



# ROYAL LONDON IRELAND **PROBATE POSITION PAPER**

Ireland

## THE PROBATE SYSTEM IN IRELAND

### Executive Summary

Handling the affairs of a deceased family member or friend is an unenviable task, which many people have to perform at some point in life. Probate is the process of transferring the ownership of assets, paying off debts, and finalising the legal affairs of a deceased individual<sup>1</sup>.

The process provides a legal document which grants authority to the executor of a will to share out the estate of the deceased, according to the instructions of their will<sup>2</sup>. In Ireland (ROI), England and Wales, this document is known as a 'grant of representation'<sup>3</sup>, in Scotland as 'confirmation', and in Northern Ireland, as a 'grant of probate'<sup>4</sup>. In Ireland this is the function of the Courts Service of Ireland's Probate Office.

When accessing probate services in the UK and Ireland, people must first seek an appointment with a Probate Officer. In the UK, the waiting time to obtain an appointment is, on average, 3-4 weeks. In Ireland, however, there is a much longer timeframe involved in obtaining a grant of probate, on average 3-4 months.

Royal London Ireland has found that the time currently taken to process probate in Ireland is having a detrimental knock-on effect on both the timeframe for processing life insurance policy claims, and consequently the service Royal London Ireland can offer its customers. It can take hundreds of days for probate to be processed by the Courts Service of Ireland's Probate Offices.

This delay can result in significant financial hardship for the family and estate of the deceased policyholder, as they wait for the proceeds of the life assurance policy. For example, without the life policy proceeds families may struggle to pay for the funeral of the deceased or simply to be able to continue to pay for day-to-day expenses, particularly if the deceased was the main breadwinner for the family.

However, once the grant of probate has been received by Royal London Ireland, it then takes just 5 days, on average, to pay the life assurance claim.

The 2016 Census found that there were 198,000 vacant homes, excluding holiday properties, across the country. While there is no official breakdown of this figure, some experts believe that a significant proportion of these homes are vacant solely due to delays in probate, which can only be exacerbating Ireland's housing crisis.

---

<sup>1</sup> <https://ez-probate.com/knowledge-base/probate-articles/what-is-probate.html>

<sup>2</sup> <https://www.citizensadvice.org.uk/family/death-and-wills/dealing-with-the-financial-affairs-of-someone-who-has-died/#how-to-deal-with-the-property-of-a-person-who-has-died>

<sup>3</sup> The Grant of Representation is also known as a Grant of Probate (where there is a will) or Letters of Administration (where there is no will).

<sup>4</sup> For the purpose of this document all grants will be referred to as a 'grant of probate'.

Royal London Ireland has, therefore, decided to embark on a campaign of political and media engagement to highlight the issue, and to lobby for a more efficient probate process in Ireland.

This report presents an insight into the current workings of probate services in both the UK and Ireland, providing a comparative analysis, where possible, to highlight areas where more effective use of resources, and/or changes to the administrative process in Ireland could improve services for the general public. This paper places specific emphasis on the customer claims experience within the Irish system, and presents a number of suggestions as to how legislative changes could help fast track the current probate backlog.

### **The Impact**

Based on our research, it is clear to Royal London Ireland that the payment of death related claims takes far longer in Ireland than in other countries, particularly in the UK, even though the legal system is comparable.

Delays within the Irish system have long been a cause for concern. Comments from the former Minister for Justice, Alan Dukes, during his tenure in 1986 point to delays of up to 4 months in issuing grants of probate in the case of the Cork Probate Office<sup>5</sup>. Now over 30 years on, and little has changed.

In 2014, it emerged that families of deceased individuals in Waterford were being forced to wait up to 8 months before they could begin handling estate and will issues of deceased relatives, at their local Probate Office<sup>6</sup>. In the same report, Donegal was named as the second worst county for probate administration - with a waiting list of 16 weeks. The same report also cited Dublin as having waiting lists of 14-16 weeks, a figure that could be potentially conservative, when taking into account the fact that the Dublin office is authorised to also take requests from the other 25 counties. More recent figures from November 2016, cited by the Tánaiste and (then) Minister for Justice Frances Fitzgerald in Dáil Éireann, flagged waiting times of 20 weeks for applications lodged by a solicitor, and 28 weeks for personal applications in the Dublin Probate Office<sup>7</sup>.

