probate Registries were in place.

The organisation and administration of Probate services is governed by the Courts (Supplemental Provisions) Act 1961 and the Succession Act 1965, which provide, respectively, for a Probate Office and for a network of District Probate Registries.

Section 6 of the Succession Act 1965⁴ vests all jurisdiction conferred on a court by that Act in the High Court, and vests in the Circuit Court, concurrently with the High Court jurisdiction to hear and determine the following proceedings:

- (a) an action in respect of the grant or revocation of representation of the estate of a deceased person in case there is any contention in relation thereto;
- (b) proceedings in respect of the administration of the estate of a deceased person or in respect of any share therein;
- (c) any proceeding under section 56, 115, 117 or 121.

⁴ As amended by section 47, Civil Liability and Courts Act 2004. The substantive jurisdiction of the Circuit Court under section 6 of the 1965 Act is extendable where the necessary parties to the proceedings in a cause sign, either before or at any time during the hearing, the form of consent to such extension prescribed by rules of court.

where the estate of the deceased person, in so far as it consists of real estate of which, at the time of his death, he was beneficially seised or possessed, does not exceed €3,000,000 in market value.

The jurisdiction conferred on the Circuit Court by this section shall be exercised by the judge of the circuit where the deceased, at the time of his death, had a fixed place of abode.

Where the High Court is satisfied that the Circuit Court has jurisdiction in in any contentious matter arising out of an application to the Probate Office, the High Court may remit the matter to be dealt with by the Circuit Court judge of the circuit where the deceased, at the time of his death, had a fixed place of abode.⁵

In such proceedings, the Circuit Court may order that Grants be issued to certain parties or cancelled or revoked, but it is the High Court Probate Office and the District Probate Registries who issue or revoke the grant concerned. The Circuit Court has no non-contentious probate jurisdiction.

The jurisdiction conferred on the Circuit Court is exercisable by the judge of the circuit where the deceased, at the time of death, had a fixed place of abode.

Non-contentious Probate business

The High Court has exclusive jurisdiction in non-contentious Probate matters to issue, revoke, cancel or recall grants of representation in deceased persons' estates and such jurisdiction is exercised through the Probate Office and the various District Probate Registries, which are all offices of the High Court in the exercise of this function. The focus of this report is the role of the Probate Office and District Probate Registries in transacting that business.

The granting and revocation of representation

The High Court is empowered to grant probate to one or more of the executors of a deceased person, and a grant may be limited in any way the Court thinks fit. The High Court may revoke, cancel or recall any grant of probate. The High Court is empowered to grant administration (with or without will annexed) of the estate of a deceased person and may limit a grant in any way it thinks fit and has power to revoke, cancel or recall a grant of administration.

The order of entitlement to a grant of administration is determined in accordance with rules of court, subject to the court having power, where by reason of any special circumstances it appears necessary or expedient to do so, to grant administration to such person as it thinks fit. Order 79, rule 5 of the Rules of the Superior Courts (RSC) prescribes that order of entitlement.

An application for the grant or revocation of representation may be made, either in person or through a solicitor, to the Probate Office or the District Probate Registry for the district where the deceased, at the time of death, had a fixed place of abode.⁶

⁵ Section 35(3), Succession Act 1965.

⁶ Section 35(1) and (2), Succession Act 1965.

A District Probate Registrar may issue a grant in common form in the name of the High Court and under the seal of the registry where the deceased, at the time of his death, had a fixed place of abode within the district where the application for the grant is made.

The procedure applicable in those offices is prescribed by Order 79 (Probate Office) and Order 80 (District Probate Registries) Rules of the Superior Courts.

The Probate Office

Section 8 of the Court Officers Act 1945 provides for the Probate Office to be under the management of the Probate Officer and for the transaction therein of

“all such business as shall from time to time be assigned thereto by statute or rule of court and in particular (unless and until otherwise provided by statute or rule of court) all the business which immediately before the passing of this Act was required by law to be transacted in the Principal Probate Registry and also such other business as has heretofore been transacted in the offices of the Principal Probate Registrar.”

Section 9 of the 1945 Act provides for the Probate Officer to exercise such powers and authorities to perform and fulfil such duties and functions as are conferred by statute or rule of court including such powers and duties previously within the remit of the Principal Probate Registrar or an Assistant Probate Registrar of the High Court.

The Eighth Schedule of the Courts (Supplemental Provisions) Act 1961 provides for the Probate Office and Probate Officer, respectively, to be attached to the High Court. Since the enactment of the Succession Act, the Probate Officer⁷, is assisted by the Assistant Probate Officer who shares the same powers.

The Probate Officer has jurisdiction to issue Grants of Representation in respect of all deceased persons, irrespective of their place of abode.

The District Probate Registries

Section 129 of the Succession Act 1965 provided that “[t]here shall be district probate registries for such districts and at such places as the Minister may by order appoint.”

Section 129(2) gave power to the Minister for Justice:

- (i) to increase or decrease the number of district registries
- (ii) to alter the districts served by them
- (iii) to direct where within a district, a registry shall be
- (iv) to close a district registry.

⁷ Section 128(2) of the Succession Act 1965 provides that the powers, authorities, duties and functions exercisable or performable by the Probate Officer may, subject to any restrictions which the President of the High Court may think fit to impose, be exercised or performed by the Assistant Probate Officer – the latter being the officer employed in the Probate Office who is next in rank to the Probate Officer and is qualified to be appointed to be Probate Officer (section 128(1)). References to the Probate Officer in this report should be understood accordingly.

Section 129(4) provided that until provision was otherwise made under that section, the District Probate Registries existing at the commencement of the 1965 Act should continue to function for the districts and at the places theretofore appointed by law. Since the 1st January 1967 to the present day 14 District Probate Registries in all have been in operation, as detailed below.

Grants in District Probate Registries are issued in the name of the High Court and under the seal of the registry where the deceased, at the time of his death, had a fixed place of abode within the district where the application for the grant is made.⁸

The authority of the District Probate Registrar derives from Section 36 of the Succession Act 1965, subsection (1) of which provides:

“36 (1) A grant may be made in common form by a district probate registrar where the deceased, at the time of his death, had a fixed place of abode within the district where the application for the grant is made.”

Section 36 (3) provides that “any case where it appears doubtful to a District Probate Registrar whether a grant should or should not be made, or where any question arises in relation to a grant, or an application for a grant” directions may sought from and transmitted to the Probate Judge via the Probate Office.

Section 36(4) requires that:

“A district probate registrar shall send to the Probate Office a notice of every application made in the registry for a grant as soon as may be after the application has been made, and no grant shall be made by him until he has received from that Office a certificate that no other application appears to have been made in respect of the estate of the deceased.”

Section 36(8) requires a District Probate Registrar twice in every month to transmit to the Probate Office a list of the grants made and copies of the wills to which the grants relate.

Section 36 is also the foundation on which Order 80 RSC - the rules of court regulating the District Probate Registry procedure, including notifying of the Probate Officer of applications of applications for grants and caveats⁹ and the scope of the decision making powers of the District Probate Registrar when issues of law arise regarding such applications - is built.

Interaction between Probate Officer and District Probate Registries

While the District Probate Registrar has authority to issue grants in respect of deceased persons with a fixed abode in his/her district, where issues arise regarding a will or entitlement to a Grant in such deceased's estate, or where an Order is required to facilitate the issue of such Grant, such power and decision making rests with the Probate Officer. Order 80 contains 36 such provisions Having reviewed those provisions and received the views of the Probate Officer and the District Probate Registrars, the Review Group has identified a number of rules meriting amendment to

⁸ Section 36(1), Succession Act 1965.

⁹ See in particular Order 80 rules 37, 38, and 52.

transfer the powers concerned from the Probate Officer to the District Probate Registrar. Those provisions and the Review Group's conclusions thereon are set out in Part II of Chapter 4.

II. Organisation

The Probate Office

The Dublin Probate Office is an office of the High Court and all staff attached to this office are accountable to the Assistant Secretary with responsibility for Superior Courts Operations in the Courts Service. The office currently comprises 21.5 members of staff, three of whom are assigned to the office on a temporary basis, whose exclusive function is delivery of the Probate service:

The *Management Team* consists of

- the Probate Officer (graded at Principal Officer (Finance))
- the Assistant Probate Officer (graded at Principal Officer)
- an Assistant Principal Officer (deputed to perform the functions of Probate Officer as Probate Officer during the absence or incapacitation of the Probate Officer)¹⁰

The Probate Officer has responsibility for the management of the office at both an administrative and legal level and is assisted by the Assistant Probate Officer and the Assistant Principal Officer in this regard.

The Probate Officer's remit encompasses:

- consideration of applications for Grants of Representation
- making Orders to facilitate the issue of a Grant
- issuing Citations and Subpoenas and supporting the Probate Judge and Probate Office staff
- advising District Probate Registrars or District Probate Registry staff on Probate applications as necessary
- meeting with Solicitors/ Barristers/ Law Agents on legal aspects of an application and all other associated legal issues pertaining to Probate.

The remit also includes dealing with various policy issues which may arise from time to time including representing the Probate Office with other Government Departments and outside agencies and at various legal conferences when same arise.

The Assistant Probate Officer has the same probate functions as the Probate Officer and holds the specific responsibility of supporting the Probate Judge in the management of the Probate Court applications. The Assistant Probate Officer is also the direct line manager of the Assistant Principal Officer.

The Assistant Principal Officer is the Office Manager and is the line manager for seven HEOs. Her further functions include

¹⁰ Under section 9, Court Officers Act, 1945.

- supporting the Assistant Probate Officer by attending Court in the absence of the Registrar.
- supporting the Probate Officer in the execution of her duties
- supporting all District Probate Registry staff by signing off on all Grants applied for in all of the 14 District Probate Registries located across the jurisdiction. The legislation mandates that all applications made to District Probate Registries must be transmitted to the Dublin Probate Office to ensure there is no impediment to the Grant issuing in the estate in question.

Seat Office

The Seat Office - consisting of seven personnel at Higher Executive Officer (HEO) grade¹¹ - manages applications for Grants from solicitors. Applications for Grants of Representation from the legal profession are managed by four of these HEOs. One of the HEOs on the team acts as line manager to the Executive Officer (EO) and Clerical Officer (CO) cadre in the Probate Office and additionally provides support to the HEOs processing grant applications from solicitors and personal applicants.

Applications for Grants of Representations from unrepresented applicants – known as applicants in person or “personal applicants”- are managed by the remaining two HEOs.

Rules and General Office

The Rules Office staff - three personnel at EO grade and five at CO grade - handle the general public business of the Probate Office other than that of receipt and examination of applications for Grants.

The EOs are collectively known as the Rules Office team and their remit involves:

- making preliminary and final (i.e. on morning of issue of Grant) searches to ensure no prior Grant has issued in an estate and no Caveat has been lodged against an estate
- processing Caveats, Warnings, Appearances, Citations and all Side Bar Orders of the Probate Officer/Assistant Probate Officer
- processing court applications (motions and affidavits) attending to customers, including practitioners, law agents and personal applicants
- processing of all correspondence received by the Probate Office
- inputting of applications for Grants onto the Lotus Notes Data Base. This information ultimately constitutes the Probate Public Register when the Grant has issued in an estate

The functions of the CO Team are as follows:

- Provision of counter service to members of public and legal profession and dealing with any enquiries which may arise
- Provision of copy wills, grants etc.
- Inputting of applications for Grants unto the Probate Office’s Lotus Notes system

¹¹ One of the Seat office HEOs performs a management role in relation to the Rules and General Office.

- preparation of Grants for issue and all associated administrative tasks associated therewith including maintenance of Archives and transmission of relevant documentation to Revenue, Charities Regulator and the National Archives as appropriate
- Other clerical duties as they arise.

The District Probate Registries

Grants in District Probate Registries are issued in the name of the High Court and under the seal of the registry where the deceased, at the time of his death, had a fixed place of abode within the district where the application for the grant is made.¹²

An application for the grant or revocation of representation may be made, either in person or through a solicitor, to the Probate Office or the District Probate Registry for the district where the deceased, at the time of death, had a fixed place of abode.¹³

Under the District Probate Registries (Places and Districts) Order, 1966 (S.I. No. 274 of 1966), 14 districts and venues for such districts, were appointed under section 29(1), as follows:

Castlebar	County Mayo
Cavan	Counties of Cavan and Longford
Clonmel	County of Tipperary
Cork	County and County Borough of Cork
Lifford	County Donegal
Dundalk	Counties of Louth and Monaghan
Galway	Counties of Galway and Roscommon
Kilkenny	Counties of Carlow, Kilkenny and Laois
Limerick	Counties of Limerick and Clare; County Borough of Limerick
Mullingar	Counties of Offaly and Westmeath
Sligo	Counties of Leitrim and Sligo
Tralee	County of Kerry
Waterford	County and County Borough of Waterford
Wexford	County of Wexford.

While all District Probate Registries remain open, it should be noted that at this point in time, there is no District Probate Registrar in situ in Sligo or Kilkenny.

Staffing arrangements and functions

The position of District Probate Registrar is held by the County Registrar for the county in which the District Probate Registry is situate. An appointee to the office of County Registrar – which is graded for remuneration purposes at the equivalent of Assistant Secretary - must at the time of his appointment be a solicitor or barrister of

¹² Section 36(1), Succession Act 1965.

¹³ Section 35(1) and (2), Succession Act 1965.

not less than eight years standing who is then actually practising or has previously practised for not less than eight years.

The Probate functions of the District Probate Registrar, for which an allowance is paid additional to his/her County Registrar's salary, are therefore discharged in tandem with the functions of County Registrar. Unlike the Probate Officer, a District Probate Registrar has no management function vis a vis the probate personnel in his/her Registry.

The personnel resources to staff the District Probate Registries are provided from within the Courts Service staff employed at the Combined Court Office for the county within which the District Probate Registry is located. Those staff report to their line manager in the Combined Court Office to which they belong. It should also be noted that the District Probate Registry forms part of the broader Combined Office framework within the Circuit and District Court Directorate of the Courts Service and, subject to a small number of exceptions, Probate staff within this framework have administrative responsibilities servicing the Circuit or District Courts aside from their Probate functions - unlike the staff in the Dublin Probate Office whose remit is confined to Probate services.

Combined Court Office managers report to the Regional Manager within their region, and the latter reports in turn to the Head of District and Circuit Operations (Assistant Secretary grade) in the Courts Service. It is therefore the case that the Probate Officer in Dublin has no managerial responsibility for or authority over District Probate Registries personnel, or any say in the resourcing of those registries.

The actual complement and grading of staff across the District Probate Registry network is contained in **Appendix 1, Part A**.

Notwithstanding the absence of a management or reporting relationship between the Probate Officer and the District Probate Registries, the legal architecture supporting both the Dublin Probate Office and the District Registries has created a framework whereby the District Probate Registries are heavily dependent on the Dublin Probate Office in meeting its probate remit on a daily basis and most decision making regarding issues of probate at District Probate Registry level reside in the Probate Officer rather than the relevant District Probate Registrar. The Review Group acknowledges that probate personnel at District Probate Registry level provide an excellent service to the public and to the legal profession, as evidenced in the responses to the survey conducted at the outset of the Review.

III. The Probate Process

The business of the Probate Office and District Probate Registries consists, chiefly, of

- the receipt and evaluation of applications for and issuance of grants of representation
- the processing of caveats (and in the case of the Probate Office only), warnings, citations and appearances connected with grant applications and

- in the case of the Probate Office only) the processing of applications to court in non-contentious Probate matters.

Types of grants of representation

Applications for a grant of representation may be made by a solicitor or, subject to some exceptions, by a person without professional representation (an “applicant in person”).

Grants of representation may be broadly classified as follows:

Grant of Probate, which issues where a deceased has left a valid will and appointed an executor. Only the executor(s) named in the will may apply for this type of grant

Grant of Letters of administration with Will Annexed, which issues where the deceased left a valid will and someone other than the executor is applying to extract the Grant.¹⁴

Grant of Letters of Administration Intestate. This type of grant is applied for where a deceased person has died without having made a will, entitlement to extract representation being, as indicated earlier in this chapter, governed by Order 79 rule 5, RSC.

Grant limited as to duration, purpose or subject-matter. The High Court is empowered to limit in any way the Court thinks fit a grant of probate,¹⁵ or a grant administration (with or without will annexed).¹⁶ To extract a Grant of this nature, it is sometimes necessary to either obtain an Order from the Probate Court or the Probate Officer.

Examples of grants limited as to duration include: grants issuing to a guardian of a child or committee of an intellectually incapacitated person; grants issuing to an attorney under a power of attorney where the donor has left or is about to leave the jurisdiction; grants issuing where proceedings affecting the validity of a will are pending; and grants issuing on the basis of a copy of a will where the original will has been lost.

Examples of grants limited as to purpose are: grants issuing to enable proceedings to be taken against a deceased's estate where representation has not been taken out to that estate; grants issuing to enable a sale by the vendor of a property, since deceased, to be completed; and grants issuing to enable the assets comprised in an estate to be gathered in and preserved.

Examples of grants limited as to subject-matter include grants issuing in respect of real estate or personal estate only¹⁷ and grants limited to property of which the testator was trustee only, where the testator had no beneficial interest in other property.

¹⁴ This type of grant requires to be applied for where the testator dies leaving a will appointing no executor, or appointing an executor or executors who have been cleared off by death, renunciation, citation, or otherwise. Entitlement to apply for this type of grant is governed by Order 79, rule 5(6), RSC.

¹⁵ Section 26(1), Succession Act 1965.

¹⁶ Section 27(1), Succession Act 1965.

¹⁷ Section 28(1), Succession Act 1965.

Grant of letters of administration with will annexed de bonis non and Grant of letters of administration intestate de bonis non. In this instance, a primary grant has already issued in the estate. If it subsequently appears that the person to whom the first grant issued has died, or has been removed and the estate has not been fully administered, a grant *de bonis non* (“goods not administered”) is issued to an administrator to complete administration of the estate.

Applications for Grants may be made to a District Probate Registry if the deceased died with a fixed place of abode within the area of the Registry in question or to the Dublin Probate Office.

Other procedural steps

As indicated above, other procedures may also become relevant. It should be noted that all of these procedures, with the exception of the caveat, may only be initiated in the Dublin Probate Office. For example:

Caveats

A caveat is a document lodged in the Probate Office – in the Rules Office within that Office - or District Probate Registry, either personally or by his/her solicitor, by a person (the caveator) claiming an interest entitling him/her to oppose the issuing of a grant of probate or letters of administration. The caveat requests that nothing be done in the estate of the deceased without notice to the caveator;¹⁸

Warnings

A warning is a notice to a caveator calling on the caveator to enter an appearance in the Probate Office to the caveat entered by him/her in the estate of the deceased and explain his/her interest, in default of which the caveat will cease to have effect.¹⁹ All caveats are “warned” from the Probate Office and the District Probate Registry has no remit in this regard;²⁰

Citations

A citation is a form of notice entered and issuing out of the Probate Office calling on an executor or administrator to take specific steps to progress the extraction of

18 See section 38, Succession Act 1965, Part XIX, Order 79 and Appendix Q, Form 40, RSC.

19 Order 79, rules 47 to 51, RSC.

20 Order 79, rule 47, RSC.

representation to an estate²¹. It should be noted that a District Probate Registry has no authority to issue a Citation;

Appearances

An appearance is the form lodged and served by a person responding to a warning or citation and it follows in light of the foregoing that a District Probate Registry has no role in same;

Subpoenas

The Probate Officer may call on the person who has custody of the original will to deposit it in the Probate Office and so allow the person with priority to extract the Grant to proceed with same. Again a District Probate Registry has no function in this regard;

Probate Court Applications

Applications to the Probate Judge (in Dublin) for the Monday Probate List which concern matters touching on the issue of a Grant in a deceased's estate.

