



Official Solicitor's Office

Annual Report

1 April 1999 to 31 March 2000

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Foreword by Laurence Oates, the Official Solicitor



In previous years this Office's performance and activities have been given the briefest of mentions in the Lord Chancellor's Department's Annual Report and have warranted a single table in the annual Judicial Statistics. It is right that I should more fully account for what the office has done in a financial year.

As this is the first document of its kind intended for both my staff and my stakeholders alike it includes some general introductory material. It should also be seen as representing a state of transition from the previous internally published reviews. Nevertheless, I hope it is of interest both to

those who have a particular interest in this office's affairs and wish to study some of the detailed information contained in this report and others who merely wish to dip into it to gain a flavour of how the office has discharged its responsibilities.

I take this opportunity to thank all staff who have worked hard over the 12 months, in a period when there has been some underlying uncertainty as to the future referred to in the note on future changes below, and for their contributions to the outcomes recorded in this report. This is my first year of appointment. I am committed to leading the office through this period of change and to justifying its recognition, as an Associated Office of LCD HQ, as an Investor in People.

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Note on Future Changes

This report records our activities in the final complete year before full implementation on 2 October of the Human Rights Act 1998, which will be an important factor in how we go about our tasks. My work in representing children in child welfare cases is to be taken over by the new unified Children and Family Court Advisory and Support Service, to be established under the Criminal Justice and Court Services Bill currently before Parliament. The Lord Chancellor has announced, as part of the Public Trust Office Reform Programme, that the PTO's trust functions will be transferred here, and that in addition to my office as Official Solicitor I shall be appointed Public Trustee. It is anticipated that these changes will occur on or by 1 April 2001.

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Aims and Objectives

Our aim is justice for those unable to obtain it without our intervention.

To achieve this aim our strategic objectives are:

- to protect the best interests and human rights of children and the mentally disabled who are unable to represent themselves in legal processes;
- to enable others to pursue legal processes where without our representation of a party they would not be able to do so; and
- to contribute to a fair, swift and effective system of justice.

We achieve these objectives through our operational objectives which are:

- to reach timely decisions on whether to intervene in accordance with the applicable directions and criteria;
- to assist the courts in arriving at a just result in accordance with the relevant evidence and applicable law;
- to protect the welfare and best interests of persons without legal capacity for whom we act;
- to intervene in such a way as to remove or lessen unnecessary involvement of the Court in the processes for resolving disputes;
- to secure the best value for the beneficiaries from the administration of estates and trusts;
- in the case of an abducted child, to ensure that the aggrieved parent may, with minimal delay, make application to enforce orders made in the child's home country;
- when called upon to advise the judiciary or brief an amicus, to provide as much assistance and support to the judiciary as we are able within our resources;
- to meet the service standards expected; and
- to improve the current rate of recovery of our operational costs.

We operate efficiently and effectively within available resources, providing best value for the taxpayer.

We value our employees and are committed to ensuring that they are equipped with the knowledge and skills they need to do their jobs well and that they are properly supported, recognised and developed.

We are an equal opportunities employer.

4 Activities

Section 90 of the Supreme Court Act 1981 provides for the Official Solicitor to perform duties in relation to the Supreme Court as the Lord Chancellor may from time to time direct. Our activities reflect the directions which have been given.

Our main activities and means by which we seek to obtain justice for those unable to obtain it without our intervention are as follows:

Family Litigation

My office represents children as their guardians ad litem in exceptionally difficult or complex Children Act, wardship or adoption cases in the High or County Courts. We will consent to act often in the most intractable of disputes between parents, relatives or other adults and seek to find a way through to assist the court to achieve a solution which promotes the child's welfare. In the past ten years, more than 18,000 children have been represented by this office. We intervene on behalf of any person (child or adult) in medical-legal cases where that person is incapable of consenting (or refusing consent) to the course of action proposed. We also act in family proceedings as the guardian ad litem of a parent suffering from mental disorder.