---

<sup>5</sup> <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail1986042900074>

<sup>6</sup> <http://www.irishexaminer.com/ireland/bereaved-face-8-month-wait-to-deal-with-wills-266004.html>

<sup>7</sup> <https://www.kildarestreet.com/wrans/?id=2017-03-07a.276>

The Tánaiste also provided figures for District Probate Offices around the country, representing the most recent national statistics on waiting times:

District Probate Office	Applications from Solicitors	Applications from personal applicants
Cavan	16-18 weeks	16-18 weeks
Dundalk	6 weeks	6 weeks
Mullingar	16 weeks	12-13 weeks
Clonmel	2 weeks	This service is not available at present.
Kilkenny	3-4 months	3-4 months
Waterford	7 weeks	1 month
Wexford	2-3 weeks	3-4 weeks
Cork	12 weeks	12 weeks
Tralee	5 weeks	5 weeks
Limerick	4-6 weeks	3-4 weeks
Letterkenny	12-16 weeks	12-16 weeks
Sligo	12-16 weeks	14-18 weeks
Castlebar	2-4 weeks	2-4 weeks
Galway	12-14 weeks	14-16 weeks

**Fig 1: Waiting Times in District Probate Registries as of 15-11-16<sup>8</sup>**

The table illustrates the wide variation in waiting times at offices around the country. The Courts Service have quoted that “waiting times vary and depend on a number of factors, including the number of staff at each location and the volume of business transacted at each registry”<sup>9</sup>, and have blamed the delays on a lack of staffing and a 30-year-old IT system.

<sup>8</sup> <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016111500065?opendocument#WRH02900>

<sup>9</sup> <http://www.irishexaminer.com/ireland/bereaved-face-8-month-wait-to-deal-with-wills-266004.html>

Royal London Ireland conducted an analysis of its claims in 2016 – it found:

- The shortest period to receive probate was 192 days (27 weeks or 6 months).
- The longest period to receive probate was 1,142 days (163 weeks or 3 years and 2 months).
- The average time to get probate was 489 days (70 weeks or 16 months).

These numbers are considerably longer than those quoted above by the Tánaiste in relation to the wait times at the Probate Office. The Probate Office figures reflect the wait times to first appointment whereas the Royal London times more accurately depict the length of time to the probate being finally issued.

Once Royal London has received the grant of probate, it only takes 5 days to process these claims and pay the policy proceeds. The delays caused by the probate process can have a clearly negative financial impact on the deceased person's family, who may be totally reliant on the policy pay-out to pay their ongoing day-to-day living expenses such as rent, electricity, food and indeed, the cost of the funeral of the deceased.

## **Actions**

### **Review and Comparative Analysis:**

A key objective of this paper is to highlight the current landscape for probate services in Ireland and to illustrate areas for improvement. Working with Royal London Ireland, the Royal London Group Legal team recently undertook a comprehensive review and comparative analysis of probate services across the UK and Ireland. The study's key findings are outlined in this paper (next section below).

### **National Consumer Survey:**

Royal London Ireland commissioned a nationwide survey of 1,000 members of the public to examine the public perception and understanding of issues surrounding probate.

### **Lobbying & Political Engagement:**

Lobbying activity consisted of a culmination of the efforts of Royal London Ireland's Joe Charles, Head of Proposition, Greg Dyer, Head of Operations and Sara Murphy, Marketing Lead and of Peter Mitchell, MD of Business Talk, Royal London Ireland's PR agency, all of whom met with Colm Brophy TD.

