

STEP's comments on Ministry of Justice Consultation on mandating online professional applications for Non-Contentious Probate

About Us

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 22,000 members in over 100 countries and over 8,000 members in the UK. Our membership is drawn from a range of professions, including lawyers, accountants and other specialists. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

We take a leading role in explaining our members' views and expertise to governments, tax authorities, regulators and the public. We work with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

Response

STEP thanks the Ministry of Justice for the opportunity to reply to its consultation on mandating online professional applications for Non-Contentious Probate. STEP recognises and supports the need for reform and modernisation of the probate application process to enable it to become more accessible.

STEP understands why HMCTS has decided to make this move online to enhance efficiency and to create a more effective system. STEP welcomes this move in the case of standard, day to day and non-complex probate applications (such as applications by recognised trust corporations). The online system can work well for these types of application and, to an extent operates smoothly.

Complex and non-standard applications

STEP is of the view that the online system in its current form cannot efficiently handle and process more complex and niche applications such as Grants ad colligenda bona, Grants pending suit (pendente lite), and Grants under Sections 113 or 116 Senior Court Act 1981. It appears that the current version of the online system is not equipped to handle these types of application and they are not listed in the proposed exceptions set out in Question 5.

STEP would like HMCTS to continue with the traditional paper method for the more complex Grants in order to avoid administrative difficulties, delays for practitioners and their clients and to avoid placing additional burdens on HMCTS. The benefits associated with moving online for simpler estates will not be possible for more complex applications until the online system is comprehensively updated to facilitate them.

STEP suggests that the simpler approach for HMCTS and applicants would be to make online applications the default position for simple applications with all other applications being submitted by paper until the online system is capable of processing them. STEP would be happy to assist in drawing up the criteria for the types of estate that could use the online probate application process in its current form. This would ideally tie in with further work on the PA1P forms and other attachments which STEP would also be pleased to assist with.

The suggested approach would be similar to that taken by HMRC when reporting IHT on estates where simple estates can use the basic IHT205 form (or online equivalent) but only if they meet a set list of criteria. Any estates which do not satisfy those criteria must submit more detailed information using different forms as HMRC acknowledges that the IHT205 is not appropriate for them.

STEP is also concerned that if the more complex applications and those which require more niche types of Grant, must all be submitted online, the existing system is simply unequipped. At the most basic level, the current online forms do not allow the entry of all of the required information for some types of application. Due to this flaw in the system any online component of a more complex application will need to be accompanied by separate paper submissions providing the information that cannot currently be entered into the online system (evidence of foreign law being just one example). This would negate many of the stated advantages of switching online for both HMCTS and applicants and would also increase the likelihood of administrative complications and delays as the two elements (online and paper) applications would need to be consolidated by HMCTS before being processed.

The proposal in the consultation is to make the online system the default for all types of application although it sets out a list of exceptions which will continue to use the paper process. STEP understands that the current process requires the practitioner to start the application and answer some initial queries however if the answer to questions becomes 'no' then the practitioner is asked to stop the online process and to deal with a paper application instead. STEP is not certain what happens to the initial application given that, as per member understanding, you are not able to delete it. It is also uncertain whether, once the practitioner is told to switch to the paper application, how the process aligns with the paper application process. STEP is concerned that this process adds to cost and possible inefficiencies within the system.

Practical points in relation to the online system

STEP members have identified a number of issues with the current Beta online probate system, some of which have been referred to above. In order to maximise the benefits of moving certain applications online, STEP believes that it will be important to address the following issues:

- Members have stated that there are occasions where they cannot log in at all and receive a "bad gateway" webpage when they submit their account login details. It also appears that sometimes when members try to submit information they receive error messages such as; "the event could not be created" or "sorry, there is a problem with the service, try again later". Members rarely get through a whole application without some kind of error or a page "sticking".

- There does not seem to be a simple way to list all of the applicant's applications, with applicants having to search to find a current application. It would be useful to have a dashboard of all applications and their status including them being removed from the list once the Grant has been issued.
- The firm details have to be entered each time which is onerous and a time saving measure would be to allow these details to be saved so that they do not need to be typed in each time.
- It appears that once the application has started and cannot be completed that it is not possible to delete it. From a practical point it is important to delete old incomplete applications which convolute the system and it would be useful to have the ability to delete them.
- Members have found it difficult to go back in to amend a statement of truth with it not being immediately obvious what to do.
- It has been reported that the system could be better signposted in regard to finding where the application is saved. It appears that that once the application has been submitted online and the paper copies have been sent that is where the process seems to end with a notification confirming that the documents have arrived and that a response will be issued within 20 days. It would be useful to explore whether it would be possible to have updates such as whether the IHT421 has arrived, which registry is processing the application for ease of contact, and if the Grant has been made (with sometimes members first hearing it from the client telling them that they have seen it via an online search).
- Another suggestion is to explore the possibility of allowing the sealed copy of the will to be ordered at the time of application or as a separate application via the online system.
- STEP has been informed that practitioners are not allowed to submit IHT 205 forms online whereas personal applicants can if they have been given a HMRC reference number. STEP believes it would make sense for practitioners to be allowed to submit IHT 205 forms online as well.
- Another issue being reported by members is that all of the (relevant) applications are being held up by the Probate Registry who are not receiving the IHT421 which HMRC claim to have already sent. Once HMRC are contacted directly they then resend the IHT421 and the Grant is then issued shortly afterwards. It appears that the interface between HMRC and HMCTS could be improved to increase efficiency and decrease the processing time for Grants which has led to a delay and backlog in issuing some applications.

One other area STEP wishes to comment on is paragraph 21 in the consultation which states the advantages of the online system. One advantage provided is that applications can be tracked and monitored, allowing time and money to be saved on making enquiries, although each user can send queries and feedback online. STEP would caution that applicants have currently lost the ability to ring directly for updates and although the paper mentions the ability to submit online queries, more information should be given on who will be addressing these queries and whether they will have suitable experience and legal knowledge to handle queries.

STEP respectfully requests a dedicated professional helpline or administrative mail box (which HMRC currently have in use for this area), as this would cut down on the time needed to process the application and the overall costs of the process.

Conclusion

STEP's view is that simple probate applications should be handled by the online system as suggested, but anything that is not "standard" (STEP is happy to help define the criteria for standard applications), including more complex applications, should be generally dealt with in the traditional paper form until the online system can be updated to process them.

Additionally, the importance of addressing practical issues in relation to the online system, including creating either a dedicated professional helpline or administrative mailbox to support the system cannot be understated. The time and money savings that dealing with these points would bring (both for applicants and for HMCTS) could considerably increase the efficiency of, and trust in, the online process.

STEP urges HMCTS to consider the issues referred to before mandating the online process for all professional applications. Addressing these concerns in advance will significantly improve confidence in the system and help HMCTS to avoid unnecessary administrative difficulties and delays.

Submitted by STEP dated 10 September 2020