In these cases we seek to produce a high quality report which reflects a thorough and careful investigation and analysis of the relevant legal, procedural and welfare issues and provide the necessary legal assistance.

General Litigation

We will consent to act, when there is no-one else suitable or able to act, as the litigation friend of a party who is incapable of conducting proceedings on his or her own behalf. Many cases involve personal injury claims, possession actions or applications in connection with inheritances. Other cases may involve representing an estate of a deceased person, usually in circumstances in which there is need to protect the property of a minor or person under mental incapacity or some person wishes to claim against an estate for which no personal representative is willing to act.

In these cases we seek to assess what can be achieved on behalf of the party in need of our intervention and provide effective legal assistance to that end.

Estates

We administer estates, act as trustee, and act as the guardian of children's estates, when there is no-one else suitable to do so. The total value of such assets at any given time is between £50 and £60 million, spread between more than 1,100 cases. We seek to administer the assets for which we are responsible to secure best value for the beneficiaries in accordance with the terms under which we hold those assets.

Court of Protection

My office also represents persons without mental capacity in proceedings concerning their property and affairs before the Court of Protection. Our role is to represent a patient in a way which protects his or her financial interests and seeks to respect his or her own wishes and feelings, whether actual or in an assumed lucid interval.

Child Abduction Unit

My office runs the Child Abduction Unit in England and Wales as the Central Authority under the Hague Convention on International Child Abduction and European Convention on Recognition of Foreign Orders. Our aim is to ensure that an aggrieved parent may, with minimal delay, make application to enforce orders made in the child's home country, and where the claim is made out secure the return of an abducted child. We must ensure the timely processing of applications in relation to both incoming and outgoing cases.

Liberty of the Subject

Other activities are to review the cases of people committed to prison for contempt of court and act for prisoners applying to a High Court judge for bail.

Assisting the Court

We also assist the Court when requested to do so through investigating the conduct of litigation or briefing counsel to appear as *amicus curiae*.

The Lord Chancellor's Department has amongst its strategic objectives for achieving justice:

- to improve the availability of affordable and good quality legal services so that, *inter alia*, the use of public funds secures greater social justice and reduces social exclusion; and
- to improve the lives of children and help build and sustain strong families through providing a legal framework to sustain family relationships and when they do break down to resolve disputes, with the least distress to those affected, especially the most vulnerable.

Our activities contribute to these objectives.

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Caseload

The caseload in 1999-2000 (and comparison with the previous year) was as set out over the page. This shows the number of new cases accepted, the proportion of these cases to the number of invitations to act we received, and our active caseload. It represents a small overall annual decline as shown in the table below.

	Increase/ Decrease %	Weighting (i.e. % of total costs incurred)	Weighted Increase/ Decrease
Family Lit – Adoptions	-7.7%	4%	-0.31%
Family Lit – Other Children	-9.1%	54%	-4.91%
Family Lit – Adults	+10.6%	3.75%	+0.40%
Family Lit – Amicus/Medic	+75.8%	4.75%	+3.60%
Child Abductions	-4.9%	2.25%	-0.11%
General Litigation	+10.5%	9.5%	+1.00%
Divorce	-15.4%	5.75%	-0.88%
Contempts & Bails	-0.7%	0.5%	0.00%
Estates (live cases)*	-8.0%	12%	-0.96%
Court of Protection	-6.5%	3.5%	-0.23%
Overall			-2.41%

* Number of current live cases is a better guide to the workload in Estates Group than number of cases accepted because many are of long-standing duration.