## **Research and Findings**

### **Review and Comparative Analysis – Findings:**

A comprehensive study by the Royal London Group Legal team was undertaken to provide a comparison of probate services in the UK and Ireland. Overall, the study found that UK probate processes are simpler and considerably quicker than Irish systems, and are set up to allow the general public to apply for and access probate themselves as 'Personal Applicants' (PAs), without the assistance of solicitors. In Ireland, the use of solicitors is actively encouraged.

- In England, obtaining a grant of probate takes an average of 3-4 weeks. In Scotland, while an Executor cannot distribute the funds for 6 months, funds *can* be released to the Executor before that date, thereby assisting in a relatively fluid process for claimants. In Northern Ireland, research didn't provide conclusive guidance on the length of the process, however it is worth noting that in the case of PAs, it takes approximately 28 days from receipt of application to setting up an interview with the Probate Officer.
- In Ireland, the Law Society suggests a wait time of upwards of 3 months, at least, before a grant of probate can be issued, advising that it can take considerably longer in certain cases. The study also found that unofficial guidance suggests the process can take up to a few years.
- In Scotland, a separate 'small estate' procedure allows PAs to obtain confirmation without having to engage a solicitor. There is no comparative process for small estates in Ireland, PAs have to follow the same process to obtain a grant of probate regardless of estate size.

The study identified four key themes that lead to underperformance in the Irish system compared to the UK:

#### **i) Utilisation of resources**

There is a substantial duplication of efforts when Probate Officers review applications in Ireland, with certain resources under-utilised and also inefficient:

- Applications are reviewed by a Probate Officer up to 4 times (3 for a solicitor applicant) during the process.
- Applicants can be asked for additional information on 3 separate occasions (twice for a solicitor applicant).
- Most applicants must attend two 'interview' appointments. In terms of appointment services in Scotland and Northern Ireland, applications are first filled out during the appointments with the help of court officials. In Ireland, PAs are not offered help at the time of completing the forms, and are instead expected to have already completed and submitted the application form before the appointment.
- Other factors adding to delays in the Irish system are:
  - PAs are required to submit title deeds to property and vouching documents for the estate for which they are seeking probate. These documents may be very difficult or time consuming for a PA to obtain. This is not a requirement for appointments in Northern Ireland. In England, the process for PAs is the same as the process for solicitor applicants, which states that professional property valuations are not required, but are recommended in some instances. Professional property valuations are not required in Scotland, while title deeds are not a stated requirement in either England or Scotland.
  - Irish applicants are also required to submit a PPS number for the deceased and all the beneficiaries. The availability and knowledge of PPS numbers is cited by the Law Society of Ireland as a key reason for delays with applications.

**ii) The difference between personal applicants (PAs) and solicitor applicants:**

Our research has shown that it is considerably more difficult to make an application for probate in Ireland without a solicitor.

**England & Wales:**

- The process is similar and fees are the same whether applying as a PA or via a solicitor.
- An applicant can use a solicitor or another person licensed to provide probate services.
- A helpline exists to assist PAs with inheritance tax (IHT) and inventory is provided.

**Scotland:**

- There is substantial guidance and assistance for PAs.
- Fees are same for PAs and solicitor applications.

**Northern Ireland:**

- There is a £50 charge for a PAs.
- There is a helpline to assist PAs with IHT and inventory is provided.

**Ireland:**

- In most instances, a solicitor is highly recommended by court guidance documents.
- Guidance notes state that any failure on PAs to undertake legal responsibilities associated may result in penalties and/or legal proceedings. PAs are required to sign a 'Form of Understanding' to that effect.
- The court fees for PAs are double the court fees for a solicitor (introduced in 2007).
- All PAs must attend an appointment in person.
- There are no guidance documents or resources available for public use.
- At any time during the process the Probate Office can refer the applicant to a solicitor and that decision is final.
- There are additional requirements for PAs in Ireland that do not apply in the UK. For example, PAs have to obtain and submit additional evidence regarding the estate (title deeds, updated valuation of any property from an expert and vouching documentation from financial services, for example bank statements, post office accounts, amount payable on insurance policies, the value of stocks and shares).