Documents required for an application for a grant of representation

An application for a grant involves the lodgement with the Probate Office or District Probate Registry of a number of documents. While all applications must include an Oath from the proposed applicant and the original Inland Revenue Affidavit and a certified copy thereof, additional documentation is necessary and is determined by the nature of the grant sought

- the mode of lodgement (i.e. by post or at the counter)
- whether the application is made by a solicitor or by an applicant in person
- any particular circumstance requiring production of a particular proof.

The essential documents or proofs required to be lodged for the main types of grant are set out below.

Grant of Probate or of Letters of Administration with Will Annexed— application by solicitor

- (a) the original will and any codicil (i.e. formally attested amendment of a will);
- (b) a certified copy of the will and any codicils;
- (c) a death certificate of the deceased;

21 There are various types of citation, viz.:

- to accept or refuse administration.
- to accept or refuse the burden of the execution of a will.
- to introduce and deposit a will, and to accept or refuse probate of same
- to introduce and deposit a will [if any there be] and to accept or refuse probate of same, and in case of no will, to accept or refuse letters of administration.
- to introduce an alleged will and prove same in solemn form, otherwise to show cause why the same should not be pronounced invalid
- to introduce an alleged last will at suit of a legatee in a former will
- to call in administration with will annexed and to have another testamentary paper incorporated and included in the letters of administration
- to bring in probate or administration
- to exhibit an inventory.

- (d) the form containing the executor's oath (for a Grant of Probate) or administrator's oath (for a Grant of Letters of Administration with Will Annexed);
- (e) a copy of the executor's or administrator's oath;
- (f) a signed form of renunciation by a named executor (where applicable);
- (g) the administrator's bond (for a Grant of Letters of Administration with Will Annexed);
- (h) an affidavit of market value (where the estate includes immoveable estate) (for a Grant of Letters of Administration with Will Annexed);
- (i) Inland Revenue Affidavit/ High Court (Probate) Form CA24, in duplicate.

Grant of Letters of Administration Intestate– application by solicitor

- (a) a death certificate of the deceased;
- (b) the administrator's oath;
- (c) a copy of the administrator's oath;
- (d) the administrator's bond;
- (e) an affidavit of market value (where the estate included immoveable estate);
- (f) Inland Revenue Affidavit / High Court (Probate) Form CA24, in duplicate.

Applications for Grants of Representation by Applicants in Person

Applicants for a grant who are not professionally represented are required to complete a separate form (Form PA 2), accompanied, inter alia, by:

- the original death certificate;
- the Inland Revenue Affidavit / High Court (Probate) Form CA24 in duplicate;
- three copies of the will/codicil (where a will/codicil was made).

Additional documentation or proofs may be required e.g.:

- an affidavit of due execution of a will (where for example the valid execution of the will is in doubt, the will contains interlineations, alterations or amendments or the testator was blind) an affidavit of plight and condition (where a will contains perforations or other markings which might indicate revocation, amendment or other testamentary provisions)
- where a limited Grant or Grant *de bonis non* is required, or a foreign estate is involved
- an affidavit of testamentary capacity where the capacity of the testator may be in issue

Scrutiny and processing of applications

A flow chart showing the process by which applications for grants are handled in the Probate Office is appended at **Part A of Appendix 2**.

Probate Office

Solicitors' Applications

The Seat Office team consists of four personnel at Higher Executive Officer (HEO) grade²² handling solicitors' applications and two handling personal applicants' applications.

²² One of the Seat Office HEOs performs a management role in relation to the Rules and General Office.

Up to January 2012, all applications by Solicitors for Grants of Representation to the Dublin Probate Office had to be lodged in person. Following a rules amendment to facilitate postal lodgement in the Superior Courts office generally, in addition to personal lodgement, a solicitor may now lodge an application for a grant on behalf of a client

- by pre-paid registered post,
- by pre-paid ordinary post,
- through a document exchange service, or
- through deposit in a box or at a facility maintained for the purpose by the office.

Where the deposit of an original testamentary paper is in question, it may be lodged by the Solicitor by pre-paid registered post or by lodgement directly in the Probate Office. Where the application is lodged by post, the solicitor must lodge Probate Office Form S1.

Applications which are lodged in person are checked immediately while the law agent/solicitor is present, unless there is complexity in the application which may cause delays for persons waiting to be served and in these instances the application must be sent by post or left in the drop-in box. Challenges in the provision of these various avenues of service will be considered and addressed in Chapter 4.

The average time for checking of an application is approximately 8 to 10 minutes but on occasion the checking may take up to 15 minutes. Applications lodged by post/dx and by drop-in box are managed separately and one HEO is assigned to this task on a daily basis. Where queries arise the papers are returned to the applicants. If papers are in order, they take their place in the waiting list for further processing by the HEO staff. The nature of the queries raised and difficulties arising in this regard will also be addressed in Chapter 4.

Where an application is in order, the Grant will be drafted by the Seat Office and if the application is straightforward it is signed off by the Seat Office staff and transmitted to the General Office for issue of the Grant. If it is more complex, the papers are submitted to the Probate Officer or Assistant Probate Officer for signature. If management is satisfied, the Grant is finalised for issue by the General Office. If management is not satisfied, the matter will be returned to the Solicitor for clarification.

Where objection to the issuance of a Grant is made by the lodging of a caveat (further referred to below) or issues arise as to the validity of a will or entitlement of a person to take out representation, these may require to be determined by the Probate Officer, or by the Court, depending on the subject-matter, before a Grant may issue.²³ The rules

²³ Where a will is declared valid in court proceedings it is said to have been proved “in solemn form”: a will is proved “in common form” when admitted to probate in the Probate Office or district probate registry. A probate action will require to be initiated to have a will proved in solemn form (e.g. where not executed in accordance with the statutory requirements); to challenge a will on the basis of the testator's capacity to make the will, or of fraud or undue influence; or to revoke a grant of representation. In addition, an application to the Court will require to be made where -

of court require that probate or letters of administration shall not issue until all the inquiries which [the Probate Officer] may see fit to institute have been answered to his satisfaction.... “ but the Probate Officer notwithstanding, shall “... afford as great facility for obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.”²⁴

On the morning of issue of the Grant, the Rules Office team determine whether or not there is an impediment to the Grant issuing. It is not possible to make this search in advance, as under legislation, a person may object to a Grant issuing up to the day of issue of the Grant. Consequently, this search must be carried out on the date in question and so ensure that the Grant may legally issue on that date. If an impediment occurs, the Grant must be stopped pending resolution of the issue which has arisen. This may involve a Court application.

Where no impediment arises, the General Office prepares the Grant for issue and arranges for the signature of the Probate Officer to same and the subsequent sealing of the Grant. It is also responsible for transmission of appropriate documentation to Revenue, Charities Regulator and the Department of Social Protection if appropriate. Maintenance of the public archive and provision of copy documents is also a responsibility for this office.

Personal Applications

Personal Applicants are provided with an Information Pack which explains the process in detail and the responsibilities associated therewith. It also necessitates the lodgement of a sworn Inland Revenue Affidavit / High Court (Probate) Form CA24 and a certified copy of same together with a completed application form.

The applicant furnishes his/her application to the Office, the application is inputted onto the Probate Lotus Notes Database and a reference number allocated, and the application is placed on a waiting list.

In due course, such applications are first assessed by one of the HEO team assigned to personal applications and queries highlighted. When queries are resolved the applicants are called for appointment by a HEO and he/she prepares the documents supporting the application with the exception of the Inland Revenue Affidavit / High Court (Probate)

-
- a grant of administration is sought by a person (e.g. a creditor) other than the person otherwise entitled in law to take out representation
 - a will has been lost
 - in the cases of rival applications for a grant, an objection is taken to the Probate Officer's selection of the person to receive the grant a presumption of death requires to be made in order to take out a grant
 - a presumption of due execution of a grant has to be made to admit a will to probate
 - a determination has to be made as to whether an individual survived another individual for the purpose of determining entitlement to extract representation
 - a caveat is sought to be set aside
 - certain types of limited grant are sought
 - a grant of special administration is sought under section 31(1) of the Succession Act 1965 where a personal representative is abroad.

24 Order 79 rule 4 and Order 80 rule 5, RSC.

Form CA24 which the applicant has responsibility for completing in advance of the appointment.

Once the application is ready for consideration at an interview with the applicant, an appointment is arranged by the team member for the applicant to attend the Probate Office. In advance of the interview, the team member prepares all the papers with the exception of the Inland Revenue Affidavit / High Court (Probate) Form CA24, which the applicant must complete in advance. At the meeting the team member examines the papers in the presence of the applicant and if in order the papers, with drafted Grant, are submitted to management and the Grant issues within a few days following the appointment.

The Seat Office Team maintains a weekly statistical table of workflow and setting of targets against same.

District Probate Registries

There is no equivalent in the District Probate Registries to the Seat Office arrangement where Solicitors have their applications examined immediately in the presence of a Solicitor or Law Agent, Applications at District Probate Registries are either lodged in person or by post and reviewed by District Probate Registry personnel at a later time. If a Solicitor wishes to speak to a Probate official in a Registry they make an appointment or the matter may be clarified by phone call or email.

Personal Applicants prepare their application on foot of the Information Pack available from the Registry. In due course, the application is received and ultimately an appointment is made with either the District Probate Registrar or designated member of staff and all documents sworn and the matter is ready for issue.

Subject to the elaboration contained in the chapter on the District Probate Registry relationship with the Dublin Probate Office, the processing of applications is as follows:

1. Clerical Officer/Executive Officer opens correspondence and creates the application on the Lotus Notes Database which is common to both the Dublin Probate Office and the various District Probate Registries
2. All queries pertaining to the application of a complex nature are discussed with Dublin Probate Office
3. Grants are drafted and via the Lotus Notes System, the draft grant is submitted to Dublin in all cases (as prescribed by statute) together with any necessary supporting documentation, which is either scanned or faxed
4. All necessary Orders pertaining to the application are made by the Probate Officer and the legal entitlement to the Grant is signed off on by the Assistant Principal Officer in Dublin
5. Executive Officer staff in Dublin clear the Grant for issue provided there is no rival application or Caveat in the estate to impede same
6. Application is electronically cleared for issue and reverts to the Probate Registry where the appropriate staff member prepares the Grant for issue. This must be done within 24 hours of the Grant being cleared by Dublin or otherwise

it has to be resubmitted to Dublin in case an impediment has arisen in the meanwhile

7. Grant signed by District Probate Registrar
8. Sealed by Probate Personnel and posted to Solicitor
9. All archives are maintained by District Probate Registry staff in question and appropriate documentation sent to Revenue and Charities Regulator as applicable.

District Probate Registry staff also accept Caveats but all other procedures are exclusively dealt with by the Dublin Probate Office.

Main documentation/proofs associated with applications for Grants

As mentioned above, Probate Office Form S1 must be lodged. where the application is lodged by post.

Of the documents and proofs which are required to ground an application for a grant, two in particular account for the greatest input of time in scrutinising the application:

- (i) the Inland Revenue Affidavit / High Court (Probate) Form CA24 and
- (ii) the Executor's or Administrator's Oath.

Inland Revenue Affidavit/ High Court (Probate) Form CA24

Revenue are a central part of the Probate process in this jurisdiction. Section 30 of the Customs and Inland Revenue Act, 1881 provides:

“No probate or letters of administration shall be granted by the [High Court], unless the same bear a certificate in writing under the hand of the proper officer of the court, showing that the affidavit for the [Revenue Commissioners] has been delivered, and that such affidavit, if liable to stamp duty, was duly stamped, and stating the amount of the gross value of the estate and effects as shown by the account.”

The affidavit in question is called the Inland Revenue Affidavit / High Court (Probate) Form CA24 the format of which has evolved over time. The affidavit includes assets and liabilities²⁵ of the deceased's estate as at his/her date of death and when applying to

25 Section 48(2) to (4) of the Capital Acquisitions Tax Consolidation Act 2003 provide:

- “(2) The Inland Revenue affidavit required for an application for probate or letters of administration shall extend to the verification of a statement of the following particulars:
- (a) details of all property in respect of which the grant of probate or administration is required and, in the case of a deceased person who died domiciled in the State, details of all property, wherever situate, the beneficial ownership of which, on that person's death, is affected—
 - (i) by that person's will,
 - (ii) by the rules for distribution on intestacy,
 - (iii) by Part IX or section 56 of the Succession Act 1965;
 - (b) details of any property which was the subject matter of a disposition *inter vivos* made by the deceased person where the date of the disposition was within 2 years prior to that person's death or of a *donatio mortis causa*;
 - (c) details of the inheritances arising under the will or intestacy of the deceased person or under Part IX or section 56 of the Succession Act 1965, or under the analogous law of another territory, together with a copy of any such will;
 - (d) particulars of the inheritances (including the property comprised in such inheritances) other than those referred to in paragraphs (b) and (c), arising on the death of the deceased

take out the grant of representation, and is sworn by the personal representative to the estate.

It enables the liability of the estate for Capital Acquisitions Tax (CAT), Probate Tax and Estate Duty (when applicable) to be calculated. The affidavit also enables court fees payable on the application for the grant – which are calculated pro rata on the basis of the net value of the estate – to be assessed.²⁶

Amendments to the CAT legislation in 2010 altered the manner in which the Inland Revenue Affidavit / High Court (Probate) Form CA24 was evaluated. Previously, the Inland Revenue Affidavit/ (Probate) Form CA24 was required to be delivered to Revenue, who, following scrutiny of same, would certify the gross and net estate of the deceased and further indicate that Inheritance Tax had been paid or deferral of payment permitted. This original certificate together with a copy of the Inland Revenue Affidavit was produced to the Probate Office in tandem with all other necessary documents to support an application for a Grant of Representation.

Since the 2010 amendments, the Inland Revenue Affidavit/High Court (Probate) Form CA24 and associated documentation were required to be submitted directly to the Probate Office or District Probate Registry²⁷ in duplicate and the Probate Office is required to send one copy of the affidavit together with a copy of the will (if any) to the Commissioners as soon as practicable after probate or letters of administration has or have been issued.²⁸ The Probate Office is further required “as soon as practicable after probate or letters of administration has or have been issued...” to “... transmit to the Commissioners such information as is held in electronic form by the Probate Office and which is relevant for the purposes of this Act.”²⁹

person;

(e) the name and address of each person who takes an inheritance on the death of the deceased person and that person's relationship to the disponent; and

(f) such other particulars as the Commissioners may require for the purposes of this Act.

(3) Where the interest of the deceased person was a limited interest and that person died on or after the date of the passing of this Act, the trustee of the property in which the limited interest subsisted shall deliver an account which shall contain the following particulars—

(a) details of each inheritance arising on the death of the deceased person under the disposition under which the limited interest of the deceased person arose, including the name and address of each person taking such inheritance and that person's relationship to the disponent, and

(b) such other particulars as the Commissioners may require for the purposes of this Act

(4) If at any time it shall appear that any material error or omission was made in an affidavit or account referred to in this section, the persons liable to deliver an affidavit or account shall be liable to deliver an additional affidavit or an additional account, correcting the error or omission.”

26 See: section 6(2), Finance Act 1894;

27 Section 48(1) of the Capital Acquisitions Tax Consolidation Act 2003 provides that “‘Probate Office’ includes a district probate registry.

28 Section 48(5) and (7), respectively, of the Capital Acquisitions Tax Consolidation Act 2003 inserted by section 147 of the Finance Act 2010.

29 Section 48(6) of the Capital Acquisitions Tax Consolidation Act 2003 inserted by section 147 of the Finance Act 2010.

Insofar as the Revenue function is concerned, the Capital Acquisitions Tax Consolidation Act 2003 already provides for the electronic transmission of information from the Probate Office to Revenue. This Act also contains enabling legislation to allow for the future development of a platform that will allow the electronic filing of the Inland Revenue Affidavit / (Probate) Form CA24 simultaneously to both Revenue and the Probate Office. This enabling legislation was put in place as part of a package of measures in the 2010 Finance Act (section 147) to modernise and streamline the administration of capital acquisitions tax. On foot of this enabling legislation, Revenue will make regulations to give effect to electronic filing when the required electronic platform has been developed.

These amendments did not purport to affect section 40 of the Succession Act 1965, which provides that “subject to any arrangements which may from time to time be made between the President of the High Court and the Revenue Commissioners”, the Probate Office and every District Probate Registry shall, within such period after a grant as the President may direct, deliver to Revenue or their proper officer

- (a) in the case of a probate or of administration with a will annexed, the Inland Revenue affidavit and a copy of the will (if required);
- (b) in the case of administration without a will annexed, the Inland Revenue Affidavit / High Court (Probate) Form CA24;
- (c) in every case of administration, a copy or extract of the administration;
- (d) in every case, such certificate or note of the grant as Revenue may require.”

The Inland Revenue Affidavit / High Court (Probate) Form CA24 itself is now a 20-page document and until recently had, on foot of the 2010 amendments, been required to be sworn in duplicate, both documents being examined as originals by a Seat Office staff member when scrutinising the application for the grant.

The Executor's/Administrator's Oath

The “oath” of the executor or proposed administrator is an affidavit setting out the material facts which support the legal entitlement of the deponent to be issued with the grant of representation. In the case of an administrator's oath, the oath must be so worded as to “clear off” all persons having a prior right to the grant, i.e. explain why, in the circumstances of the case, those persons who would be entitled under the sequence ordained by the rules of court to seek the grant prior to the applicant, should be discounted for the purpose of the application.

The Appendix of Forms in the rules of court prescribes the basic content of the forms of the oath, respectively, for completion by an executor, an administrator seeking a Grant of Letters of Administration with Will Annexed and an administrator seeking a Grant of Letters of Administration Intestate³⁰. However, the factual content to be provided, in particular for a Grant of Letters of Administration, will differ depending on the nature of the grant sought and the capacity in which it is sought, and practitioners generally rely on precedents for that purpose.³¹

³⁰ Forms 3 to 5, Appendix Q, RSC.

IV. Caseload and caseload

The table appended at **Appendix 1, Part A** details the numbers of applications for grants received and processed by the Probate Office in Dublin and the District Probate Registries in 2016 and the distribution of the Probate caseload across the network, together with population served, waiting times for issuance of grants and staff resourcing for the Office or Registry concerned.

As the table indicates, the Probate Office in Dublin (where 28.2% of the State's population resides) received 8705 applications and issued 8,054 grants in 2016 – 50.8% and 50.5% respectively of the national caseload. Waiting times for grant applications in Dublin at the end of 2016 amounted to 20 weeks.

In the case of the District Probate Registries, the level of business transacted in a number of registries as a percentage of the national caseload is out of alignment with the percentage of the national population served by the registries concerned.

Thus, Castlebar, serving Mayo, with 2.7% of the population, handled 3.5% of the total of grant applications made nationwide and 3.58% of grants issued.

By contrast, Letterkenny, serving 3.3% of the population, , accounted for only 1.1 % of grants applied for nationwide and 1.4% of those issued nationwide. Galway, serving Galway and Roscommon with 6.77% of the population, accounted for 3.6% of grants applied for and 3.3% of grants issued. Cavan, serving Cavan and Longford with 2.45% of the population, handled 1.5% of grants sought and 1.7% of grants issued. Kilkenny, serving Kilkenny, Carlow and Laois with 5.05% of the population, handled 3.5 % of grants sought and 3. 6 % of grants issued. Mullingar, serving Westmeath and Offaly with 3.5% of the population, received 2.3% of applications for grants and issued 2% of grants.