Case Numbers by Type of Case/Client

	1/4/99 to 31/3/00 (previous year in brackets)					
	Cases Accepted		% Accepted		Active Caseload C/F	
Representing Children						
In Family Litigation						
Child Adoptions	36	(39)	95%	(63%)	75	(91)
Other Child Cases	270	(297)	59%	(51%)	531	(554)
In General Litigation/Divorce	84	(86)	58%	(82%)	305	(331)
Total	390	(422)	60%	(69%)	911	(976)

Representing Adults						
In Family Litigation	261	(236)	69%	(66%)	270	(244)
In General Litigation/Divorce	294	(231)	91%	(92%)	966	(825)
In Court of Protection	267	(277)	100%	(100%)	200	(289)
Total	822	(744)	85%	(84%)	1,436	(1,358)

Representing Deceased's Estates in Litigation	68	(108)	94%	(92%)	63	(117)
Medico-Legal	13	(9)	52%	(43%)	42	(20)
Amicus	45	(24)	87%	(77%)	26	(32)
Child Abductions	372	(391)	100%	(100%)	251	(214)
Admin. Of Estates & Trusts	164	(166)	96%	(98%)	1,259	(1,422)
Contempts	299	(304)	100%	(100%)	37	(40)
Bail Apps	6	(3)	100%	(100%)	5	(4)
TOTALS	2,179	(2,171)	85%	(86%)	4,030	(4,183)

N.B. "Active Caseload" includes those cases where a decision has not been made on whether to accept the case.

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Business Plan

The business plan for the year was set out in the Office's Management Plan, as supplemented when the main drivers for change became clearer (viz preparation for the Human Rights Act and the CAFCASS and PTO reforms). This section sets out how we have done in relation to that plan; our financial performance is set out separately in the next section.

Continue to provide a quality service protecting the interests and welfare of our "clients" as measured by the extent to which we secure litigation outcomes in accordance with our recommendations.

This is the main "qualitative" indicator to mark how well we are doing. Overall the proportion of contested cases in which our recommendations are accepted without substantial amendment is running at virtually 90%, marginally up on the previous year. In the nature of our work we cannot expect 100% success. Our performance is a very high level of achievement.

Excluding Child Abductions and Estates cases, the following **case outcomes** were recorded:

	% Cases Concluded with Definite Outcome*		% of which were Concluded by Consent i.e. not Contested		% of Contested Cases where O.S. Submissions/ Recommendations were Accepted without Substantial Amendment	
	1/4/99 to 31/3/2000	(1/4/98 to 31/3/99)	1/4/99 to 31/3/2000	(1/4/98 to 31/3/99)	1/4/99 to 31/3/2000	(1/4/98 to 31/3/99)
Family Lit – Children	82.7%	84.5%	42.2%	44.4%	94.7%	95.6%
Family Lit – Adults, Medical & Other	34.8%	40.2%	21.5%	24.5%	77.4%	71.6%
General Litigation	37.7%	34.2%	64.0%	65.3%	61.3%	55.8%
Divorce	20.9%	28.3%	88.9%	89.3%	100.0%	100.0%
COP	89.6%	74.6%	70.3%	69.1%	98.9%	100.0%
Overall	65.4%	58.7%	53.8%	52.8%	90.1%	87.6%

*i.e. cases which were either concluded by consent, or with a contested hearing. This excludes those cases where the outcome was recorded as "Other" where, for example, the application was withdrawn, or one of the parties died, so that the case did not reach a normal conclusion.

Achieve stated throughput targets

Our targets and performance were as recorded below.

	Target	Achieved 1/4/99 to 31/3/00	Achieved 1/4/98 to 31/3/99
Family Litigation			
<u>Wardship/Custody/Care</u> Reports filed in time for hearing (i.e. at least 7 days before)	75%	63%	66%
<u>Adoption/Freeing</u> Reports filed within 9 months of receipt of Schedule II report	65%	77%	42%
Child Abductions			
To forward incoming cases to panel solicitors within 24 hrs	95%	99%	100%
To forward outgoing cases to other Central Authorities within 5 working days	95%	96%	100%
General Litigation & Divorce			
<u>General Litigation</u> Enquiries completed within 6 months of appointment/ allocation to section	75%	86%	85%
<u>Divorce</u> Preliminary enquiries completed within 3 months of request to act	70%	73%	81%
Cases ready for trial stage within 9 months of allocation to section	65%	83%	100%
Administration of Estates			
<u>C.I.C.A./Guardianship of Minors</u> Substantial payments to minor beneficiaries made within 1 month of reaching age 18	70%	69%	79%
<u>Estates</u> Deposit balances in the Ledger in excess of £1,000 invested within 14 days	95%	71%	74%
Trust Accounts completed and referred to Finance Section within 1 month of due date	65%	71%	73%
Administration accounts completed and referred to Finance Section within 1 month of completion of administration	75%	71%	62%
Costs Division			
Bills of Costs drafted within one month of referral	90%	89%	92%
Costs recovered within three months of request for payment	75%	82%	80%
Costs recovered within nine months of request for payment	90%	95%	93%