### **iii) Lack of good quality guidance:**

Guidance available to the public on the probate process in Ireland is limited and basic compared to that available within the UK. For example helplines, a comprehensive guidance booklet, and assistance with completing forms. Overall, the study found it difficult to conclude whether or not current 'guidance notes' were helpful or solution-focused enough for PAs.

- Applicants use solicitors to apply, even when the sums involved are small. Arguably, this leads to probate market services being less competitive, slower and more expensive than they should be.
- The guidance available on the probate process is written in such a technical way so as to perhaps discourage some personal applicants.
- UK jurisdictions have personalised, applicant-friendly guidance, for example phone-based assistance hotlines that supplement the application process, as well as easy-to-follow guidelines.
- Guidance notes in Ireland state that any failure on the applicant to undertake associated legal responsibilities may result in penalties and/or legal proceedings, with applicants required to sign a 'Form of Understanding' to that effect. Without clear and instructive guidelines of the full process and all due legal responsibility on the part of the applicant, the likelihood of falling into a difficult legal situation, and/or incurring financial penalties is much higher.

### **iv) Monopoly for solicitors:**

It is clearly more difficult to apply for probate as a personal applicant in Ireland and our study has found that in Ireland, unlike the UK, a solicitor is highly recommended by court guidance documents. As stated in point iii) of this section, guidance notes caution that failure by PAs to undertake all legal responsibilities associated with their application may result in penalties and/or legal proceedings. Whether such notes are intended to dissuade PAs isn't absolutely clear but they do seem designed, perhaps unintentionally, to deter people from applying without a solicitor.

- The findings suggest that solicitors therefore, have a monopoly on this market and that, as a consequence, the service being offered is less competitive (slower, less responsive and more expensive) than it could be.



#### **v) Impact on Housing crisis:**

The latest CSO figures show there are 198,000 empty homes<sup>10</sup>, excluding holiday homes in Ireland, though it's not known how many vacant or potentially vacant homes are tied up in the probate process. The economist John Fitzgerald has suggested that speeding up the probate process could facilitate earlier sales after an owner's death<sup>11</sup>.

Worryingly, research carried out by homeless charity the Peter McVerry Trust early in 2017<sup>12</sup>, found that 62% of people are in favour of a tax on empty homes. Many participants in the survey may not have appreciated that such a tax could be unfair on those with properties tied up in a lengthy probate process.

#### **vi) National Consumer Survey – Findings:**

In order to gain a greater understanding of consumer perception on the probate process, Royal London Ireland commissioned a nationwide survey of 1,000 people on the topic. The survey pool incorporated a mix of demographics, ages and regions across the country. Its main finding was that:

- 41% of Irish people know of someone who has experienced legal problems or delays in relation to wills and inheritance.

The survey highlighted a dearth of awareness and information amongst the Irish public on the issue:

- 26% of respondents estimated that the length of the legal process in relation to wills and inheritance is less than 3 months.
- A further 30% believed that it can all be completed in less than 6 months.
- Just 7% thought it would take 1 month.
- 24% thought it would take 7-12 months.
- 20% thought it would take 1-2 years.
- 53% believed their next of kin would be in charge of 'sorting out' their estate if they passed away.

#### **vii) Lobbying & Political Engagement – Findings:**

Royal London met with Colm Brophy, Fine Gael TD and member of the Justice and Equality Oireachtas Committee. Deputy Brophy outlined his own views on the need for reform of probate and had a discussion with Royal London on our findings as part of our research. Deputy Brophy was very positive in relation to the view that there should be legislative change in this area.