A lower volume of Probate business transacted at district level is in turn reflected in a higher volume of business originating in that district being transacted the Probate Office in Dublin, as indicated above

The Table also indicates a wide disparity in waiting times (a) between the District Probate Registries and Dublin, and (b) between individual District Probate Registries. Thus, while a grant application took as much as 20 weeks to process in Dublin, it took as little as three or four weeks in some Registries outside Dublin. Six District Probate Registries – Castlebar, Clonmel, Limerick, Tralee, Waterford and Wexford – had waiting times for solicitor initiated grant applications of less than eight weeks, while the remaining eight Registries had waiting times of between 11 and 20 weeks.

Furthermore, the level of resources committed to Probate work in the District Probate Registries varies considerably between numbers and grades of staff deployed, and the amount of time such staff devote to the Probate service.

31 See, e.g. Precedents of oath in Keating, Succession Law in Ireland, Clarus Press, 2015, Chapters 13 to 17.

A number of features may be observed as common to the District Probate Registries transacting a lower volume of business in proportion to the population they serve. Letterkenny, generating 233 grants in 2016 with a 14 week waiting period for solicitor applications, deploys 10% of one EO's time and 10% of one CO's time to Probate work. Cavan, generating 285 grants with a 16 to 18 week waiting period, devotes 20% of an Assistant Principal Officer's time and 20% of a CO's time to that work.

By contrast, Castlebar, generating 571 grants with a 4 week waiting time, allocates 75% of one EO's time and 75% of one CO's time. Tralee, generating 723 applications with a 5 week waiting period, deploys 60% of one EO's time and 20% of one CO's time to Probate. Wexford, generating 433 grants with a maximum 4 week waiting period, manages to do so with 80% of one CO resource.

Clearly, therefore, the level of resources committed to Probate within District Probate Registries has an impact both on turnover of grant applications and waiting times for issuance of grants, as well as influencing practitioners in deciding whether to transact business with the Registry or "vote with their feet" and apply to the Probate Office in Dublin for a grant. However, resources alone do not account for differences in service delivery. Galway, with 75% of one EO and 75% of one CO resource, issued 546 grants in 2016, while Kilkenny, with 95% of one EO's time, generated 579 grants.

However, it need hardly be said that comparisons of this nature need to be treated with caution. Differences in turnover may be due to the level of experience of staff in Probate work, and the manner in which the work is allocated (e.g. assignment of an officer exclusively to Probate services as opposed to sharing the work between officers each of whom may have other duties).

Based on (a) the level of scrutiny currently required, in a manual environment, to be applied to the Inland Revenue Affidavit / High Court (Probate) Form CA24 and (b) the personnel resourcing in place, a five week waiting time in the case of solicitor-prepared grant applications for examination of the application, drafting and issue of the grant would appear to the Review Group to constitute a reasonable level of service.³² Cases awaiting attention for more than five weeks would then constitute the backlog. As of the date of the end of November 2017, the profile of the backlog of solicitor-prepared applications for grants of representation in the Probate Office based on a five week waiting period was as follows:

1. Postal applications awaiting examination	568	
2. Postal applications awaiting examination five weeks or more within item 1 (postal applications backlog).		397
3. Postal applications examined and awaiting drafting	0	
4. Counter applications examined and awaiting drafting	1,690	
5. Counter applications examined and awaiting drafting five weeks or more within item 4 (counter applications backlog)		1,122

³² This does not take into account additional time required by an applicant to address queries raised.

6. Total applications awaiting examination and drafting (1+ 4)	2,258	
7. Grant applications queried and awaiting response	784	
Total pending applications (1+4+7)	3,042	
Total backlog of cases awaiting action by Probate Office (2+5)		1,519

Waiting times in the Probate Office for issuance of solicitor-prepared grant applications on which queries had been resolved were 16 weeks at the end of November 2017.

625 Applications by applicants in person were pending as of the end of November 2017.

The Review Group considers the scope for rationalisation of the District Probate Registry network in Part II of Chapter 4.

V. Queries analysis

In the questionnaire circulated as part of this review and responded to by practitioners (see Chapter 3), the high level of rejections and queries raised by Probate staff on applications for Grants, was signalled as a concern.

With a view to providing the Review Group with an insight on this issue and more particularly

- (a) obtain a precise profile of the most common queries raised and
- (b) consider measures to minimise rejections of applications for Grant of representation,

a review was conducted of all applications for Grants which were assessed in Dublin for a three week period from 21st November 2016 to 9th December 2016 and where such applications were rejected, a record of the reasons for same was maintained.

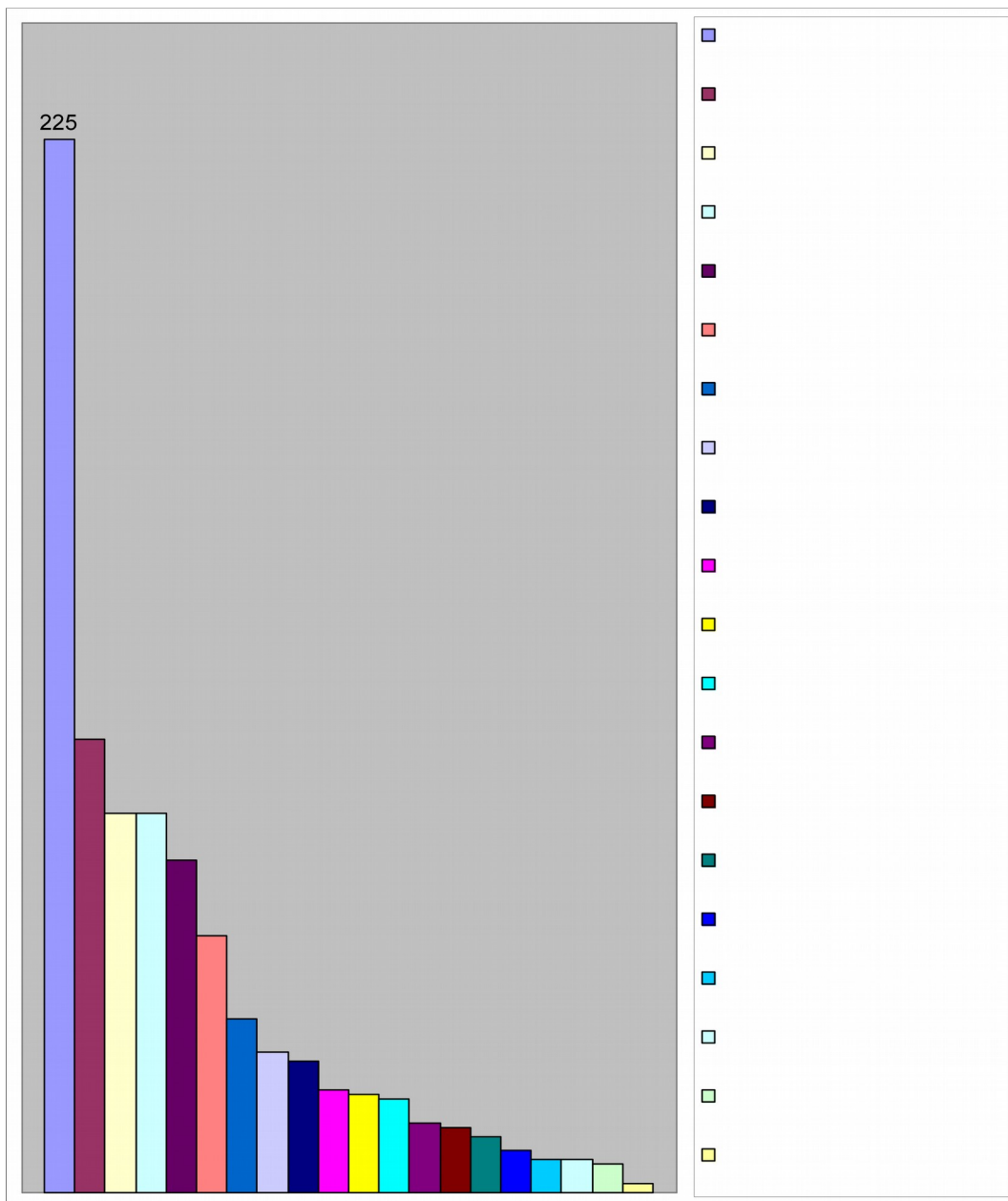
972 applications were assessed in the Dublin Probate Office during the pertinent period. 755 applications were presented and assessed by the Seat Office at the counter, while 217 postal applications were assessed during the same period (it should be noted that the figure for postal applications represents those assessed as opposed to the number of postal applications lodged during this period). 419 of the total number of applications were accepted while 553 were rejected – in some cases for a variety of reasons. The breakdown of these figures can be seen in the table below:

Application Type	Accepted	Rejected
New applications (counter)	116	295
Resubmitted applications (counter)	221	123
Postal applications assessed	42	89
Resubmitted postal applications assessed	40	46
Total	419	553

These figures indicate an overall rejection rate of 57%. When the rejection rate is split into applications presented for the first time, the rejection figure is 72%. When applications are presented for the second or subsequent times, the rejection rate is 36%.

The table below lists each of the most common reasons (one or more of which may have related to a single application) an application may be queried or rejected and the number of queries which fell into each category. Just over a quarter (26%) of all queries are Inland Revenue Affidavit / High Court (Probate) Form CA24 related, while 11.5% are for title reasons.

Query/Rejection Reason	Total
Inland Revenue Affidavit / High Court (Probate) Form CA24 incomplete / Incorrect	225
No Title (or title not properly indicated)	97
Value of Estate incorrect (oath)	81
Will (Codicil) Original or insufficient copies lodged	81
Oath: jurat incomplete	71
Affidavit of attesting witness (AAW) required	55
Lodge current valuation	37
Deceased's details differ on oath & Inland Revenue Affidavit / High Court (Probate) Form CA24	30
Lodge original & copy oath	28
Oath: no filing clause	22
Exhibits not properly marked	21
Affidavit of testamentary capacity (ATC) required	20
Charitable Bequest form not lodged	15
Incorrect or no Bond lodged	14
Bond: Penal sum insufficient	12
Incorrect Revenue Affidavit	9
Death Cert. not lodged	7
Different commissioner on oath & bond	7
Date of Death differs on oath/ Inland Revenue Affidavit / High Court (Probate) Form CA24 and death cert	6
Affidavit of plight and condition (APC) required	2
Total Queries	840



An additional exercise over the same period was carried out by the Assistant Principal Officer in the Probate Office with responsibility for overseeing applications made to the District Probate Registries.

All queries raised by the Assistant Principal Officer with the registries concerned incorrect title on the Oath. A total of 35 queries of this nature arose over the three week period in question.

The Probate Office survey indicates that out of 972 applications assessed:
 1.225 (23%) resulted in queries being raised in respect of the Inland Revenue Affidavit / High Court (Probate) Form CA 24

- 2.97 (10%) were rejected on the basis that the correct legal entitlement to the Grant was not established in the Oath supporting the application;
3. of the other 16 categories of queries raised, 14 concerned queries which indicate a lack of attention to detail and proper preparation of the documents involved in the process (e.g. incorrect date of death, incorrect jurats, failure to lodge pertinent documents).

Queries which invite an affidavit of attesting witness, affidavit of plight and condition and affidavits of testamentary capacity may be anticipated by Solicitors in many cases but it may also be said that this requirement may not be evident until the papers are seen by the Probate Office. However, these query types in any event represent a quite small proportion (8%) of all queries raised, and it remains the case that the majority of queries profiled related to documentation which was either incomplete, incorrect or not provided.

The Review Group considered the information made available to practitioners to assist them in the completion of their applications for Grants of Representation. The Probate Office section of the Courts Service's website contains a range of information on documentation required for grant applications and other procedural steps in the Probate non-contentious procedure, including:

- Administration *de bonis non* checklist
- Administration intestate checklist
- Administration with will annexed checklist
- Administration with will annexed *de bonis non* checklist
- Administrator ad litem checklist
- Affidavit of attesting witness
- Applications to the probate court
- Corrective affidavits
- Divorce and legal separation
- Executor checklist
- Foreign domicile
- Limited special grants
- Powers of attorney
- Probate forms
- Probate officer's orders
- Rejected applications - common reasons
- Second or subsequent grants
- Trust Corporations.

In addition to the above, the "Solicitors Applications" page within the Probate Office section contains a link to the webpage titled: "Rejected applications - common reasons"³³, containing a tabulated list of 20 issues or defects giving rise to queries, together with advice to practitioners on how to avoid them.

³³ The link to this page is:

<http://www.courts.ie/Courts.ie/Library3.nsf/pagecurrent/875D0DAD45B0BF0B8025811000536344?opendocument>

The Revenue website contains a detailed guide in pdf format to completion of the Inland Revenue Affidavit / High Court (Probate) Form CA24.³⁴

It is evident from the above that comprehensive guidelines are available on the preparation of grant applications.

The Review Group is also aware of the attention given by the Law Society to the Probate process in its professional course and continuing professional education. The Review Group understands that the Probate Office and District Probate Registrars assist regularly in lectures and seminars with the Law Society, Society of Trust and Estate Practitioners and various Bar Associations across the jurisdiction to assist practitioner education in this area.

The Review Group has gained the impression that a proportion of practitioners or clerks engaged in preparing applications either do not adequately access the information resources available to them for that purpose, or may lack awareness of the material concerned, rendering them overly reliant on the Probate Office or District Probate Registries in the preparation of their paperwork.

³⁴ The link to the page concerned is:
<https://www.revenue.ie/en/gains-gifts-and-inheritance/guide-to-completing-an-inland-revenue-affidavit/index.aspx>

3. SURVEY OF EXTERNAL AND INTERNAL CUSTOMERS

I. Introduction

With a view to assisting it in its deliberations, the Probate Service Review Group decided to conduct a survey of (a) external stakeholders (both private users - viz. practitioners, legal executives, town agents and personal applicants - and institutional and representative partners and (b) District Probate Registries, court offices, managers (including regional managers) and staff.

The form of the questionnaire issued to external stakeholders is appended at **Appendix 3**. A shorter form, omitting Questions 1 to 4 of the form for external stakeholders, was issued to internal stakeholders.

The survey was issued in the week beginning the 27th June 2016, and responses were requested to be returned by the 31st August 2016. The Chief Executive Officer of the Courts Service wrote to each of external institutional and representative stakeholders listed in **Appendix 4**, enclosing the questionnaire. The questionnaire was also publicised and made available for downloading on the Courts Service's website. Staff both in the Probate Office, Dublin, and District Probate Registries were requested to enclose copy of the CEO's letter together with questionnaire with all issued Grants between the 4th July and the 8th August 2016. The survey was also brought to the attention of Law Society members via the Law Society "e-zine" facility. In late July 2016 all Courts Service staff were informed separately of the Review by e-mail and provided with a link to the questionnaire.

Not all respondents completed every question in the questionnaire form, and some indicated "no comment" for all questions. A very small number of respondents raised matters (e.g. concerning the outcome of court proceedings or the possibility of developing software with the Courts Service) which were not germane to the survey.

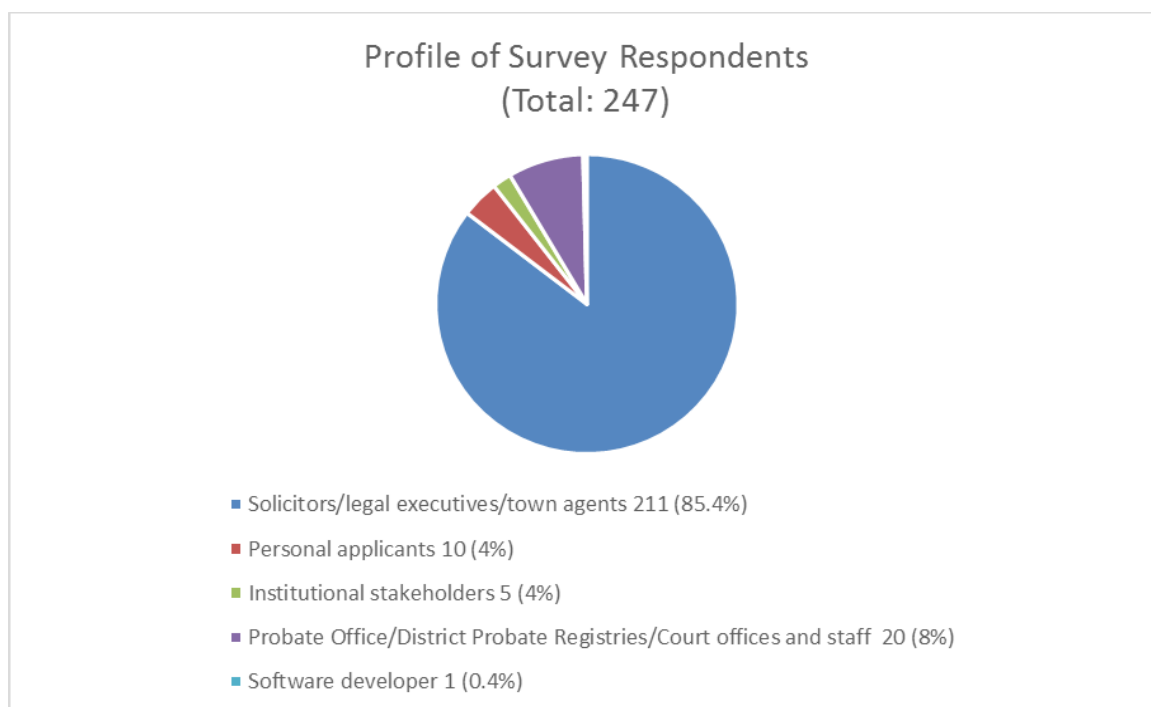
Institutional and representative stakeholders responded according to their particular relationship with the Probate Office, and their responses are not comparable for evaluation purposes with those received by private users of Probate services. Responses from registrars and staff have addressed both issues related to service delivery and organisational arrangement. With a view to ensuring comparability of responses, it is therefore proposed to consider the responses of those stakeholders and court offices and staff separately within this Chapter.

The approach taken in classifying responses for evaluation has been to endeavour as far as possible to reflect the view of the respondent on a question raised in the questionnaire even where – as was the case in some responses – the respondent's comment on the question was provided under another heading in the questionnaire (e.g. comments on ICT improvements appearing under question 5 rather than question 7 were treated as an answer to question 7).

Profile of responses

As illustrated in **Figure 1**, a total of 247 respondents answered the survey, 85.4% - or 211 - of whom were solicitors, legal executives or town agents. Ten personal applicants - or 4% of the total - responded. All five institutional and representative stakeholders canvassed replied. A total of 20 internal stakeholders - 8% - including 7 county registrars and 12 regional and court office managers and staff replied. A detailed (15 page) submission was received from the staff of the Probate Office, Dublin.