In those areas of the office with the greatest workload, throughput performance has improved over last year's, although staff shortages in Costs Division, Divorce Section and Estates Division have caused a slight deterioration. Completion of Children Division reports within the specified time before hearings (at least 7 days in advance) remains a problem. There are a number of reasons outside the control of this office why it has proved impossible to meet the 75% target. This is in large part because of the interdependencies in the system – eg we are reliant upon someone else filling their report or are awaiting an expert's report before we can file ours. It is an issue we are likely to carry over to CAFCASS.

Ensure that no complaints from the public need to be upheld

A total of **43** complaints were recorded between 1 April 1999 and 31 March 2000, compared with **41** in the equivalent period last year. These complaints were classified as follows:

Abductions	Bias/incompetence on part of O.S. representative	Costs: Payment/Amount	Disagreement with Court Decisions	Estate/Trust mismanagement	Failure to act promptly/delay/inertia	Other, or complaint unintelligible	Total
3	17	0	3	0	12	8	43

In six instances an apology was given. Four of these relate to a delay in handling the case or responding to correspondence (which more rigorous file review should be able to obviate). Two turn on their own special facts (one from a number of year's ago when we tried to help by intervening and obtaining counsel's opinion when the client was not in need of a litigation friend and the other when we inadvertently disclosed an ex-directory telephone number). In no case was a complaint of bias or incompetence by a member of staff upheld.

We responded to 25 cases (64%) within the 10-day target period, compared with 38 cases (92.7%) during the equivalent period last year. Again, staff shortages in certain parts of the office have caused delays in responding to complaints because caseworkers have concentrated their efforts on dealing with substantive issues relating to their cases.

Prepare for the coming into force of the Human Rights Act

We have laid a solid foundation for implementation of the Act on 2 October. This has included consideration of our position as a public authority under the Act and how we might modify our own practices to take account of the Act. We recognise that in all we do we should be aware of the human rights implications. I and members of staff have participated in a number of training events.

Contribute to the planning processes for the creation of CAFCASS and the reform of the Public Trust Office

Both projects are due for completion at the start of the next financial year. At this stage there is inevitably uncertainty as to certain aspects and the full implications for the office and for people here. We have played a full part in the work in progress and in taking the issues forward. We have been involved in the CAFCASS Project Development Group and Task Teams as well as participating in meetings here. We are also represented in the on-going PTO reform programme discussions. This coming year will be crucial in our securing a smooth transition.

Adopt all necessary practices to adapt to resource accounting

Resource accounting has been successfully implemented. We await details of resource *budgeting* which is to be introduced next year.

Training and Development

The training and development activities undertaken during the year were related to our objectives and our means of achieving them. Particular features were the training in the Civil Procedure Rules and "post-Woolf" litigation and in preparing for implementation of the Human Rights Act. I can report that in all areas of the office opportunities were taken to enhance the skills and expertise of staff and this is reflected in the continued high reputation of the office and the achievement of its objectives. As part of our commitment as an Investor in People, we are developing better ways of evaluating the contribution of our training and development activities.