---

<sup>10</sup> <http://www.cso.ie/en/releasesandpublications/ep/p-cpr/censusofpopulation2016-preliminaryresults/housing/>

<sup>11</sup> <http://www.irishtimes.com/business/economy/understanding-why-homes-are-vacant-can-help-solvehousing-crisis-1.3071526>

<sup>12</sup> <https://www.pmvtrust.ie/emptyhomes/empty-homes-advocacy/>

## **Where to From Here? Suggestions and Solutions:**

Royal London Ireland's suggestions for reform are as follows:

### **i) Review fee structure for Personal Applicants:**

- **Proposal:** We recommend that the Reform and Development Directorate of Ireland reviews the fee structure for the probate process, and look into the option of charging solicitors and PAs the same fee price.
- **Further comments:** We presume the rationale behind the additional fees is due to the additional appointment stage for PAs (however, it is unclear how much the appointment stage actually costs the Court Service). Better utilisation of court resources in relation to the appointment stage, would also help improve this. The variation in fees between a solicitor applicant and PAs is possibly the most tangible indication that the application process is set up in a way that encourages solicitor applications and discourages PAs.

### **ii) Alter the process for small claims:**

- **Proposal:** We propose that the Reform and Development Directorate of Ireland looks into simplifying of the process for smaller amounts.
- **Further comments:** This solution possibly represents a compromise, by which the probate process could be adjusted for smaller sum cases.

### **iii) Simplification of Inheritance Tax (IHT) forms:**

- **Proposal:** We suggest that the Revenue Commissioners consider simplifying tax forms where no IHT is payable.
- **Further comments:** This will make it easier for people to understand and complete forms, and help speed up the probate application process.

### **iv) Address the issue of the exclusivity of probate service:**

- **Proposal:** We advocate that the Reform and Development Directorate of Ireland consider opening up services to companies that are not registered solicitors. We also recommend that the Reform and Development Directorate of Ireland considers alternative methods of assisting PAs as a *first* resort, which do not require that they obtain a solicitor (e.g. additional guidance in the form of an appointment, enhanced literature or a hotline).
- **Further comments:** The position regarding the provision of probate services in England and Wales stems from the complex 'Alternative Business Structure' legislation, which took a considerable amount of time to pass through the England and Wales legislator. Such a proposition would be complex and time consuming to implement here and would not be a quick fix.

#### **v) Lessen the additional requirements for Personal Applicants:**

- **Proposal:** We propose that the Reform and Development Directorate of Ireland reviews the PAs probate process to ensure that all additional steps required by PAs are deemed necessary, with a view to cutting down any additional requirements and bringing it in line with the process for solicitors.
- **Further comments:** Enhancing the PAs system could affect both PAs and solicitor applications. By speeding up the PAs system and making it more accessible, it could increase competition in the probate services and in turn enhance solicitors' services.

### **Conclusion**

Royal London Ireland believes the Irish public are being negatively impacted by the length and complexity of the probate system in Ireland, and that this is having a direct impact on the financial position of beneficiaries who are primary dependents of the deceased.

It is traumatic enough to lose a loved one, without being left in a precarious financial position as a result of significant delays in the processing of probate by the Courts Service.

Royal London Ireland calls on the Government and the Reform and Development Directorate to consider our proposals for improvements, which are aimed at increasing efficiency and speeding up of the probate system. To not do so will allow the growing delays to continue potentially placing unnecessary financial hardship on many Irish families and other beneficiaries.

### **About Royal London Ireland**

Royal London is the largest mutual life, pensions and investment company in the UK and Ireland with group funds under management of over €122.3 billion. Group businesses provide around 9 million policies and employ 3,341 people (figures quoted are as at 31 March 2017).

Royal London's Irish office is based at 47-49 St Stephen's Green, Dublin 2.

[www.royallondon.ie](http://www.royallondon.ie)



The Royal London Mutual Insurance Society Limited is authorised by the Prudential Regulation Authority in the United Kingdom and is regulated by the Central Bank of Ireland for conduct of business rules. The Royal London Mutual Insurance Society Limited is registered in England and Wales, number 99064, at 55 Gracechurch Street, London EC3V 0RL and in Ireland, number 908341, at 47-49 St. Stephen's Green, Dublin 2