

## Courts Service Submission to the Legal Services Regulatory Authority on the education and training arrangements in the State for Legal Practitioners

**The Legal Services Regulatory Authority (LSRA) has invited submissions as part of a public consultation prior to a report to the Minister for Justice and Equality on the education and training arrangements in the State for legal practitioners.**

**The Courts Service would like to make the following submission.**

It is considered that legal practitioners can be overly reliant on court offices to ensure that documentation submitted to court is correct and in compliance with court rules, practice direction and statutory provisions. This is a cause of concern for the Courts Service as it impacts on resourcing of our offices and on the service we provide to all our users. It is considered that this is an issue which can be addressed through legal training. It can be addressed initially in the context of the primary law degree and more particularly as part of the initial professional training and the continuous professional education of legal practitioners through increased awareness of and training in referral to and use of the relevant procedures and rules in each jurisdiction.

It is also important that practitioners are aware of or have some training in the use courtroom technology and the future use of Courts Service IT systems via Courts Service On Line (CSOL) by legal practitioners.

The recent recruitment of law graduates as Judicial Assistants, has also underlined the importance of generic skills, such as high level writing skills, research skills and ICT skills.

The Courts Service engages with the Law Society in relation to legal training and participates in seminars and training events. The Courts Service is happy to engage further in this regard and to support, in so far as it can, any initiatives to progress this issue.

**The invitation to make submissions stated that** It would be helpful for any views expressed, to be substantiated and if necessary, supported with any available evidence. The Recent Review of Probate Services examined *inter alia* the ongoing difficulties faced in the Probate Office in relation to the inadequate standard of applications received by the Office from members of the public and the Report of the Review has now been published on the [Courts Service website](#).

Legal Practitioners were invited by way of public invitation to complete a questionnaire on the service provided. Legal practitioners were asked to compare their experience of service delivered in Dublin and locally. The survey was carried out between 27<sup>th</sup> June 2016 and 31<sup>st</sup> August 2016. In addition to the public consultation 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.

With a view to providing the Review Group with an insight in relation to the concerns around the standard of applications 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 21<sup>st</sup> November 2016 to 9<sup>th</sup> December 2016 and where such applications were rejected, a record of the reasons for same was maintained. An additional exercise over the same period was carried out in the Probate Office in relation to applications made to the District Probate Registries. A copy of the relevant extract from the Review Report is attached for your information and it highlights the difficulties being faced in this regard.

For example of the 972 applications 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) 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:

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

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 Courts Service has endeavoured to support solicitors in relation to the preparation of grant applications and comprehensive guidance material is available on the on the Courts Service website.

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

Significant attention is also given by the Law Society to the Probate process in its professional course and continuing professional education. 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 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.

The Courts Service is available to engage further with the LSRA in relation to this matter or to assist with any further queries you may have.



# Probate Services Review Group Report February 2018

EXTRACT

## 2. LEGISLATIVE FRAMEWORK, ORGANISATION AND PROCESS

### 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

(c) obtain a precise profile of the most common queries raised and

(d) 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 21<sup>st</sup> November 2016 to 9<sup>th</sup> December 2016 and where such applications were rejected, a record of the reasons for same was maintained.

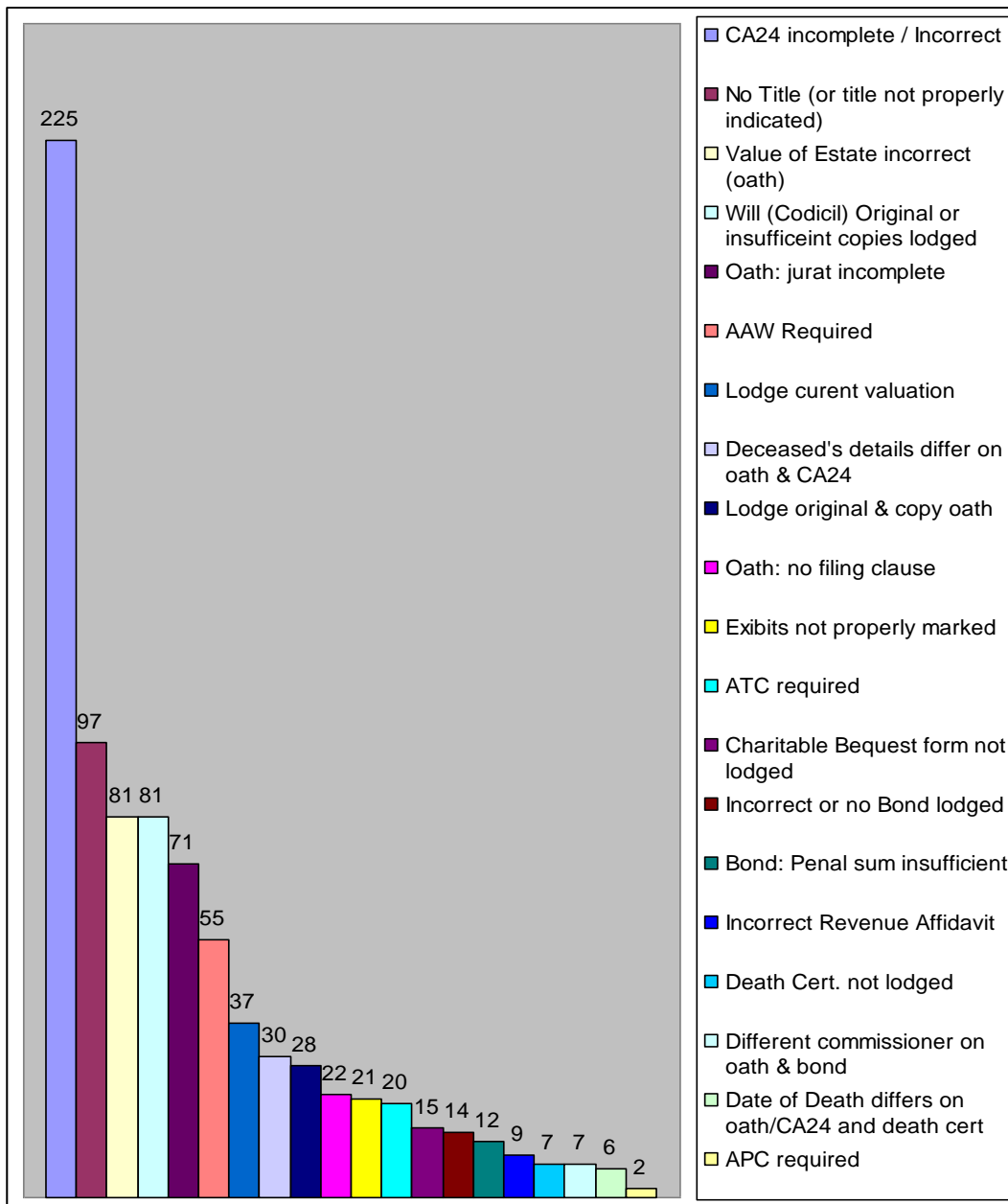
972 applications were assessed in the Dublin Probate Office during the pertinent period. 755 applications were presented and assessed by the Seat Office at the counter, while 217 postal applications were assessed during the same period (it should be noted that the figure for postal applications represents 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
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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.

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



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"<sup>1</sup>, containing a tabulated list of 20 issues or defects giving rise to queries, together with advice to practitioners on how to avoid them.

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<sup>1</sup> 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.<sup>2</sup>

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.

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

##### ***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 from 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 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.

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<sup>2</sup>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>