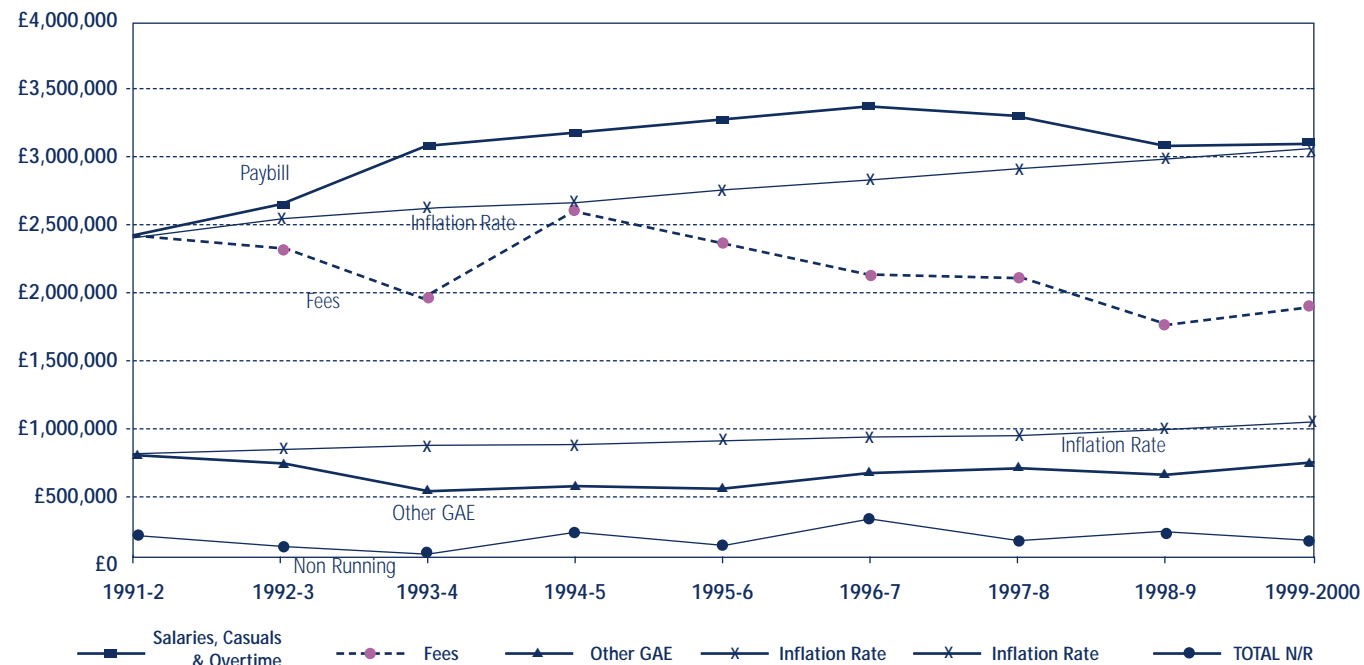
7
Financial
Performance

Outturn at 31 March 2000

Running Costs	Provision at 31/3/00	Outturn at 31/3/00	Over/Under Spend %	Last Year's Outturn
Staff Costs	£3,122,000	£3,077,339	-1.4%	£3,214,916
Counsel, Medical & Other Fees	£2,343,593	£2,318,180	-1.1%	£1,778,127
General Admin. Expenditure	£243,000	£257,015	+5.8%	£463,345
Total Running	£5,708,593	£5,652,534	-1.0%	£5,456,388

Non Running Costs	Provision at 31/3/00	Outturn at 31/3/00	Over/Under Spend %	Last Year's Outturn
Furniture & Fittings	£22,000	£23,868	+8.5%	£70,888
IT & Office Machinery	£134,000	£122,643	-8.5%	£143,307
Total Non Running	£156,000	£146,511	-6.1%	£214,195
Total Expenditure	£5,864,593	£5,799,045	-1.12%	£5,670,583

