

## Probate delays – a quintessentially British queue

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Ongoing delays at the Probate Registry are hitting the news with more and more frequency. The timeframes are no worse than they have been for a number of years but the queue shows little sign of movement and the inheritance tax (IHT) interest rate has increased substantially since 2022 resulting in a greater practical impact as the months wear on.

The delays are an important consideration for all estates and we discuss the background, why the delays are newsworthy and how to mitigate the impact below.

### What is delayed?

A grant of probate is the court-sealed document which confirms the executor's legal right to administer an estate. It is obtained by applying to the Probate Registry with appropriate supporting evidence (usually the Will) to prove that you are properly entitled to administer the estate.

If the estate meets certain criteria, the application to the Probate Registry can only be made once you have reported to HM Revenue and Customs (HMRC). Ascertaining the details to the report to HMRC can take three to six months alone.

The majority of probate applications are submitted through an online system which was introduced in November 2020 in response to delays worsened by the pandemic. However, the current guidance states:

*You'll usually get the grant of probate within 16 weeks of submitting your application. It can take longer if you need to provide additional information.*



That is a substantial queue, even for a society familiar with standing in line, and when combined with the HMRC reporting requirements means it commonly takes nine months to a year to obtain the grant of probate after death.

## What is the practical impact?

There are serious consequences quite apart from the frustration of knowing it may take years, not months, to administer an estate.

As mentioned, most high value estates require the executors to report the value of the estate to HMRC and pay any IHT due before they can apply to the Probate Registry for the grant of probate.

This creates an uncomfortable situation – the executors need assets to pay the IHT and need the grant to access those assets but they need to pay the IHT before they can apply for the grant.

There are practical ways of circumventing this in many cases – for example banks can release funds to HMRC before probate is granted and investment managers can often do the same on the basis of an indemnity from the executors.

There is also the option to pay IHT in ten annual instalments on property and private shares. This is helpful as the assets can take time to sell but on the other hand exposes the estate to interest on the unpaid IHT. A sixteen week delay at the Probate Registry exacerbates the potential impact.

Interest is currently charged on unpaid IHT at 7.75% (a major increase on the 2.6% charged as recently as January 2022). For context, a property worth £1 million could attract IHT of up to £400,000. Interest during the sixteen week waiting period alone could be £9,571. That is before incorporating delays in marketing the property, finding a suitable buyer and completing on the sale. It is also worth noting that the delay often deters buyers.

## What can you do to mitigate the impact?

The phrase “control the controllables” used in elite sport can be applied here. You should do all you can to reduce the detrimental impact of third parties – the Probate Registry in this case.

One such impact is if the Probate Registry find a problem with an application and place a stop on it, at which point they seemingly immediately place it in the “too hard” pile. It is very difficult to get an application back on track once that happens.

Taking professional advice early is vital. The first step is always to ensure you have a Will since applications on intestacy will always take longer. In addition, a professionally prepared Will, made with the benefit of experience in the capabilities of the online portal, makes it less likely that the Probate Registry will put a stop on the application and ensure probate is granted as quickly as the system will allow.

You should also take advice on how to ensure there is sufficient liquidity to meet the IHT liability. Liquidity can be increased by holding assets jointly (in the right circumstances) or, in the case of life insurance and pensions, by making sure they pay out to named individuals or trustees rather than your executors.

Professional advice during the application is also crucial. The most common reasons for an application hitting the buffers are the incorrect timing of a probate application in relation to the HMRC IHT submission, a lack of explanation regarding the physical condition of a Will or an application which does not account for all named executors (e.g. where they have predeceased or renounced their appointment).



Monitoring the application by diarising likely milestones and having regular contact with the Probate Registry to check progress is essential. With such long waiting times it is easy to assume the application is working its way through the system only to find it never reached the right pile on submission.

## Where next for the Probate Registry?

In a recent update the Probate Registry estimated that they receive 27,000 applications a month but only issue around 22,500 grants on average. That suggests there is a considerable gap but they say they have issued more grants than applications received for the last three months.

They add that they are upskilling staff to assist with complex cases and reducing the opening hours of their helpline to reallocate staff to tackle the backlog.

They also aim to be able to complete grant applications for intestacies through the online portal later this year.

These updates are promising and show improvement but the changes have not yet filtered through to have a lasting impact. Years of delays are likely to take time to resolve.

## How we can help

If you need advice on obtaining probate or are impacted by the delays please get in touch with our [probate and estate administration team](#).



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