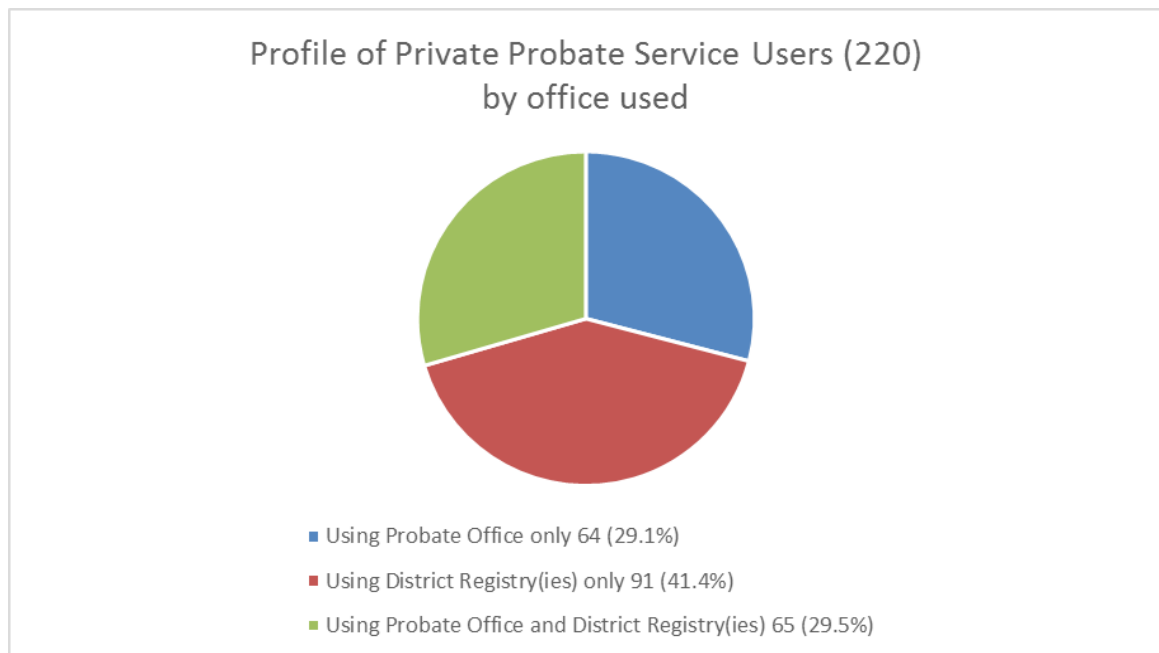
Figure 1



II. External Stakeholders' responses

Of the private respondents using Probate services, 64 – nearly one third – used the Probate Office exclusively (see **Figure 2**). This was largely due to the location of the practitioner's office location or, in the case of personal applicant respondents (almost all of whom had used the Probate Office), the location of their residence in or close to Dublin. However, a small number of provincial practitioner respondents used Dublin due specifically to delays encountered in their local District Probate Registries, principally those at Donegal and Sligo, and to a lesser extent at Galway and Cavan. 91 respondents – or 41.4% - used one or more District Probate Registries exclusively. 65 respondents – or 29.5% - transacted business both with the Probate Office and one or more District Probate Registries.

Figure 2

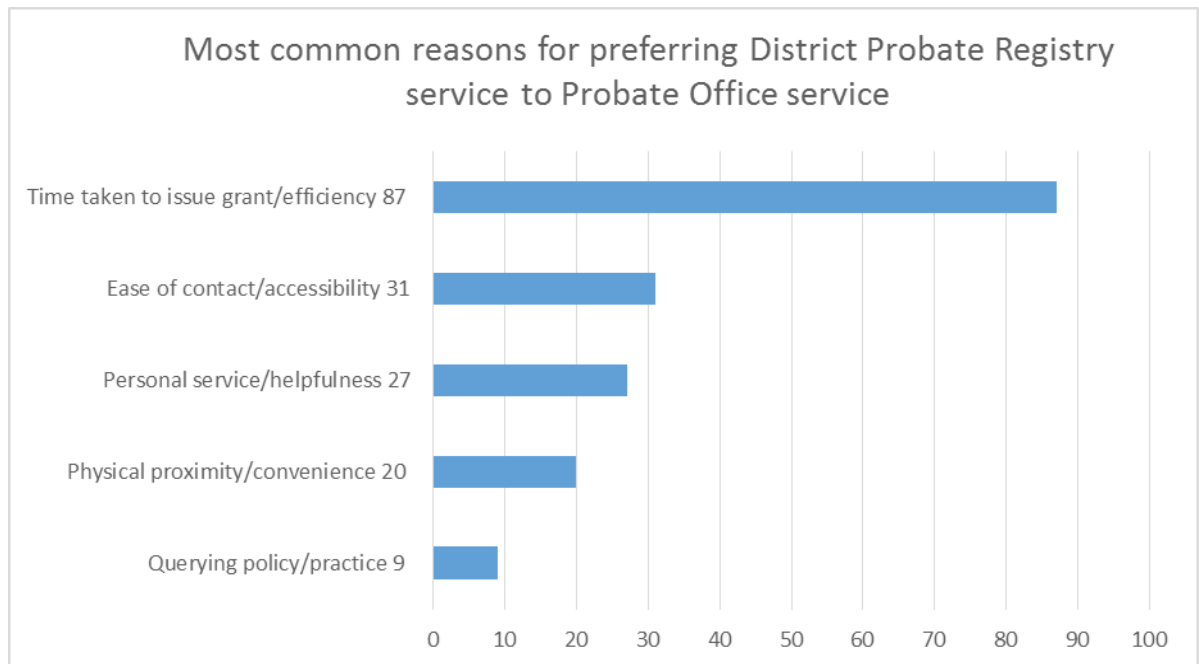


District Probate Registry service compared with Probate Office service

As **Figure 2** indicates, a very high proportion - 146, or nearly 71% - of private Probate service users who responded used a District Probate Registry or Registries either exclusively or together with the Probate Office. Of that cohort, 136 –or 93% - indicated a preference for using a District Probate Registry. 10 - or less than 1% - expressed a preference for using the Probate Office, largely due to delays in a particular District Probate Registry.

In Question 4, private Probate service users were asked: “Where you have a choice of transacting probate business through the Dublin Probate Office or a District Probate Registry/Registries which do you opt for and why?” It was possible to identify from the responses five main commonly expressed grounds for respondents’ preference for services at District Probate Registries over that offered at the Probate Office. Of those respondents using both Dublin and District Probate services, 87 indicated more expeditious issuing or less delay in issuing of grants or more efficient service generally, as a reason for choosing to do business with the District Probate Registry. 31 respondents cited ease of contact and accessibility of staff (i.e. by phone or e-mail) as a reason for their preference of the District Probate Registry over the Probate Office. 27 respondents gave personal service or helpfulness of staff as a reason for preferring the District Probate Registry. 20 respondents indicated physical proximity or convenience as a reason for choosing to transact business with the District Probate Registry. 9 respondents cited the District Probate Registry’s querying policy or practice as a reason for preferring to do business there. Many respondents gave more than one of the above reasons for their preference, and the responses are represented in **Figure 3** as absolute numbers rather than percentages.

Figure 3



Weaknesses and strengths in the delivery of Probate services

Areas for improvement

Question 5 asked respondents to indicate what aspects of the current service in the Probate Office or the District Probate Registries could be improved and how such improvements could be realised. It was again possible to discern common categories of improvement in respondents' suggestions, although discrete issues were identified in the case of the District Probate Registries, viz. the need to provide or ensure specific staff resources were dedicated to the Probate function, and the need to restore Probate services at district level or establish new District Probate Registries. Most notably, 93 respondents indicated a need for the Probate Office to reduce delays in issuing grants of representation or service delivery. 23 respondents identified a similar improvement as needed in the District Probate Registries.

41 respondents identified a need for the Probate Office to improve accessibility to customers, of whom 27 cited the need to facilitate or improve the phone service to customers and 14 requested that the Probate Office use e-mail in its communications with customers. 8 respondents indicated a need for District Probate Registries to improve accessibility, of whom 6 cited the phone service as in need of improvement and 2 the need for greater use of e-mail.

54 respondents indicated that the Probate Office needs to improve its policy and/or practice in raising and dealing with queries on applications for grants. 7 respondents raised the need for improvement in the query handling policy or practice of District Probate Registries.

The principal issues identified in this regard were:

- the degree of strictness applied to scrutiny of papers – it being suggested by a number of respondents that relatively minor queries lead to rejection of papers
- the lack of comprehensive information on what issues will lead to the raising of a query/ rejection of papers and consistency in raising queries³⁵
- the importance for customers of receiving a complete and definitive list of queries
- the practice of sending resubmitted applications “back to the end of the queue”
- the incidence and excessive level of the resubmission charge.

24 respondents indicated a need for more staffing resources for the Probate Office (the Seat Office being specifically identified by a number of respondents). 23 respondents identified a need for additional staffing in the District Probate Registries.

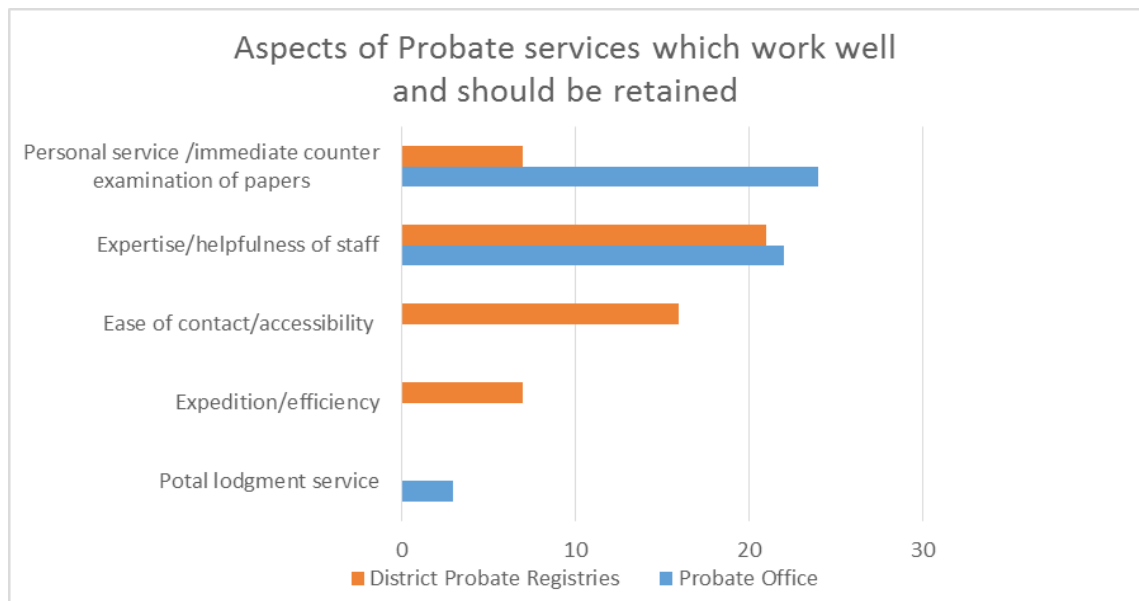
6 respondents suggested a need for simplification of forms or procedures in relation to the Probate Office, and 3 respondents indicated this as being an issue for the District Probate Registries. In particular, attention was drawn to the complexity and length of the CA 24 Form (the Inland Revenue Affidavit /High Court (Probate) Form CA24) - the need for a duplicate of which was also queried –and the process of completing an appropriate oath in support of an application for a grant.

In relation to the District Probate Registries, 10 respondents recommended that staff performing Probate functions in Combined Court Offices should be allocated exclusively to that work and raised concerns about the detrimental impact on delivery of Probate services of assigning Probate staff to attend to court and other counter activities. 5 respondents sought restoration of individual District Probate Registrar posts (Westmeath/Offaly; Sligo/Leitrim; Tipperary) and 3 respondents made requests variously for establishment of new District Probate Registries (Wicklow; Meath) or for one such in each county.

Respondents in many cases made more than one suggestion for improvement, hence the suggestions for improvement made are expressed in **Figure 4** in absolute numbers rather than percentages. It may be said that respondents’ view of the deficiencies in service offered in the Probate Office – in particular regarding delays in issuing of grants and difficulties in accessing the office – reflect the views expressed by respondents as to the comparative advantages of transacting business in the District Probate Registries as disclosed by the responses to Question 4.

35 The Probate area of the Courts Service website currently contains a section on *Rejected applications: most common reasons*:
<http://www.courts.ie/Courts.ie/library3.nsf/pagecurrent/B4A46A149A7FDCF480257A33004D63D1?opendocument>

Figure 4

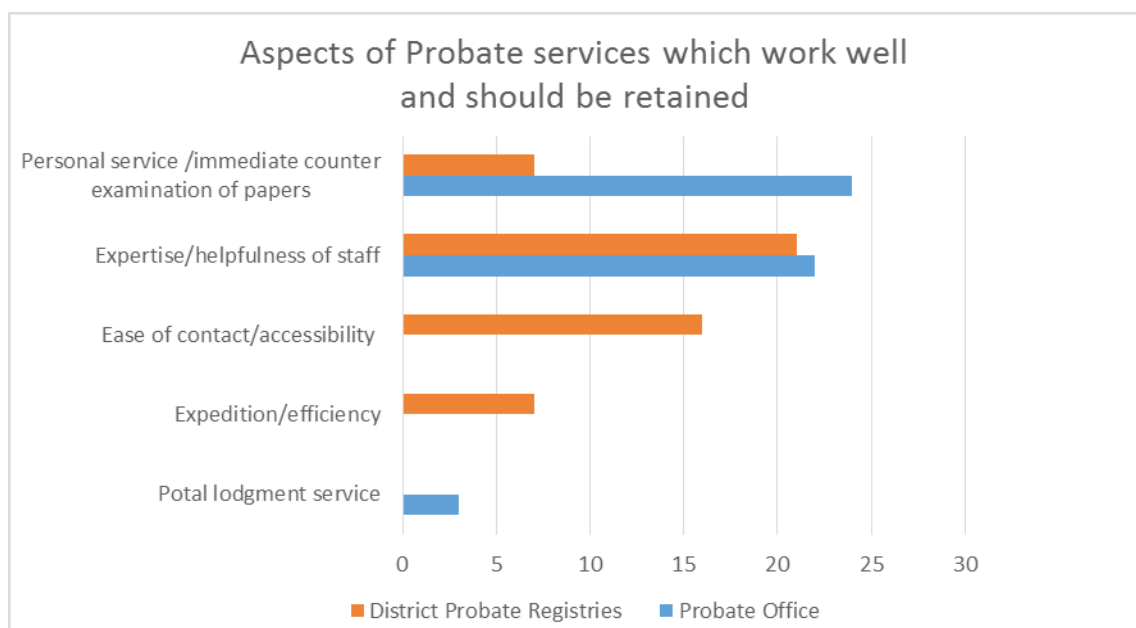


Aspects which work well and should be retained

Question 6 asked respondents what aspects of the current service work well and should be retained. 22 respondents expressed appreciation for the expertise and helpfulness of staff in the Probate Office, as did 21 respondents in relation to the staff of the District Probate Registries. 24 respondents pointed to the importance of retaining personal service and/or immediate checking at the counter of documents in the Probate Office, the Seat Office receiving particular mention in that regard. 7 respondents identified personal/counter service as a significant attribute of the District Probate Registries' service. 3 respondents valued the facility for postal lodgment of papers in the Probate Office.

Some service features were identified as particularly relevant to District Probate Registries. 16 respondents cited ease of contact/accessibility as features which should be retained in the District Probate Registries. 7 respondents mentioned the need to maintain the level of expedition/ efficiency of the District Probate Registries in attending to applications.

Figure 5



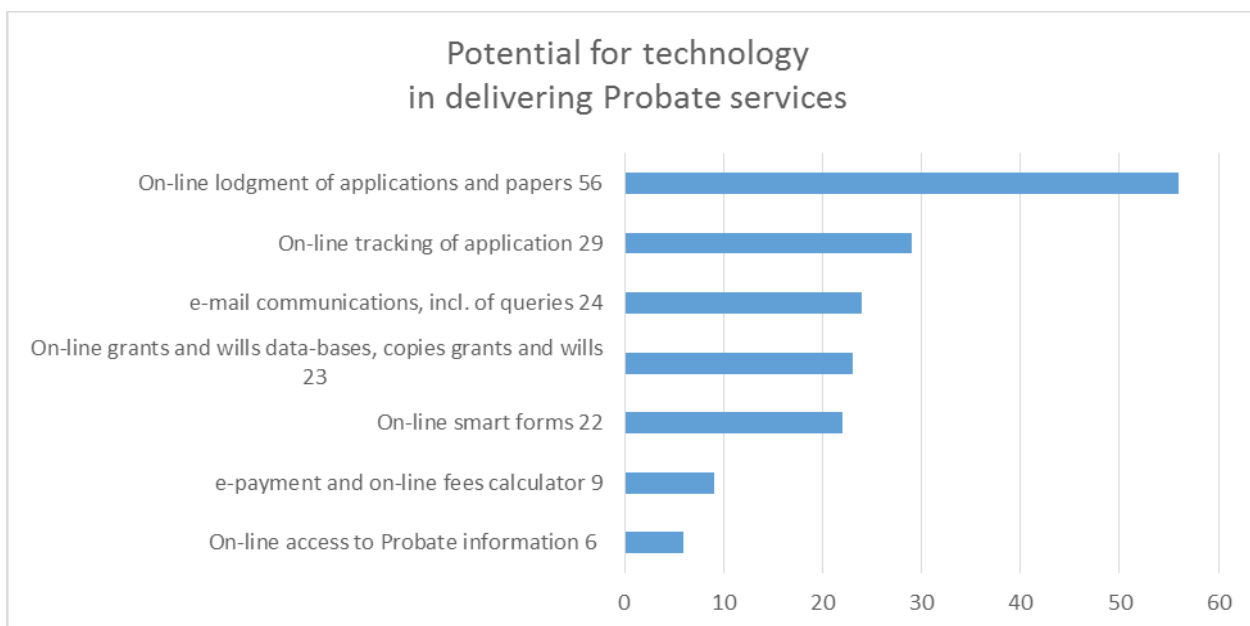
Potential for technology in delivering Probate services

Question 7 invited respondents' views on the role technology might play in the future delivery of Probate services. Significant commonality of opinion was evident among respondents as to the initiatives which should be undertaken to leverage ICT in support of the Probate function. 56 respondents identified a need for on-line lodgment of applications for grants and papers generally. 29 respondents wished to be able to track the status of an application on-line. 24 respondents saw a need for an on-line searchable grants and wills data-base with a facility to download copies wills and grants. More basically, 24 respondents wished to receive and send e-mail communications, in particular in relation to queries raised on applications for grants, it being acknowledged that some offices currently correspond by e-mail for certain purposes. 22 respondents requested provision on-line of "smart" forms - including the Inland Revenue Affidavit / High Court (Probate) Form CA24 and the variations of the form of oath for an application for a grant.³⁶ 9 respondents expressed a wish to be able to calculate Probate fees on-line and to make payments electronically, including by card. 7 respondents saw potential to have queries on grant applications resolved on-line. 6 respondents wished to see more information on the web.³⁷

Figure 6

³⁶ A smart form is an electronic form containing advanced features including optional fields for insertion of information with validation sequencing to ensure correct options are used, dynamic sections, database calls, calculation functions and electronic submission.

³⁷ The Courts Service website currently has an area dedicated to Probate:
<http://www.courts.ie/courts.ie/library3.nsf/pagecurrent/E8708CA17614670A802575AF003E0ED7?opendocument&l=en>



Respondents' other observations

Question 8 invited respondents to furnish any further comments whether of a general or specific nature. Responses to this question were, perhaps understandably, more diverse - or even conflicting - and hence more difficult to categorise. Aside from recommendations which could be accommodated under the responses to the earlier questions, suggestions/comments covered the following topics/issues, which are loosely grouped under the following headings:

Process/service issues

- review queue management system in Seat Office;
- maximise Seat Office counter service to accommodate high volume customers;
- provide a “pre-submission” facility for checking of papers;
- return function of checking the Inland Revenue Affidavit/High Court (Probate) Form CA24 to Revenue introduce a maximum six week period within which a grant should issue;
- close Probate Office at lunchtime/re-organise office opening hours;
- provide clearer information on opening hours- and changes thereto - on web site;
- align Stamp Office opening hours with Probate Office (i.e former closed at lunch time);
- provide counter service for grant applications involving a foreign element.