Historical Expenditure Summary

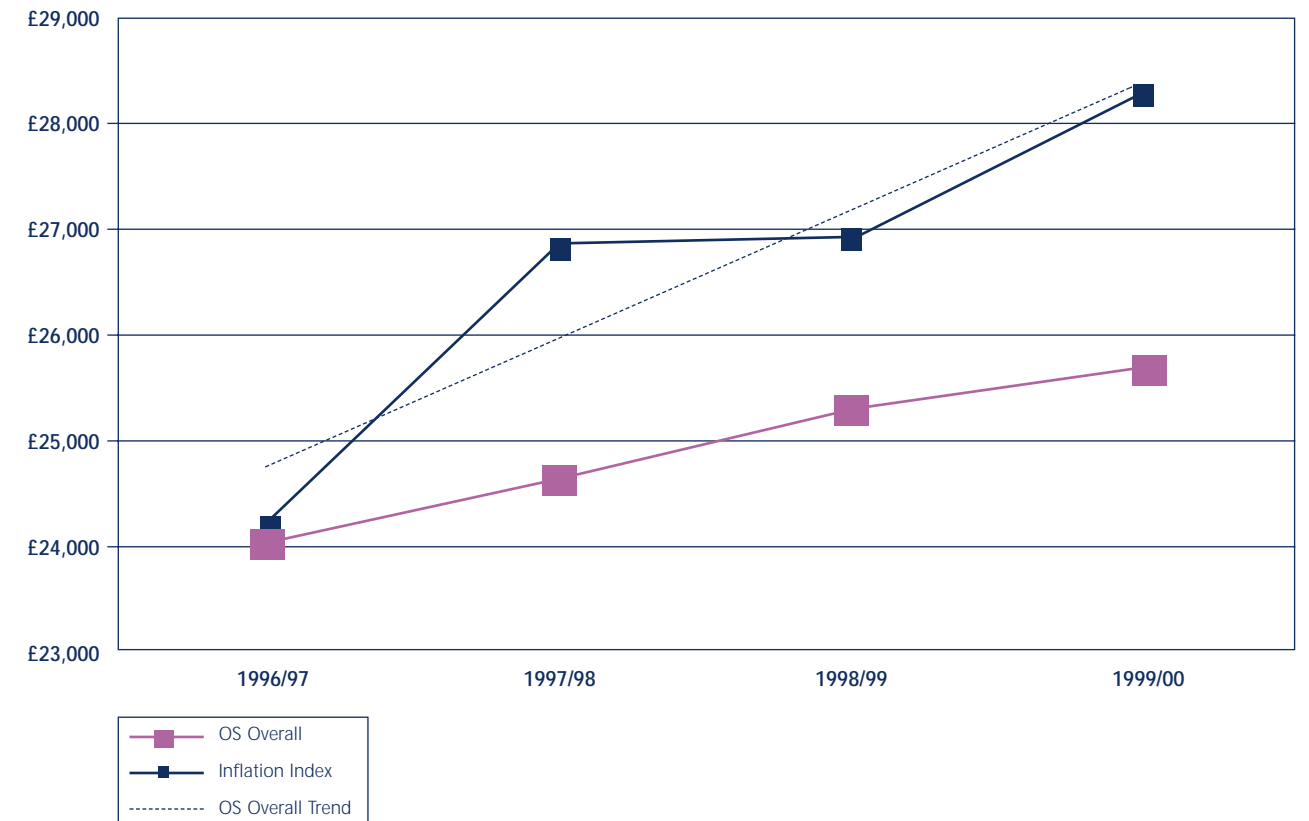


We surrendered to LCD HQ a total of £124k in running costs during the financial year in good time for it to be used elsewhere. At the start of the financial year we agreed to give up £100k non-running costs. During the year this was largely restored when an additional £72k was allocated to us. Our mechanisms for budgetary planning and monitoring resulted in our achieving our target on running costs of spending within 1% of provision.

A total of **£68,163** was saved through negotiation of counsel fees.

Unit Costs

	1996/97	1997/98	1998/9	1999/00
OS Overall				
Salaries & Overtime	£10,732	£12,265	£11,928	£13,002
Other Running	£12,399	£11,149	£11,849	£11,575
Accommodation & Overheads	£5,635	£8,413	£8,444	£9,104
Gross	£28,766	£31,827	£32,221	£33,681
Income	£4,563	£4,954	£5,279	£5,382
Net	£24,203	£26,873	£26,941	£28,299



Our unit costs are derived from the number of cases accepted in a year (or in some instances where it is a more accurate measure, the number of active cases), weighted in accordance with the relative costs of each type of case.

Costs Recovery

The target for recovery of costs for this financial year was £1,300,000 (i.e. **16.3%** of total costs, **14.5%** of costs, excluding VAT). The target percentage was lower than the previous year's (**18%**) because of the continuing trend of a reduction in the number of cases from which we are awarded costs orders.

Income in the form of costs recovery was generated as follows:

	Total to 31/3/2000 <i>(previous year in brackets)</i>		% Costs Recovered exc. VAT <i>(previous year in brackets)</i>		Target % exc. VAT (1999-2000)	No of Bills to 31/3/2000	No of Bills to 31/3/99
Family Litigation	£302,812	(£375,645)	5.4%	(6.3%)	10%	126	114
General Litigation & Divorce	£302,311	(£454,144)	19.6%	(30.4%)	25%	183	265
Court of Protection	£265,686	(£216,642)	82.2%	(71%)	100%	284	290
Estates	£406,663	(£309,264)	33.3%	(25.4%)	[96.5%] <i>(subject to review)</i>	544	511
Total	£1,277,472	(£1,355,695)	14.2%	(14.7%)	14.5%	1,137	1,180

Note: total costs = O.S. budget (see above) plus costs for accommodation which are met from LCD HQ budget, plus O.S. share of LCD HQ overheads. These additional figures amounted to **£3,090,068** during 1998-99.

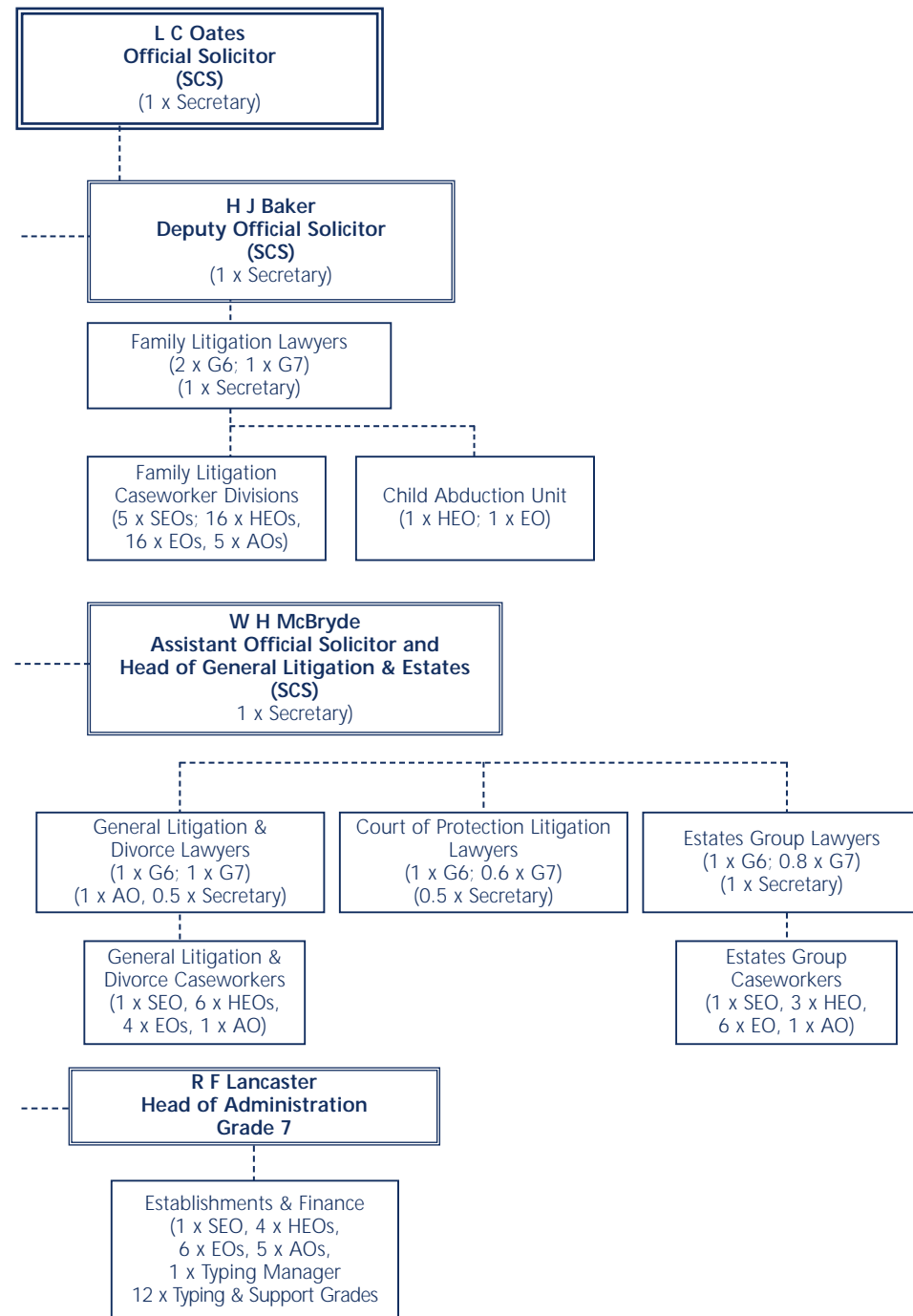
The target for recovery requires an average rate of recovery of **£108,333** per month to be achieved. The average has actually been **£106,456**.