Fees

- simplify basis for calculation of fees;
- abolish re-submission fees;
- abolish re-submission fee for minor queries;
- charge re-submission fee only if queries remain on subsequent submission;

- introduce more transparency as to when a re-submission fee is chargeable;
- allow for refund of re-submission fee.

Querying practice

- cease automatic querying of the validity of a will where dementia was cited in the death certificate;
- dispense with need for affidavit as to capacity in dementia cases where will made 10 years or more prior to death.

Forms and procedure

- modernise wording in oaths;
- remove need to include beneficiaries PPS numbers in Inland Revenue Affidavit / High Court (Probate) Form CA24 (and defer to later stage) to avoid delay in issuance of grant;
- permit interim grants to facilitate property sale closings;
- have simpler procedure for applications for grants in small estates;
- have shorter forms for grants with smaller estates;
- remove the need for an administrator's bond/remove that requirement in solicitor applications;
- limit entitlement to make personal application to estates below a maximum value.

Organisation

- create separate Probate service agency;
- transfer business between different Probate Registries to reduce delays;
- create District Probate Registry for each county/(court) district;
- provide for handover arrangements for work in progress where a staff member is moving from his/her post;
- vest jurisdiction in contentious Probate matters in Circuit Court.

Public information

- restrict information from wills available to public/third parties.

III. Internal stakeholders' responses

Profile of Responses

A total of twenty internal stakeholders responded to the questionnaire, four of whom indicated that, due to lack of familiarity with the work of the Probate Office/District Probate Registries, they did not complete the questionnaire. Of the sixteen internal stakeholders who completed the survey, seven were county registrars, six regional/court office managers, and two were individual members of staff. In addition, a substantial submission was received from the staff of the Probate Office Dublin.

Weaknesses and strengths in the delivery of Probate services

Question 1 asked respondents to indicate what aspects of the current service in the Probate Office or the District Probate Registries could be improved and how such improvements could be realised.

With regard to the **Probate Office**, 5 respondents suggested that the service should be improved by the development of on-line services ranging from search facilities, the facility to request copy documents and the modernisation of IT facilities. 3 respondents suggested that the Probate Office required greater resources, one of whom suggested that greater resources should be available to deal with assessing and clearing District Registry applications. 1 respondent suggested that the system could be streamlined.

In their submission, the staff of the Probate Office made a number of suggestions to improve the service in the Probate Office including-

- Improving the quality of applications by solicitors by addressing the issue with appropriate bodies. They point out that up to 90% of applications to the Probate Office are queried on first examination;
- Introduction of legislation to simplify applications for small estates and to eliminate the requirement for a Grant of Representation in certain circumstances;
- Centralisation or regionalisation of the service;
- Review of staffing levels;
- The return of responsibility for checking the Inland Revenue Affidavit / High Court (Probate) Form CA24 to Revenue;
- Review opening hours of Probate Office;
- Development and delivery of a modular on-line Probate training course for all staff with Probate responsibilities;
- An urgent review of infrastructure, in particular the risk associated with poor storage facilities for original wills.

Having regard to the volume of postal applications and the time required to assess papers at the Seat Office counter the staff of the Probate Office suggest that consideration be given to restricting the personal service offered by the Seat Office. Such restrictions could range from closing the Seat Office to the public with only a drop-in box for applications together with the postal application option, an appointment system to discuss complex cases with practitioners, or reducing the opening hours of the Seat Office.

With regard to the **District Probate Registries**, 6 respondents suggested that the service could be improved by the development of on-line services and improvements in IT resources. 5 respondents suggested that staff training was an area for

improvement. 2 respondents suggested that succession planning was an area for improvement.

3 respondents suggested that more staff resources would improve the service in District Probate Registries while 4 respondents suggested that the redeployment of staff dealing with Probate to other court business presents a difficulty.

Other proposals for improvements suggested include:

- Standardisation of training for staff dealing with Personal Applicants;
- Greater availability of Probate office staff to assist District Probate Registries with queries;
- Creation of forum to share knowledge and to allow staff to upskill to deal with more unusual queries;
- Development of procedural manuals;
- Regular meetings in regions;
- Dedicated phone line;
- Assistance of outside agencies (e.g. Citizens Information Service) to assist personal applicants in completing application forms;
- Creation of local calendars as to availability of staff;
- Information meetings with local practitioners supported by Probate Office;
- Reversion to previous process in respect of Inland Revenue Affidavit / High Court (Probate) Form CA24;
- IT facility to generate monthly statistics.

Aspects of service which work well and should be retained

Question 2 asked respondents what aspects of the service work well and should be retained.

With regard to the Probate Office, 4 respondents suggested that the Office works well but is under resourced while 1 respondent observed that the Probate Office has been put under pressure due to staff shortages in District Probate Registries resulting in increased numbers of applications to the Probate office.

2 respondents expressed the view that the Probate Office provides great support and guidance to the staff of the District Probate Registries.

The staff of the Probate Office suggested that the following aspects of the Probate Office work well:

- The Personal Application service;
- The interaction of the General Office with personal callers and lay persons;
- The wide experience of staff in the Office;

- Copying of documents and search facilities;
- Access to office and public facilities in Phoenix House.

With regard to the District Probate Registries, 7 respondents suggested that the Probate service in District Probate Registries is working well but one respondent indicated that the service is under resourced while 1 observed that the length of time for the issue of a grant is dependent on the number of staff available.

2 respondents observed that the members of staff providing the Probate service are very experienced and knowledgeable. 3 respondents suggested that the Personal Application service worked well with 1 respondent remarking that it is resource intensive. 1 respondent suggested that the Personal Application service should be retained locally and the service to solicitors centralised.

One respondent expressed the view that the local District Probate Registry had very good communication with solicitors and personal applicants while 1 respondent expressed the view that all services should be retained in the Limerick local registry.

2 respondents referred to the IT system in the District Probate Registry as working well.

Potential for Technology in delivering Probate services

Question Three invited respondents' views on the role technology might play in the future delivery of Probate services. Fifteen respondents offered views on this question. All were positive on the role which technology might play, ranging from on-line search facilities, on-line requests for copy documents, on-line tracking facility for customers to on-line filing of applications for Probate and the generation of statistical reports.

The staff of the Probate Office considered that the current IT system which has been in place since 1984 is no longer fit for purpose, being slow, lacking functionality and searchability with little or no capacity to generate statistics which must be collected manually.

Respondents' other observations

Responses to this question identified a number of issues:

- High Court jurisdiction in relation to Probate matters should be given to the Circuit Court;
- Regionalisation of the District Probate Registries should be considered;
- Limit should be placed on the value of estates in respect of which the Personal Application service can be used;
- Provide on-line Personal application service where estates are less than €20,000;
- Given likely demand for court services in Kilkenny, consider the centralisation of the Probate service or decrease jurisdiction of Kilkenny District Probate Registry to County Kilkenny;

- Centralise all Probate applications;
- Deal with queries by email;
- Revenue to have facility to access Inland Revenue Affidavit / High Court (Probate) Form CA24;
- Review link between Probate Office and District Probate Registries – Probate Office needs to engage with office managers regarding changes or resource allocations required for District Probate Registries;
- Probate requires greater priority in District Probate Registries;
- Improve website;
- Simplify new form of Inland Revenue Affidavit / High Court (Probate) Form CA24;
- Probate should be considered a core service;
- Probate Service is more than self-financing and therefore should be prioritised in terms of resources;
- Failure to properly resource District Probate Registries puts unnecessary pressure on the Probate Office;
- Lack of county registrar results in delays in signing grants;
- Training of both staff and legal practitioners is essential to a properly functioning Probate system;
- All District Probate Registrar posts must be filled to ensure a properly functioning service locally and to relieve pressure on the Probate Office.

4. POTENTIAL FOR PROCESS IMPROVEMENT AND REFORM AND DEVELOPMENT OF ICT

The Review Group addresses in this Chapter a range of measures – structural, legislative and process-related - which it considers should lead to expediting of the processing of applications for grants of representation and non-contentious Probate matters generally. During the course of its deliberations, the Review Group was pleased to note that steps have been taken by the Probate Office to introduce efficiencies in its processes which have already led to reductions in waiting times for issuing of grants. Those steps are also recorded in Part I of this Chapter.

I. Improvement of existing Business Processes

A. Review of existing business processes and immediate improvements

Attention is given in Part III of this Chapter to the potential for improvement of processes which a modernised Probate services ICT platform could deliver. However, any ICT solution should neither precede nor delay the streamlining of existing business processes.

Pending such an upgrade to the Probate ICT system, the Review Group notes that the Probate Office has recognised the need to improve processes within the existing paper based system and since the commencement of this Report, the Change Management Unit (CMU) in the Courts Service has made its business process review expertise available to that Office to that end.

The CMU assisted the Probate Office in mapping the main processes across the Probate Office and District Probate Registries service. Process maps for the two areas are respectively appended at **Parts A and B of Appendix 2**. The information required to populate the process maps was gathered through one on one interviews with key personnel in the Probate Office, and from a designated representative from the District Probate Registries.

Ultimately, this process review identified a range of issues impeding the capacity of the Probate Office and the District Probate Registries to process applications for Grants optimally and expeditiously, in particular -

- duplication in checking of non-complex applications for Grants by both management and the Higher Executive Officer cadre
- duplication in the practice of requiring two original sworn Inland Revenue Affidavit / High Court (Probate) Form CA24 with every grant application
- inefficiencies generated by the various channels – counter lodgments, drop-in box and postal lodgments - by which applications are received by the Dublin Probate office
- the high incidence of defects in applications received by solicitors leading to multiple visits to the office to correct errors
- inefficiencies and duplication in the interaction between the District Probate Registries and the Probate Office in relation to the approval of Grants for issue and the daily searches required to issue same.

Arising from this review, and during the course of the Review Group's deliberations, the following business process changes have been implemented within the Probate Office which have already led to a reduction in waiting times from 24 weeks at the commencement of the Review Group's deliberations:

1. A fast tracking procedure for less complex grants has been introduced

Higher Executive Officers in the Probate Office have been given authority to approve for signing applications which are not complex in nature. While the statutory authority remains with the Probate Officer/Assistant Probate Officer to sign the Grant on the date of issue, removal of final scrutiny of all applications for Grants by management has assisted in minimising delays in the issue of Grants.

2. The requirement to lodge an original Inland Revenue Affidavit / High Court (Probate) Form CA24 in duplicate has been discontinued

The requirement on Solicitors/Personal Applicants to swear two original Inland Revenue Affidavit / High Court (Probate) Form CA24 has been modified since the 1st August 2017, Revenue receiving an original since that date and the Probate Office retaining a copy only. Given that this Inland Revenue Affidavit / High Court (Probate) Form CA24 is a 20 page document, the scrutiny of two originals in the same case to ensure consistency in content represented a significant time investment in this process by probate staff and contributed to a slow down in the examination of grant applications. The new arrangement whereby one original Inland Revenue Affidavit / High Court (Probate) Form CA24 together with a certified copy of the original affidavit has seen a reduction in the time it now takes to examine the legal documentation for a Grant and this in turn will eventually minimise delays in the issue of the Grant.

3. Setting of timeline for elimination of backlog

With the restoration of a full active staffing complement to off-set illness-related staff absences and departures from the Probate Office due to retirement etc, that Office has recently been in a position to set a target date of end of June 2018 for elimination of its existing backlog as follows:

- for solicitor-prepared applications, based on an assumption of (a) a five week timeframe standard for checking, drafting and issuance of a query-free grant application, (b) a backlog of 1,519 cases³⁸, and (c) maintenance of a full (100%) case clearance rate³⁹ for incoming grant applications. The weekly case turnover required to meet this target would be approx. 205 cases
- for applications by personal applicants, based on (a) a ten to twelve week timeframe standard for checking, drafting and issuance of the application, (b) a backlog of 625 cases⁴⁰ and (c) maintenance of a full (100%) case clearance rate⁴¹ for incoming

38 see Part IV (Caseload and caseflow) in Chapter 2.

39 The case clearance rate = $\frac{\text{No. of resolved cases in designated time period}}{\text{No. of incoming cases in the same period}}$

40 see Part IV (Caseload and caseflow) in Chapter 2.

41 The case clearance rate = $\frac{\text{No. of resolved cases in designated time period}}{\text{No. of incoming cases in the same period}}$

grant applications. The weekly case turnover required to meet this target would be approx. 38 cases.

B. Channels for lodgment of grant applications

Reference has been made in Part III (The Probate Process) of Chapter 2 to the introduction in the Probate Office of postal, DX and drop-in box lodgments in 2012. These changes necessitated redeployment of existing staff within the context of existing staff resources and the statutory obligation under the Superior Courts Rules to be open for business from 10am to 4.30pm on a daily basis.

From 2012, four HEOs, provided this service,. In October 2016, an additional Higher Executive Officer was appointed to the Probate Office. However, the Probate Office has been affected by a significant reduction in resourcing in recent years due to long term illnesses, impacting on levels of service to solicitors and personal applicants. In November 2017, additional personnel resources were committed to the Probate Office , of whom a HEO was assigned to the Seat Office. Three of the HEOs assigned to the Seat Office work a four day week.

The Review Group understands that, on a daily basis, a minimum of two persons must be available (other than at lunchtime) to attend to solicitors and law agents who attend the office in person. The remaining HEOs deal with the postal applications and the drafting of Grants for issue and the Personal Applicant section of the office (if difficulties arise in that area). Where absences arise due to illness or scheduled leave, there is an onus on the Probate Office to give priority to the counter service which leads to a diminution in the time which can be allocated to postal applications.

Over time, this has resulted in delays in attending to the postal applications and as of the 9th of February 2018, a total of 486 postal applications lodged since the 7th September 2017 await examination. In contrast, the solicitor or law agent who has lodged his/her application in person receives immediate service.

Furthermore, diversion of Seat Office staff to supplement that office's counter service extends to those charged with the drafting of grants in applications already examined and passed for issue of a grant. This regularly results in the build up of a "bottle neck" of checked applications awaiting the preparation of a grant for forwarding to Probate Office management for signing, and interruption to the normal throughput of issued grants.

The Review Group is further convinced that the onus on the Probate Office to provide a two tiered system of service results in an inequity in the system with those using the counter service having an advantage over those Solicitors who chose to use the postal /DX/ drop-in box method of lodgement.

The Review Group recommends that consideration be given to amending Order 79 so as to confine lodgement of applications for grants to the postal /DX/ drop-in box" method. Such a change would allow the Probate Office to manage its time, caseload and throughput as well as its staff resources in a productive and efficient

manner, create more equity and provide a better overall service to practitioners and the public than with the current two tiered system.

The Review Group is conscious of practitioners' concerns that the removal of the Seat Office counter service would reduce their ability to engage with the Probate Office in circumstances where some respondents to the survey reported difficulties in reaching the office by telephone to ask questions or address queries raised. Any discontinuance of that service should be predicated on a commitment by the Probate Office and Courts Service management to provide

- a dedicated phone service available throughout normal office hours, staffed by experienced personnel;
- a dedicated email query service with a commitment to respond to queries within standard timelines; and
- an interview appointments system in the Probate Office for discussion of more complex queries or issues.

C. Queries handling

It would seem from the high query and rejections rates on grant applications and the queries analysis undertaken by the Probate Office, considered at Part V of Chapter 2, that some practitioners and law clerks are not availing of the information provided, in particular through the Probate Office and Revenue web pages designed to assist them in submitting correct and complete applications.

It is not clear that this is in any way attributable to the positioning of the information - in particular that within the Probate Office section of the Courts Service website. To the extent, however, that this may in any way be a factor leading to practitioners' lack of familiarity with common sources of query on grant applications, the Review Group recommends that the "Rejected applications: most common reasons" page within the website be directly accessible via a link from the Probate Home Page, and that notices containing the list of issues on this page be prominently displayed in all public offices handling Probate services.

II. The District Probate Registries

A. Communications between the Registries and the Probate Office

The cumulative effect of the primary legislation and rules of court examined at Section I of Chapter 2 above is that the District Probate Registries are in daily contact with the Probate Office in Dublin regarding all applications made to each District Probate Registry, and no Grant may issue in a District Probate Registry unless that application is first cleared by the Dublin Probate Office in the 24 hour period prior to the issue of the grant of representation in the estate in question.

A key element of this relationship is the requirement in law that only one grant of representation giving full authority to an individual/s to administer a deceased person's estate may exist at any point in time. (limited grants in respect of the said estate may exist but these are issued under an order of the court). Therefore, if an application for a grant is made to a District Probate Registry, the registry must be satisfied that no prior Grant issued, and that no other application has been made, in relation to the estate. To

determine this, checks must be made with the Dublin Probate Office as all Registries are under a legal imperative to inform Dublin of the position. This is the rationale for the notification process created by statute.

Technological advances facilitated the creation of an IT platform in the 1980s whereby all probate data pertaining to applications for Grants of Representation in deceased persons' estates, which traditionally was held manually, was now captured on a database (Lotus Notes). This facility rendered superfluous the transmission of notices as envisaged by the Succession Act. All data became immediately accessible to all probate registries and staff, irrespective of their physical place of work, enabling them to ensure that:

- (i) no grant had already issued in the estate or
- (ii) no other application for a Grant had been made in the same estate.

While the Electronic Commerce Act 2000 now facilitates the transmission of information and storage of information previously required to be given and retained in writing⁴², consideration should be given to whether a need remains to require the District Probate Registries to notify the Probate Office of transactions, as distinct from requiring those registries and the Probate Office to input data to a central database registering grant applications, caveats and other procedural steps. Section 36 of the Succession Act should be amended accordingly.

B. *Allocation of functions between the registries and the Probate Office*

Aside from the method of communication between the registries and the Probate Office, the framework created by Order 80 RSC has created a requirement for District Probate Registrars to defer to the Probate Officer in Dublin in decision making regarding the validity of a will and/or the legal entitlement to extract a Grant in an estate. As a consequence, the District Probate Registries are highly dependant on the Probate Office in the execution of their duties on a daily basis. At a practical level, this manifests itself as follows:

1. Prior to applications being made for a Grant, where issues of uncertainty arise regarding a will or the legal entitlement to extract a Grant in an estate, the documents are transmitted to Dublin by District Probate Registry staff for a decision;
2. When an application is made in an estate to a District Probate Registry and the appropriate Grant is drafted in said estate by the District Probate Registry staff, each and every such application and draft is transmitted via the Lotus Notes system to the Dublin Probate Office. On occasion this application is supported by background documentation which is forwarded by fax. Each draft grant with supporting documentation (if any) is then examined to determine that the will is valid and the legal entitlement to extract the grant is clearly established on the face of the Grant;
3. All orders required under Order 80 to be made to facilitate the issue of a grant in a District Probate Registry must be made by the Probate Officer.

⁴² See Part 2 (Legal Recognition and Non-Discrimination in respect of Electronic Signatures, Originals, Contracts and Related Matters) of the 2000 Act.

Hence, although an application may be made to the District Probate Registry, a considerable degree of the decision making and all “sign off” on grants from the registries is completed in the Dublin Probate Office.

As a result, significant management time in the Probate Office must be devoted to District Probate Registry business – time which could more productively be expended in approving draft grants lodged in Dublin for issue.

The Review Group has examined Order 80 RSC and identified 32 provisions within that Order providing variously for the exercise by the Probate Officer of functions in relation to grant applications lodged with the District Probate Registries and requirements for notification and transmission of documents from those registries to the Probate Office which it considers should either be amended or revoked so as to remove the involvement of the Probate Office. Those provisions and the associated conclusions are set out in **Appendix 5**.

C. Rationalisation of the District Probate Registry network

The Table at **Appendix 1** shows the distribution of the Probate caseload across the network in 2016, together with population served, waiting times for issuance of grants and staff resourcing for the Office or Registry concerned.

12 of the 14 District Probate Registries are overseen by sitting District Probate Registrars and the District Probate Registrar’s function in the two remaining registries - Sligo and Kilkenny – is being discharged by other District Probate Registrars on a temporary basis.

The Review Group considered in detail the disparities across District Probate Registries in caseload, case throughput and staffing levels in Part IV (Caseload and caseflow) of Chapter 2.

In light of those variables a case exists for some rationalisation of the service across the Registries, in the process aligning District Probate Registry resources more closely with caseload. Options include –

1. centralising Probate Services;
2. assessing the viability of reducing /refining the number of District Probate Registries;
3. devolving Probate business originating in districts back to the District Probate Registries;
4. replacing the existing Probate services network with on line systems and services.

The Review Group consulted with County Registrars who are appointed District Probate Registrars in relation to the proposed changes. District Probate Registrars consulted supported the approach of devolving “standard applications” to District Probate Registries. However, they raised a number of concerns in this context, in particular:

- *Training and consistency of practice across registries:* The discharge of the Probate function relies on the consistent daily availability of a trained person at

EO level to manage the day to day processes together with a clerical officer to input and deal with applications. The function requires specialist knowledge. The current position is that with retirements and promotions this specialist knowledge is depleted. No formal training structure for District Probate Registry staff currently exists. Such a structure should be an essential element in the roll out of any reformed District Probate system.

- *Resources:* For the reallocation of work to be effective there must be a commitment to fully resource the District Probate Registries. The current situation is that the Probate sections of an office tend to be allocated only after all other areas are resourced. Provision of Probate services must be incorporated into each office's strategic plan. Specific staff must be assigned to Probate work as was successfully implemented on the introduction of Insolvency work to local offices.

As to **options 1 and 2** enumerated above, the Review Group's survey of external customers examined in Chapter 3 indicated that a very strong body of support exists among legal practitioners for the maintenance of Probate services at a local level – based both on proximity of the facility and shorter waiting times for issue of grants. Furthermore, the fact that in many District Probate Registries Probate staff carry out other functions in the Combined Court Office places a limitation on the potential for redeployment of personnel resources between District Probate Registries.

In view of these considerations, the Review Group decided against recommending a centralisation or systemic rationalisation of District Probate Registry venues at present. However, the Review Group envisages that the introduction of a comprehensive on-line filing of grant applications as envisaged in its recommendations at Section C of this Chapter will have the effect of driving business from District Probate Registries and the Probate Office, and thereby strengthen the case for rationalisation of District Probate Registry services and, ultimately, the establishment of a centralised Probate service delivery model.

The Review Group notes that Sligo Probate Registry, which serves the counties of both Sligo and Leitrim and has had no resident District Probate Registrar for some considerable period of time, is being supported by the County Registrar for Donegal. Given the population served by Sligo registry – serving 65,535 in Sligo and 32,044 in Leitrim, with a total of 303 grant applications filed and 307 issued in 2016 - the Review Group considers that the Sligo Registry business should be absorbed into the Castlebar Registry, Leitrim applications to be transferred to the Cavan Registry.

The Review Group sees an opportunity to consider further rationalisation of the Registries and increasing the viability of other venues on the future retirement of District Probate Registrars, and recommends that the designation of registry venues be reviewed as retirements arise, in light of caseload and resourcing needs and priorities.

As to **option 3**, reference was made in Part I (Legislative framework) of Chapter 2 to section 35(1) and (2) of the Succession Act 1965 which specifies the territorial rules governing lodgement of applications for grants and revocations, which may be made

either to the Probate Office or to the District Probate Registry for the district where the deceased, at the time of his death, had a fixed place of abode.

The Review Group has commented in Part V (Caseload and caseflow) on the imbalance between caseloads between District Probate Registries and in particular between District Probate Registries and the Probate Office in Dublin, which latter, while serving 28.2% of the State's population, processed over 50% of grant applications in 2016. While appreciating the concerns raised by the District Probate Registrars, the Review Group does consider that an amendment to section 35(1) of the 1965 Act would enable the Probate Office to divert applications to a District Probate Registry where this would offer a prospect of earlier issue of the grant.

The Review Group emphasise that such a facility for redistribution of caseload should enable District Probate Registry resources to be optimised.

The amendment to section 35(1) recommended is as follows (revisions underlined):

“35. (1) Subject to subsection (1A), an application for a grant or revocation of representation may be made to -

(a) the Probate Office or

(b) the District Probate Registry for the district where the deceased, at the time of his death, had a fixed place of abode.

(1A) Subject to section 36, any application made to the Probate Office which was capable of being made to a District Probate Registry under subsection (1)(b) may be remitted by the Probate Officer to that District Probate Registry, to be dealt with at that registry, where the Probate Officer considers that the application could by such remission be more expeditiously dealt with.”

Option 4 is addressed in more detail in the next Part of this Chapter.

III. Potential for ICT in introducing efficiencies/improving services

A. *The existing ICT environment*

The Probate process in this jurisdiction is predominantly paper-based, though supported by a Lotus Notes system developed in the 1980s and pre-dating the establishment of the Courts Service. The system has been enhanced over the years and it now provides the following principal functionality:

- recording and tracking of the status of applications for grants of representation;
- generation and storage of a range of template letters;
- generation and storage of grants of representation;
- recording receipt of other documents/filings affecting an application for a grant of representation, such as caveats and court motions;
- A searchable register of grants;
- some reporting and statistical functionality.

Each District Probate Registry operates a standalone Lotus Notes database, with replication between the District Probate Registry databases and that in Dublin

occurring at regular intervals (approximately every 20 minutes) daily so that each registry has a complete database of all records held by the system.

The Lotus Notes system is a legacy system with many limitations:

- it does not have a single case record/unique identifier per deceased person under which all activity relating to an estate is recorded. A particular deceased could have multiple case records/record numbers making it difficult to easily obtain a complete picture of all activity relating to that particular estate. This is especially true in cases of common names e.g. John Murphy
- the absence of a single case record per deceased also leads to duplication of data and effort e.g. the same information about the deceased person is keyed in each time an application for a Grant is made, a caveat is filed or a court motion etc. is filed. In respect of estates where there is a lot of activity this can amount to a substantial amount of re-keying of the same information;
- over- reliance on human intervention e.g. the system does not prevent the issue of a Grant where there is an impediment in place. The user must identify the impediment him/herself by careful examination of records returned through a search facility. Errors occurring herein leave the Courts Service open to a significant risk of being sued;
- the system does not cover all areas of office activity, entailing that Probate Office management cannot fully rely on case information extracted from it for the purpose of management reports and responses to individual inquiries concerning estates;
- technical and other issues e.g. instances of unusual search results, duplicate numbers, no audit trail, limited reporting capability and lack of system documentation;
- poor capacity for capturing statistics.

It should also be noted that Revenue, which as already noted in this Report is a key partner with the Courts Service in the delivery of the Probate service across the jurisdiction, operates a highly advanced ICT platform for delivery of its many services to the public. The Probate aspect of its business does not, however, benefit from this platform due to the limitations of Probate services ICT system. At this point in time, the Inland Revenue Affidavit (Probate) Form CA24 is transmitted in paper form to Revenue when the Grant of Representation issues in a deceased person's estate and details regarding the issue of the Grant are thereafter shared electronically between the Courts Service and Revenue. This hybrid approach is not satisfactory. The absence of a comprehensive ICT solution integrating these two aspects of the grant application leads to a degree of duplication and delay in the handling of both elements of the process and ultimately to delays in the issuing of grants of representation to next of kin.

In addition to supporting the Probate and Revenue functions, information held by the Probate Registries is of value to a number of other Government bodies including the Department of Social Protection, the National Archives, the Charities Regulator, the Health Service Executive and the Property Registration Authority. At present, given the constraints of the Probate services IT system, limited electronic data-sharing arrangements are in place with the HSE, the Department of Social Protection and

Revenue. The Review Group understands that the Charities Regulator has signalled to the Probate Office its intention to move to an electronic version of its Charitable Bequest form and this is welcomed by the Courts Service. An enhancement of the Probate services ICT platform is overdue.

As will be apparent from Chapter 3 of this Report, responses both from external and internal stakeholders in the survey undertaken for the purpose of the Review Group's report indicated significant agreement on the particular benefits which technology can generate in the delivery of Probate services. The Review Group take the view that this is the primary imperative in the delivery of a modern Probate service to next of kin of deceased persons.

To this end, the Review Group recommends a comprehensive ICT solution serving both the Probate network and Revenue requirements encompassing the following:

1. On-line filing of
 - applications for grants including the Inland Revenue Affidavit / High Court (Probate) Form CA24 or any variation of same, oath and other supporting documents for Grants of Representation
 - caveats
 - warnings
 - appearances to warnings
 - citations
 - motions and affidavits.
2. The functionality at 1 would include
 - data entry procedures employing options, sequencing and validation to (a) reduce or eliminate repetition of data inputted and (b) the incidence of error in completion of forms and
 - an automatic calculator function for addition /subtraction of amounts etc.
3. On-line searchable Public Register of applications for grants or caveats
4. Access by Revenue to the Inland Revenue Affidavit/ High Court (Probate) Form CA24 or the variation thereof and any corrective affidavit(s).
5. Automated print out (and, optionally, electronic issuance) of grants, warnings and other notices
6. Case management of court applications including standard case management functions including generation of court lists, orders, notices and correspondence
7. Electronic payment facility for discharge of court fees (including filings and electronic searches).
8. Generation of caseload and caseload reports, and other management information.

The operation of an on-line facility for lodgement of grants may not, in the view of the Review Group, generate the desired benefits in terms of expedition of process and

optimising of resources if it were expected that it would operate in parallel with the traditional hard copy lodgement facility, although production and storage of hard copy original wills in support of on-line applications will continue to be required.

The Review Group is of the view that, subject to the exception aforementioned and after provision for an appropriate transitional period and allowing for exceptional circumstances such as the possibility of temporary systems outage, on-line filing of grant applications should be offered as the exclusive means of processing applications for grants of representation.

The Courts Service and Revenue are committed to co-operating in the development of such a solution and management teams from both organisations, including their respective ICT departments, have in the context of this Review explored the options for such collaboration. Courts Service management acknowledges the commitment of Revenue, expressed at the most senior level, to supporting the development of a system meeting the needs of the customers of both organisations.

To that end, Courts Service and Revenue, with their respective ICT departments, explored the options for provision of such a system. These included in particular:

1. hosting and maintenance by Revenue of a new eProbate web application which would collect the required data for an application for probate and would transfer in real-time or as part of a batch process the data to both internal Revenue and Probate Office systems. Using this option, it was considered that solicitors might use the Revenue On-line System (ROS) authentication scheme to login to the system, with which most practitioners would be familiar from filing Capital Acquisition Tax returns. The relevant data required by Revenue for the administration of the estate and beneficiary tax liabilities would subsequently be electronically transferred to Revenue once a grant of representation had issued.
2. leveraging of the Courts Service's existing case management and e-filing platform Courts Service On Line (CSOL). CSOL is a single, cross jurisdictional web-based case management system with the capacity to cater for the requirements for a revised Probate system. CSOL has been developed on a core structure and processes that enable online applications, case management, payment facilities for individuals and companies, court listings, capturing results, reporting, notifications to interested parties, online register and document creation while also providing the functionality to upload documents. Furthermore, web services have been developed to cater for the electronic exchange of information with other public services and external companies. The application also provides for public access to an on-line eLegal Diary, with the potential to provide other functions such as public search (similar to High Court Search).

Insofar as the second of these options is concerned, the Courts Service's ICT strategy envisages the extension of e-filing to a range of categories of litigation, including litigation which may currently involve the adducing of affidavit evidence. To facilitate this, provision has been included in the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017 for a "statement of truth" to substitute for

evidence given or a document or information verified by an affidavit or a statutory declaration. The draft legislation, inter alia, provides that a statement of truth -

- may be in electronic form;
- shall contain a statement that the person making the statement of truth believes that the facts stated therein are true; and
- may be signed by the person making it by that person entering his or her name on an online form.

A statement of truth could be made -

- by a party in the proceedings concerned or on his or her behalf by a solicitor acting for that party in those proceedings;
- by a solicitor on his or her own behalf where that solicitor is acting for a party in the proceedings concerned; or
- by a solicitor on behalf of a person who has served or delivered a document in the proceedings concerned, where that solicitor is acting for a party in those proceedings.

Where a statement of truth is made by a solicitor on behalf of another person, the solicitor would require, before making the statement, to -

- obtain permission to make the statement of truth from the party or person on whose behalf it is being made;
- explain to the party or person concerned that in making the statement of truth the solicitor will be confirming by that statement that the party or person concerned honestly believes that the contents of the statement of truth are true; and
- inform the party or person on whose behalf the statement of truth is being made of the consequences for a person to make or cause to be made a false statement in a statement of truth without an honest belief in its truth.

Reference has been made in Part III (The Probate Process) of Chapter 2 to the amendments to the CAT legislation in 2010 which would permit the submission to the Probate Office of the Inland Revenue Affidavit / High Court (Probate) Form CA24 and associated documents by their simultaneous transmission in electronic form to that Office and to Revenue. The introduction of a statement of truth as a dematerialised substitute for an affidavit would afford an opportunity to develop an alternative to the Inland Revenue Affidavit / High Court (Probate) Form CA24 by way of a “smart” report form having the same effect.

This also presents an opportunity to compose a more generic Inland Revenue Affidavit / High Court (Probate) Form CA24 with the underlying objective of moving away from the requirement to furnish different formats of same depending on the date of death of the deceased person.

Having considered the options, and having regard in particular to the fact that the greater part of the functionality required of a new system serves Probate Registry case processing requirements, Courts Service and Revenue are in agreement that the existing Courts Service case management system, CSOL, offers the most appropriate

platform for development of an ICT solution for grant applications and the Revenue element of the process as well as other cross-agency requirements.

To that end, Courts Service and Revenue have indicated their willingness to participate jointly in project management of the analysis, design, development and implementation phases of a system integrating Probate Registry and Revenue requirements, as well as serving other agency requirements.

The Review Group recommends that a Project be formally established for this purpose, adhering to the project management methodology employed by the Courts Service for ICT projects. The Courts Service operates the PRINCE 2 (Projects in Controlled Environments) methodology in managing ICT projects. It is envisaged that the Project would be overseen by a joint Project Steering Group including one Courts Service and one Revenue representative at Assistant Secretary level, which Group would report respectively to the Courts Service's ICT Governance Committee and its Revenue counterpart. Management of execution of the analysis, design, development, user testing and implementation stages of the project would be the responsibility of a Project Board – reporting to the joint Steering Group - consisting of the Courts Service project sponsor and business representatives of the Probate Office and District Probate Registries Revenue and other agencies, Courts Service ICT, Courts Service Change Management Unit representative and the development contractor. Execution of the project stages aforementioned would be the responsibility of the Project Team, consisting of a project manager, business expert, systems analyst, systems architect, developer and business tester(s).

The Review Group considers that, ideally, a timescale of 18 months from finalising and approval of the business case and project initiation document to implementation should be set for the project. Courts Service representatives on the Review Group propose that the business case and project initiation document be completed by the end of third quarter of 2018, This would envisage completion of the ICT solution by the end of the first quarter of 2020.

5. Summary of Conclusions and Recommendations

The conclusions and recommendations following are presented in the sequence in which they appear in the preceding chapters of the report: that sequencing is not indicative of the priority attaching to any individual conclusion or recommendation.

I. Improvement of existing Business Processes

Review of existing business processes and immediate improvements (pages 47 to 49)

1. The Review Group notes and commends various process improvements implemented in the Probate Office during the course of its deliberations, including

- a fast tracking procedure for less complex grants and
- removal of the requirement to lodge an original Inland Revenue Affidavit / High Court (Probate) Form CA24 in duplicate
- the setting of a timeline of end June 2018 for elimination of the Probate Office's backlog of applications for grants, in light of the recent assignment of additional personnel to the Office to address absences due to long-term illness.

Channels for lodgement of grant applications (pages 49 to 50)

2. The Review Group recommends that consideration be given to amending Order 79 so as to confine lodgement of applications for grants to the postal /DX/ drop in box" method. Such a change would allow the Probate Office to manage its caseload and throughput as well as its staff resources in a productive and efficient manner, and provide a better overall service to the public than does the current two tiered system.

3. The Review Group is conscious of practitioners' concerns that the removal of the Seat Office counter service would reduce their ability to engage with the Probate Office in circumstances where some respondents to the survey reported difficulties in reaching the office by telephone to ask questions or address queries raised. Any discontinuance should be predicated on a commitment by the Probate Office and Courts Service management to provide

- a dedicated phone service available throughout normal office hours, staffed by experienced personnel
- a dedicated email query service with a commitment to respond to queries within standard timelines, and

an interview appointments system in the Probate Office for discussion of more complex queries or issues.

Queries handling (page 50)

4. The Review Group recommends that the "Rejected applications: most common reasons" page within the website be directly accessible via a link from the Probate Home Page, and that notices containing the list of issues on this page be prominently displayed in all public offices handling Probate services.

II. The District Probate Registries

Communications between the Registries and the Probate Office (pages 50 to 51)

5. While the Electronic Commerce Act 2000 now facilitates the transmission of information and storage of information previously required to be given and retained in writing⁴³, consideration should be given to whether a need remains to require the District Probate Registries to notify the Probate Office of transactions, as distinct from requiring those registries and the Probate Office to input data to a central database registering grant applications, caveats and other procedural steps. Section 36 of the Succession Act should be amended accordingly.

Reallocation of functions between the Registries and the Probate Office (pages 51 to 52)

6. The Review Group has examined Order 80 RSC and identified 32 provisions within that Order providing variously for the exercise by the Probate Officer of functions in relation to applications for grants lodged with the District Probate Registries and requirements for notification and transmission of documents from those registries to the Probate Office which it considers should either be amended or revoked so as to remove the involvement of the Probate Office. Those provisions and the associated conclusions are set out in **Appendix 5**.

Rationalisation of the District Probate Registry network (pages 52 to 54)

7. The Review Group's survey of external customers indicated a very strong body of support among legal practitioners for the maintenance of Probate services at a local level – based both on proximity of the facility and shorter waiting times for issue of grants. Furthermore, the fact that in many District Probate Registries Probate staff carry out other functions in the Combined Court Office places a limitation on the potential for redeployment of personnel resources between District Probate Registries. In view of these considerations, the Review Group decided against recommending a centralisation or systemic rationalisation of District Probate Registry venues at present.

8. However, the Review Group envisages that the introduction of a comprehensive on-line filing of grant applications as envisaged in its recommendations at Section C of this Chapter Part will have the effect of driving business from District Probate Registries and the Probate Office, and thereby strengthen the case for rationalisation of District Probate Registry services and, ultimately, the establishment of a centralised Probate service delivery model.

9. The Review Group considers that the Sligo Registry business should be absorbed into the Castlebar Registry, Leitrim applications to be transferred to the Cavan Registry.

10. The Review Group sees an opportunity to consider further rationalisation of the Registries and increasing the viability of other venues on the future retirement of District Probate Registrars, and recommends that the designation of registry venues be reviewed as retirements arise, in light of caseload and resourcing needs and priorities.

⁴³ See Part 2 (Legal Recognition and Non-Discrimination in respect of Electronic Signatures, Originals, Contracts and Related Matters) of the 2000 Act.

11. The Review Group considers that section 35(1) of the 1965 Act should be amended

- to enable an application for a grant or revocation of representation to be made to -
(a) the Probate Office, or
(b) the District Probate Registry for the district where the deceased, at the time of his death, had a fixed place of abode
- to enable the Probate Officer to remit any application made to the Probate Office which could have been made to a District Probate Registry may be remitted to that District Probate Registry, to be dealt with at that District Probate Registry, where the Probate Officer considers that the application could by such remission be more expeditiously dealt with

Such a facility for redistribution of caseload should enable District Probate Registry resources to be optimised..

III. Potential for ICT in introducing efficiencies/improving services (pages 54 to 59)

12. The Review Group recommends that a comprehensive ICT solution serving both the Probate network and Revenue requirements encompassing the following is advised:

(a) On-line filing of

- applications for grants including the Inland Revenue Affidavit / High Court (Probate) Form CA24 or any variation of same, oath and other supporting documents for Grants of Representation.
- caveats
- warnings
- appearances to warnings
- citations
- motions and affidavits.

The functionality at 1 would include -

- data entry procedures employing options, sequencing and validation to (a) reduce or eliminate repetition of data inputted and (b) the incidence of error in completion of forms and
- an automatic calculator function for addition /subtraction of amounts etc.;

(b) On-line searchable Public Register of applications for grants or caveats;

(c) Access by Revenue to the Inland Revenue Affidavit / High Court (Probate) Form CA24 or the variation thereof and any corrective affidavit(s);

(d) Automated print out (and, optionally, electronic issuance) of grants, warnings and other notices;

(e) Case management of court applications including standard case management functions including generation of court lists, orders, notices and correspondence;

- (f) Electronic payment facility for discharge of court fees (including filings and electronic searches);
- (g) Generation of caseload and caseflow reports, and other management information.

13. The introduction of a statement of truth as a dematerialised substitute for an affidavit - already planned to be introduced to support e-filing in litigation and awaiting legislative provision - would afford an opportunity to develop an alternative to the Inland Revenue Affidavit / High Court (Probate) Form CA24 by way of a “smart” report form having the same effect.

14. This also presents an opportunity to compose a more generic Inland Revenue Affidavit / High Court (Probate) Form CA24 with the underlying objective of moving away from the requirement to furnish different formats depending on the date of death of the deceased person.

15. As an on-line facility for lodgement of grants may not generate the desired benefits in terms of expedition of process and optimising of resources if operating in parallel with the traditional hard copy lodgement facility, the Review Group is of the view that - subject to the need for production and storage of hard copy original wills, after provision for an appropriate transitional period and allowing for exceptional circumstances such as the possibility of temporary systems outage - on-line filing of grant applications should be offered as the exclusive means of processing applications for grants of representation.

16. The Review Group notes that the Courts Service and Revenue are committed to co-operating in the development of such a solution and management teams from both organisations, including their respective ICT departments, have in the context of this Review explored the options for such collaboration.

17. The Review Group notes that Courts Service and Revenue are in agreement that the existing Courts Service case management system, CSOL, offers the most appropriate platform for development of an ICT solution for grant applications and the Revenue element of the process as well as other cross-agency requirements.

18. The Review Group notes that Courts Service and Revenue have indicated their willingness to participate jointly in project management of the analysis, design, development and implementation phases of a system integrating Probate registry and Revenue requirements, as well as serving other agency requirements.

19. The Review Group recommends that a Project be formally established for this purpose, to be overseen by a joint Project Steering Group including one Courts Service and one Revenue representative at Assistant Secretary level, which Group would report respectively to the Courts Service’s ICT Governance Committee and its Revenue counterpart.

20. Management of execution of the analysis, design, development, user testing and implementation stages of the project would be the responsibility of a Project Board – reporting to the joint Steering Group - consisting of the Courts Service project sponsor

and business representatives of the Probate Office and District Probate Registries, Revenue and other agencies, Courts Service ICT, Courts Service Change Management Unit representative and the development contractor. Execution of the project stages aforementioned would be the responsibility of the Project Team, consisting of a project manager, business expert, systems analyst, systems architect, developer and business tester(s).

21. The Probate Office considers that, ideally, a timescale of 18 months from finalising and approval of the business case and project initiation document to implementation should be set for the project, the business case and project initiation document to be completed by the end of third quarter of 2018, This would envisage completion of the ICT solution by the end of the first quarter of 2020.

APPENDIX 1

A. Caseload and Caseflow, Probate Office Dublin and District Probate Registries 2016

Registry	Counties served	Population served	No of Grant Applications	No of Grants issued	Grants received/ issued as percentage total grants received/ issued	Waiting Time (Weeks) SOLR AIP	No of caveats lodged	No of staff doing Probate work and % of time*
Castlebar	Mayo	130507 2.7%	605	571	3.5% / 3.58%	4 2	17	1 EO – 75% 1 CO – 50%
Cork	Cork	542868 11.4%	1722	1513	10% / 9.5%	13 13	35	1 EO – 100% 1 CO – 100% 1 CO – 20%
Clonmel	Tipperary	160441 3.36%	372	280	2.10% / 1.7%	2/3 N/A	7	1 EO – 100%
Cavan	Cavan, Longford	76176+ 40873= 117049 2.45%	270	285	1.5% / 1.7%	16/18 20	5	1 AP – 20% 1 CO – 20%
Dublin	Nationwide	1347359 28.2%	8705	8054	50.80% / 50.5%	20 (complex) 8 (simple)		
Dundalk	Louth, Monaghan	128884+ 61386= 190270 3.99%	575	533	3.30% / 3.3%	11 6	3	1 CO – 100%
Galway	Galway, Roscommon	258058+ 64544= 322602 6.77%	624	546	3.60% / 3.4%	14/16 14/16	17	1 EO – 75% 1 CO – 75%

Kilkenny	Kilkenny, Carlow, Laois	99232+ 56932+ 84697= 240861 5.05%	609	579	3.50% / 3.6%	12/14 12/14	13	1 EO – 95% (4 day wk)
Letter-kenny	Donegal	159192 3.3%	200	233	1.10% / 1.4%	14 8/9	11	1 EO – 10% 1 CO – 10%
Limerick	Limerick, Clare.	194,899+ 118817= 313716 6.58%	1216	1127	7.10% / 7%	6/8 2/4	29	1 EO – 90% 1 CO – 100%
Mullingar	Westmeath, Offaly	88770+ 77961= 166731 3.5%	403	330	2.30% / 2%	18/20 24/32	10	1 EO – 70%
Sligo	Sligo, Leitrim	65535+ 32044= 97579 2.04%	303	307	1.70% / 1.9%	18/20 12/14	11	1 EO – 75%
Tralee	Kerry	147707 3.1%	660	723	3.80% / 4.5%	5 1/2	25	1 EO – 60% 1 CO – 20%
Waterford	Waterford	116176 2.4%	382	404	2.20% / 2.5%	4 2	9	1 EO – 100% (4day wk)
Wexford	Wexford	149722 3.1%	466	433	2.70% / 2.7%	2/4 2/4	27	1 CO – 80%
Total		4761865	17112	15918			219	

B. Business volume comparison under key activity headings of issuing Grants and lodging caveats: 2014

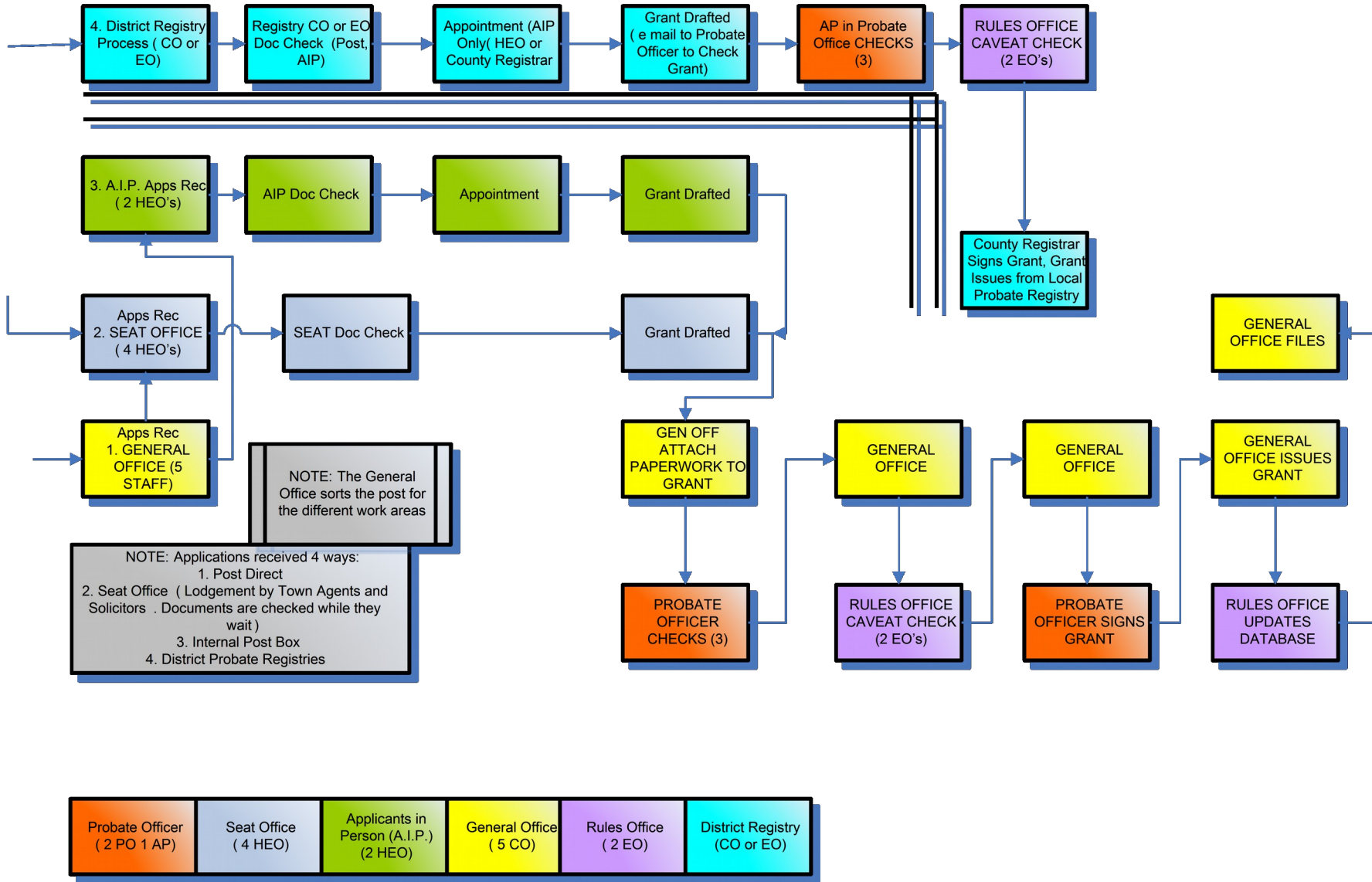
Number of Grants issued from Probate Office Dublin				8852			
Number of Caveats lodged in Probate Office Dublin				646			
Total number of Grants issued nationwide				15747			
Total number of Caveats lodged nationwide				888			
Registry	No of Grants issued	Approx no of grants issuing per day	No of Grants issued as a % of total no of Grants issued	No of Grants issued as a % of No of Grants issued from PO	No of Caveats lodged	No of Caveats lodged as a % of total no of Caveats lodged	No of caveats lodged as a % of no of caveats lodged in PO
Castlebar	545	2-3	3.5%	6.2%	17	1.9%	2.6%
Cork	1414	5-6	9%	16%	48	5.4%	7.4%
Clonmel	33	<1	0.2%	0.4%	3	0.3%	0.5%
Cavan	291	1-2	1.8%	3.3%	5	0.6%	0.8%
Dundalk	535	2-3	3.4%	6%	18	2%	2.8%
Galway	503	2-3	3.2%	5.7%	26	2.9%	4%
Kilkenny	431	1-2	2.7%	4.8%	11	1.2%	1.7%
Letterkenny	197	1	1.3%	2.2%	10	1.1%	1.5%
Limerick	1035	4-5	6.5%	11.7%	37	4.2%	5.7%
Mullingar	379	1-2	2.4%	4.3%	5	0.6%	0.8%
Sligo	278	1-2	1.8%	3.1%	5	0.6%	0.8%
Tralee	474	2	3%	5.4%	22	2.5%	3.4%
Waterford	362	1-2	2.3%	4.1%	11	1.2%	1.7%
Wexford	418	2	2.7%	4.7%	24	2.7%	3.7%
Total	6895	28-29	43.8%	78%	242	27.2%	37.5%

C. Business volume comparison under key activity headings of issuing Grants and lodging caveats: 2015

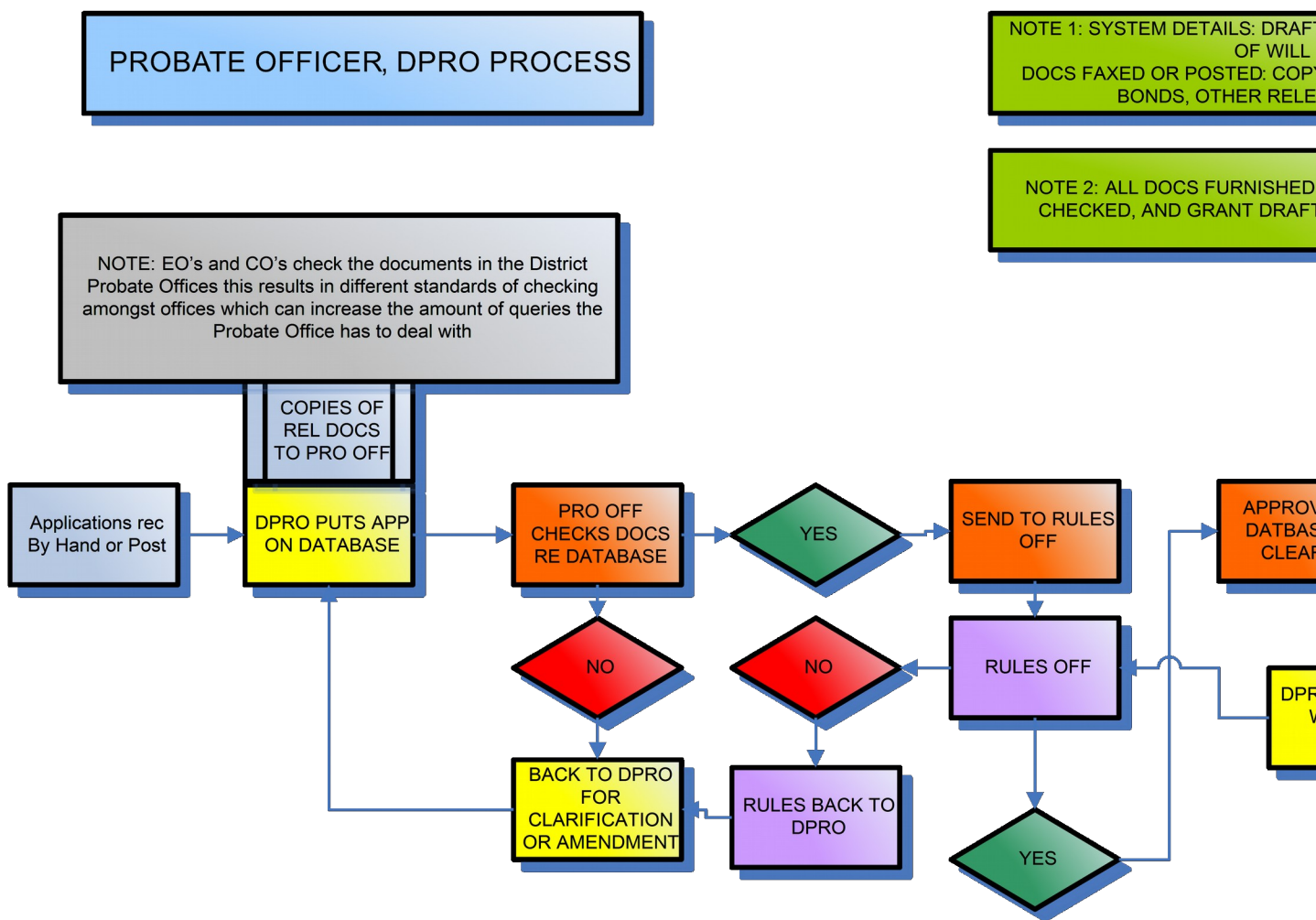
Number of Grants issued from Probate Office Dublin			7705				
Number of Caveats lodged in Probate Office Dublin			567				
Total number of Grants issued nationwide			14705				
Total number of Caveats lodged nationwide			762				
Registry	No of Grants issued	Approx no of grants issuing per day	No of Grants issued as a % of total no of Grants issued	No of Grants issued as a % of No of Grants issued from PO	No of Caveats lodged	No of Caveats lodged as a % of total no of Caveats lodged	No of caveats lodged as a % of no of caveats lodged in PO
Castlebar	559	2-3	3.8%	7.3%	7	1%	1.2%
Cork	1403	5-6	9.5%	18%	37	4.8%	6.5%
Clonmel	7	<1	.05%	.1%	2	0.3%	0.3%
Cavan	156	<1	1.1%	2%	1	0.13%	0.2%
Dundalk	487	2	3.3%	6.3%	9	1.2%	1.6%
Galway	587	2-3	4%	7.6%	17	2.2%	3%
Kilkenny	505	2	3.4%	6.6%	15	2%	2.6%
Letterkenny	206	1	1.4%	2.7%	10	1.3%	1.8%
Limerick	1067	4-5	7.3%	13.8%	34	4.5%	6%
Mullingar	448	2	3%	5.8%	8	1%	1.4%
Sligo	234	1	1.6%	3%	8	1%	1.4%
Tralee	561	2-3	3.8%	7.3%	14	1.8%	2.5%
Waterford	342	1-2	2.3%	4.4%	12	1.6%	2.1%
Wexford	438	2	3%	5.7%	21	2.8%	3.7%
Total	7000	29	47.5%	91%	195	25.6%	34.3

APPENDIX 2

A. PROBATE OFFICE PROCESS MAP



APPENDIX 2
B. DISTRICT PROBATE REGISTRIES PROCESS MAP



APPENDIX 3

Questionnaire for External Stakeholders

1. In what capacity do you engage with the Probate Service?

Solicitor

Legal Executive/Town Agent

Applicant in person

Other (please give details)

2. How often do you engage with the Probate Service?

Daily

Weekly

Monthly

Other (please give details)

3. If you are a Solicitor do you conduct your probate business through the Dublin Probate Office or a District Probate Registry/Registries?

(Please identify specific Registry/Registries concerned)

4. Where you have a choice of transacting probate business through the Dublin Probate Office or a District Probate Registry/Registries which do you opt for and why?

5. What aspects of the current service could be improved and do you have any suggestions as to how any such improvements could be realised?

Dublin Probate Office:

District Probate Registry (please identify specific Registry/Registries concerned):

6. What aspects of the current service work well and should be retained?

Dublin Probate Office

District Probate Registry/Registries (please identify specific Registry/Registries concerned)

7. What role do you see for technology in the future delivery of the Probate Service?

8. Are there any further comments, whether of a general or specific nature, you wish to make?

APPENDIX 4
External institutional and representative stakeholders
invited to participate in survey

Association of Higher Civil Servants
Carlow Bar Association
Cavan Solicitors' Bar Association
Charities Regulatory Authority
Clare Bar Association
Civil Public and Services Union
Department of Justice and Equality
Department of Social Protection
Donegal Solicitors' Bar Association
Drogheda Bar Association
Dublin Solicitors Bar Association
Galway Solicitors Bar Association
General Council of the Bar of Ireland
Health Service Executive
IMPACT Trade Union
Inishowen Bar Association
The Irish Institute of Legal Executives
Kerry Law Society
Kildare Solicitors' Bar Association
Laois Solicitors' Association
Law Society of Ireland
Leitrim Bar Association
Limerick Solicitors' Bar Association
Longford Bar Association
Louth Solicitors' Bar Association
Mayo Solicitors Bar Association
Meath Solicitors' Bar Association
Midland County Bar Association
Monaghan Solicitors' Bar Association
National Archives of Ireland
Property Registration Authority
Public Service Executive Union
Revenue
Roscommon Solicitors' Bar Association
Sligo Solicitors' Bar Association
Society of Trust and Estate Practitioners
Southern Law Association Citizens Information Board
Tipperary Solicitors' Bar Association
Civil Service Employee Assistance Service
Waterford Law Society
Wexford Solicitors' Bar Association
West Cork Bar Association
Wicklow Solicitors' Bar Association

APPENDIX 5

Review Group's recommendations for revision of Order 80, Rules of the Superior Courts (The District Probate Registries)

The text of each rule of Order 80 concerned is set out and the Review Group's conclusions in respect of the rule appear thereunder.

1. Order 80, rule 6 (6)(e)

"Where the deceased died on or after the 1st January, 1967, domiciled in the Republic of Ireland, leaving a will appointing no executor, or appointing an executor or executors who have been cleared off by death, renunciation, citation or otherwise, the person or persons entitled to a grant of administration with will annexed shall be determined in accordance with the following order of priority, namely:

(e) where the residue is not in terms wholly disposed of, the matter shall be referred to the Probate Officer, and he may, if he is of opinion that the testator has nevertheless disposed of the whole or substantially the whole of the estate as ascertained at the time of an application for a grant, allow a grant to be made to any legatee or devisee entitled to, or to share in, the estate so disposed of, without regard to the person entitled to share in any residue not disposed of by the will;"

2. & 3. Order 80, rule 6 (8)(b) and (c)

"(8) (b) Unless the Court or Probate Officer otherwise directs a grant shall be given to a living member of a class entitled thereto in preference to a personal representative of a member of such class who has died after the deceased;

(c) Unless the Court or Probate Officer otherwise directs a grant shall be given to a person not under legal disability in preference to the committee or guardian of a person under a legal disability equally entitled provided that in the case of an application by the committee of a person under a legal disability the Court or Probate Officer shall, before a grant is given, consult the Registrar of Wards of Court."

Conclusion on 1, 2 and 3: The Review Group considers that the District Probate Registrar should be granted authority to make these determinations. The knowledge required for such decision- making is two-fold:

- (i) the ability to read a will and be aware and understand all legal terminology in that regard and
- (ii) knowledge of the rules of succession as to inheritance as set out in the Succession Act (and other relevant succession law) and knowledge of Order 80 Rule 5(6) (1) of RSC which sets out the legal entitlement and priority of next of kin of deceased persons to extract Grants of Representation in deceased persons' estates.

All District Probate Registrars are experienced legal practitioners and are consequently qualified in this regard.

4. Order 80, rule 6 (9):

"Where a will is in any language other than the Irish or English language the District Registrar may by order of the Probate Officer admit it to proof in the terms of a translation thereof in the Irish or English language."

Conclusion on 4: This rule is relevant when a person dies domiciled in another jurisdiction leaving property in the Republic of Ireland. In most of these estates the District Probate Registrar is precluded by primary legislation from issuing a Grant in such estate as the deceased does not have a fixed place of abode in the environs of a District Probate Registry. In the small number of cases where a District

Probate Registrar has jurisdiction, the Review Group understand that solicitors choose to make the applications directly to the Dublin Probate Office rather than engage with the two tiered approach designated by this rule.

There is some complexity pertaining to these applications as aspects of private international law are relevant in determining the proofs necessary. An application under this section requires the following supporting documentation:

1. Affidavit of law from lawyer familiar with law of domicile setting out the basis as to how the will of the deceased is capable of being admitted to proof in this jurisdiction under Section 102 of Succession Act. On occasion this element has to be adjudicated upon by the Probate Court.
2. Sealed and certified copy of Grants which issue in country of domicile if applicable.
3. Original Will or notarised will where applicable.
4. Affidavit from translator exhibiting will/grants in foreign language and the English translations of same.

In practice, these applications attract considerable enquiries from the legal profession. In the event of errors there is a potential for delay due to papers having to be re-sworn and applicants being outside of the jurisdiction. In the circumstances and as the Probate Office is very familiar with this category of application, the Review Group considers that the District Probate Registrar should be relieved of his/her responsibility in this regard and that all applications with a foreign dimension should be dealt with exclusively by the Probate Office.

5. Order 80, rule 6 (10):

“Where the only person entitled to the estate of the deceased, whether under a will or on intestacy has assigned his whole interest in the estate, that assignee shall be entitled by order of the Probate Officer to replace the assignor in the order of priority for a grant.”

6. Order 80, rule 6(11):

“Where a person is entitled to the beneficial interest in the whole of the estate of a deceased, the Probate Officer may order that administration on the renunciation of that person be granted to the person, or jointly to the persons, nominated by him who would be entitled to the estate or to a share in the estate of the person so renouncing if he had died intestate.”

7. Order 80, rule 6 (13):

“No grant of administration shall be made jointly to more than three persons unless the Probate Officer otherwise directs.”

8. Order 80, rule 11:

“In any case in which a will apparently duly executed has been produced for probate or for administration with the will annexed, probate of any former will, or administration with any former will annexed, or administration to the deceased, as having died intestate shall not be granted by a District Registrar without an order of the Court, or of the Probate Officer, showing that the last will is not entitled to probate. In the absence of such order the District Registrar shall communicate with the Probate Officer.”

9. Order 80, rule 19:

“In all cases in which for any cause it is doubtful whether any will is entitled to probate, and in all cases in which a question arises whether any alteration, interlineation, erasure or obliteration ought to prevail, or whether any deed, paper, memorandum or other document ought to form part of a will, or if any doubt arises in consequence of the appearance of the paper, or on any other point, the District Registrar shall consult the Probate Officer, who may take the directions of the Court or require the parties to bring the matter before the Court.”

10. Order 80, rule 20

“The right of parties to letters of administration with the will annexed, and letters of administration with the will annexed de bonis non depends so entirely upon the circumstances of each particular case taken in connection with the wording of the will that whenever the right of the party applying is at all questionable, a statement of the case, accompanied by a copy of the will, shall be transmitted to the Probate Officer who will advise thereon.”

11. Order 80, rule 24

“Limited administration shall not be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, unless the Court or Probate Officer otherwise directs: in this rule the word "limited" means limited to part only of the assets or estate of the deceased.”

12. Order 80, rule 27

“In the case of a person residing out of or about to leave the jurisdiction of the Court, or who, in the opinion of the Court or the Probate Officer is suffering from a severe continuing physical disability, administration, or administration with the will annexed, may be granted to his attorney acting under a power of attorney.”

13. Order 80, rule 29

“In a case where any infant has not a testamentary guardian or a guardian appointed by the Court, or by or under the provisions of the Guardianship of Infants Act, 1964, a guardian shall be assigned by order of the Court or of the Probate Officer. The application for such an order shall be grounded on an affidavit showing as nearly as possible the amount of the assets, the age of the infant and with whom he resides, that the proposed guardian is either the nearest relation of the infant or that the nearest relation has renounced his right to the guardianship, or is consenting to the assignment of the proposed guardian, and that such proposed guardian is ready to undertake the guardianship. On such application the Court or Probate Officer shall have regard to the expressed wishes of any infant over the age of twelve years.”

14. Order 80, rule 35

“No probate or letters of administration shall issue until after the lapse of fourteen days from the death of the deceased, unless by order of the Court or of the Probate Officer.”

Conclusions on 5-14

Determinations in all of the foregoing rules, with the exception of Rules 6(13) and 35, require legal expertise. As the District Probate Registrar is a Solicitor, he/ she meets the criteria to make the relevant decisions and should be empowered accordingly. Decisions under Rules 13 and 35 should also be made by the District Probate Registrar.

15. Order 80, rule 37

“Notices of application for grants of probate or administration with will annexed transmitted by a District Registrar to the Probate Officer shall contain in addition to the particulars specified in the Succession Act, 1965, section 36, an extract of the words of the will by which the applicant has been appointed executor, or the words (if any) upon which he founds his claim to such administration, and shall show the day upon which the application is made.”

Conclusion on 15

This Rule is born out of the provisions under Section 36(1) and (4) of the Succession Act. The Review Group is of the view that both the primary legislation and this specific Rule should be abandoned for the reasons previously advanced on page 51.

16. Order 80, rule 40

“The draft oath to lead to grants of special or limited probate, or of administration intestate or with will annexed, shall be transmitted by the District Registrar to the Probate Officer to be settled; and no special or limited grant shall issue until the draft oath to lead to the same has been settled by the Probate Officer.”

Conclusion on 16

The Oath is the sworn legal document in which the applicant for the Grant establishes his legal entitlement to extract the Grant. To be in a position to settle this document, the person examining same must have knowledge:

- (i) as to the legal requirements for a valid will and
- (ii) as to the legal entitlement to extract a Grant either under the terms of the will or on an intestacy basis.

In the Probate Office, a Higher Executive Officer makes these determinations. In the District Probate Registry, the processing of the application is made by a Clerical Officer/Executive Officer and the Assistant Principal Officer in the Dublin Probate Office settles and signs off on whether the legal elements of the application to the District Probate Registry are correct.

As District Probate Registrars are legal practitioners by profession with the requisite legal expertise, the Review Group considers that such settling of the document should be carried out by the District Probate Registrar.

17. Order 80, rule 44

“Grants of probate or letters of administration shall be revoked only by order of the Court or of the Probate Officer.”

Two elements need to be considered here:

- Once a grant issues in an estate, the record cannot be altered unless certain designated members of staff have permission to change data on the official Probate system. At present, the Probate Officer/Assistant Probate Officer and Assistant Probate Officer in Dublin have this permission. This is designed to protect the integrity of the system and the public register. If this rule is extended to embrace all 14 District Probate Registrars, it would entail that 17 persons are given official capacity to change a public register.
- A very small number of grants are revoked and of this number most are revoked by the Court. The Probate Officer may also revoke a grant if the person who extracted same becomes incapacitated and of unsound mind, and may revoke and cancel a grant where the grant issued incorrectly at the outset.

The Review Group considers that a possible solution which would limit any risk were the function of revocation to be reallocated to the District Probate Registrar, would be to limit the number of designated persons authorised by the system to amend the register on foot of such revocation.

18. Order 80, rule 45

“No grant of probate or letters of administration shall be altered by a District Registrar, without an order of the Probate Officer having been previously obtained. In case the name of the testator or intestate or the date of death requires alteration, notice of an application to amend shall be given,

and the alteration ordered shall not be made by a District Registrar until the usual certificate on such notice has been received from the Probate Officer.”

Conclusion on 18:

Once a Grant issues in an estate, the only alterations which may be made are corrections to dates of death, addresses, names appearing thereon or incorrect figures. Again only designated persons have power to make such amendments to the public record. A similar solution as for Order 80, rule 45 would limit any risk attendant on reallocation of this function to a District Probate Registrar.

19. Order 80, rule 52

“A District Registrar shall, immediately upon a caveat being lodged, send a copy thereof to the Probate Officer, and also to the Registrar of any other district in which it is alleged the deceased resided at the time of his death, or in which he is known to have a fixed place of abode at the time of his death, and shall state the day on which the same was lodged.”

Conclusion on 19:

As visibility of the caveat is available on the Lotus Notes database to all Probate personnel, irrespective of where their office is situated, this rule is now redundant and should be revoked.

20. Order 80, rule 55

“After a caveat has been lodged, a District Registrar shall not proceed with the grant of probate or administration to which it relates until it has expired or been subducted, or until he has received notice from the Probate Office that the caveat has been warned and no appearance entered or that the contentious proceedings consequent on the caveat have terminated.”

Conclusion on 20:

As a search of the Lotus Notes Database on foot of a search by District Probate Registry staff will establish the information required under this rule, the requirement for notification it contains is redundant and should be deleted from the rule.

21. Order 80, rule 58

“A District Registrar shall not allow probate of the will or administration of the will annexed of any blind or illiterate person to issue unless he is satisfied by evidence on affidavit that the will was read over to the testator before its execution or that the testator had at such time knowledge of its contents. Where such information is not forthcoming, the District Registrar shall communicate with the Probate Officer.”

Conclusion on 21:

The District Probate Registrar has the expertise to make final determination without recourse to Probate Officer, and this rule should be revoked.

22. Order 80, rule 59

“Whenever any alteration is made in a grant, or a renunciation is filed, notice of such alteration or renunciation shall without delay be forwarded by the District Registrar to the Probate Officer, but no fee shall be payable in respect of any such notice.”

Conclusion on 22:

As a search of the Lotus Notes Database by District Probate Registry staff will establish the information required under this rule, the requirement for notification it contains is redundant and should be deleted from the rule.

23. Order 80, rule 60

“The lists of grants of probate and administration required to be furnished by a District Registrar under the Succession Act, 1965, Section 36, shall contain the name of the District Registry in which such grant was made and the first name and surname of each testator and intestate.”

Conclusion on 23:

This rule is also superfluous given the availability of information which is now captured on Lotus Notes database.

24. Order 80, rule 61

“Every such list of grants forwarded by a District Registrar shall be accompanied by a copy of the record of each grant mentioned in it. The record, besides stating the necessary particulars of the grant to which it refers, shall contain the place and date of death of the testator or intestate, the names and description of each executor or administrator, the date of each grant and the sum under which the value of the estate is sworn.”

Conclusion on 24:

The requirement in this rule for forwarding of information is superfluous given the availability of information which is now captured on Lotus Notes database, and the rule should be amended accordingly.

25. Order 80, rule 62

“Within four days from the end of each month each District Registrar shall forward to the Probate Office a return arranged alphabetically of all grants of probate or letters of administration passed at his District Registry during the preceding month.”

Conclusion on 25:

The requirement in this rule for forwarding of information is superfluous given the availability of information which is now captured on Lotus Notes database, and the rule should be amended accordingly.

26. Order 80, rule 64

“When an application is made to the Court, in relation to an application for a grant at a District Registry, the District Registrar shall transmit all relevant original papers and documents to the Probate Office; and the same, after the directions of the Court have been taken, shall on the application of the parties (unless the Court shall otherwise direct) be returned to the District Registrar, together with an attested copy of the order of the Court.”

Conclusion on 26:

The Review Group understands that, as all such applications are now lodged in Dublin, the rule has not been used. This rule is now redundant and should be revoked.

27. Order 80, rule 65

“Original papers shall be forwarded to the Probate Office whenever an inspection of them is necessary to enable the Probate Officer to answer the questions submitted to him by a District

Registrar. Papers and other documents may be transmitted by a District Registrar to the Probate Officer and by the Probate Officer to a District Registrar by registered post.”

Conclusion on 27:

This rule is rarely used, is of doubtful utility given the facility of scanning etc., and should be revoked.

28. Order 80, rule 69 (1) and (2)

“(1) If a will or other document filed in a District Registry is required to be produced at any other place, application shall be made for that purpose in sufficient time to allow for making and examining a copy of such will or other document.

(2) On the making of such an application, there shall (unless the Court or the Probate Officer otherwise directs) be made a copy of such will or other document, which copy shall be examined with the original, and such examined copy shall be deposited in place of the original pending its return.”

Conclusion on 28:

The District Probate Registrar does not require the intervention of the Probate Office regarding this administrative exercise, and the rule should be amended accordingly.

29. Order 80, rule 70

“No practising solicitor, or clerk or apprentice to a practising solicitor shall be admitted as surety to an administration bond, without the leave of the Court or the Probate Officer.”

Conclusion on 29:

The Review Group understands that sureties are rarely used in applications now. If a surety of this nature is envisaged, the District Probate Registrar is in a position to make this decision: the rule should be amended accordingly.

30. Order 80, rule 74

“An application which has in the first instance been made through a solicitor shall not afterwards be treated as a personal application, unless the Probate Officer otherwise directs.”

Conclusion on 30:

The Review Group considers that there is no justification for this rule. It should be revoked.

31. Order 80, rule 75

“An application for a grant of probate or administration in a case which has already been before the Court (on motion or otherwise) shall not be entertained as a personal application, but shall be made through a solicitor, unless the Probate Officer otherwise directs.”

Conclusion on 31:

The Review Group considers that there is no reason why the District Probate Registrar cannot make this assessment: the rule should be amended accordingly.

32. Order 80, rule 77

“The papers necessary to lead to the grant shall be prepared and sworn in the District Registry. An applicant may bring such papers, or any of them, filled up, and if correct they may be received and if already sworn shall be re-sworn. Any papers once received in a District Registry shall not be given out unless under special circumstances by permission of the Probate Officer.”

Conclusion on 32:

There should not be a necessity for the Probate Officer to intervene in the business of the District Probate Registry in such a matter. The rule should be amended accordingly.

33. Citations, subpoenas

The Review Group considers that the rules within Order 80 requiring Citations and subpoenas to issue only from the Probate Office should be retained. Citations and subpoenas also lay the foundation for possible litigation and a motion to the Probate Court. As the Dublin Probate Office manages the Court list, it is preferable that all such Court files remain with the Dublin Office and all procedures relating thereto be lodged with the Probate Office.

APPENDIX 6

Schedule of meetings between Courts Service representatives and Revenue in the course of the Review Group's deliberations

Probate Modernisation Review – Schedule of Formal Bilateral Meetings Held Between Probate Office and Revenue

Date	Host, Location	Attendee level	Subject
21 Feb 2017	Revenue, Bishop's Square	Revenue and Courts Service/Probate Service Review Group senior management reps, ICT reps, Stamp Duty operational rep	High level Demonstration/overview of Revenue's eStamping modernisation project - system, change management, Revenue's Project Management Approach
26 Jun 2017	Revenue, Bishop's Square	Revenue and Courts Service senior management	High level discussion on IT requirements, funding, and collaborative approach to Probate Modernisation
13 Jul 2017	Courts Service, Phoenix House	Revenue and Courts Service Probate Service Review Group reps and ICT reps	Discussion on IT requirements and collaborative approach to Probate Modernisation
19 Jul 2017	Revenue, Bishop's Square	Revenue and Courts Service Probate Service Review Group reps, ICT reps	Discussion on high level Probate process maps, IT requirements and collaborative approach to Probate Modernisation
25 Jul 2017	Courts Service, Phoenix House	Revenue and Courts Service ICT reps and Courts Service ICT Consultant	Assessment of the optional IT interfaces for early stage feasibility, compatibility, any significant technical difficulties that might arise and any respective future M&E aspects that might be problematic
26 Jul 2017	Courts Service, Phoenix House	Revenue and Courts Service Probate Service Review Group reps, ICT reps and	Discussion on IT options and collaborative approach to Probate

2 Aug 2017	Revenue, Dublin Castle	Courts Service ICT Consultant Revenue and Courts Service ICT reps	Modernisation Detailed demonstration of Revenue's eStamping system, including stakeholder engagement and change management process*
4 Aug 2017	Courts Service, Green St	Probate Service Review Group Chair, Revenue and Courts Service Probate Service Review Group reps, ICT reps	Discussion on hard copy of the draft of the IT section of the Probate Service Review Group report presented at the meeting

* Revenue's e-Stamping system, introduced in 2009, provided for an electronic based self-assessment system to facilitate the payment of Stamp Duty. It has provided a useful "case-study" experience for an e-Probate system.