The continuing fall in income from Family Litigation is due to:

- overall decline in caseload;
- shift in balance of cases from public law (from which most cost recovery orders have traditionally been made) to private law and parent/patient cases, from which we recover relatively little;
- decreasing proportion of cases (both public and private) where judges are making costs orders in favour of the Official Solicitor.

The main area in which the percentage of costs recovered fell well short of the pre-existing target was in relation to our estates work. Our target and performance will need looking at in the context of our combining this work with the PTO's trust and executorship work (for which full cost recovery is a statutory requirement).

8 Organisation



9 Noteworthy Cases

Re J – dispute as to whether 4 year-old son of divorced parents should be circumcised. Mother English, father a Turkish Muslim now settled in England. OS recommended child should not be circumcised without mother's agreement or his own consent once old enough. OS recommendation accepted by High Court judge whose decision was confirmed by the Court of Appeal.

Re MM – dispute as to whether child should have regular replacement immunoglobulin therapy. OS recommended parents' objections should be overridden but parents' agreement secured before final order made.

Re A – should 27 year old man with Down's Syndrome have a non-consensual vasectomy? OS recommended he should not, which was accepted by the High Court judge and confirmed by the Court of Appeal. Leave to appeal to the House of Lords refused.

Re ZM – should 20 year old woman with Down's Syndrome have a non-consensual hysterectomy? OS recommended she should not, but recommendation not accepted by High Court judge.

Re SL – should 28 year old woman with learning disability have a non-consensual hysterectomy? OS recommended she should not, but recommendation not accepted by High Court judge. OS appealed to the Court of Appeal and that appeal was allowed. Useful guidelines for future cases were established. In this case the Court of Appeal held that less intrusive therapeutic means should be tried as being in the patient's best interests.

Re O and Re J – OS as amicus advised that the court has no jurisdiction to order the taking of a blood sample from a child if the person with care and control refuses consent. Advice accepted by High Court judge and earlier decision of a different High Court judge not followed.

Re L,V,H,M – OS as amicus – Court of Appeal – test cases on domestic violence and contact for fathers. The Court of Appeal has given guidelines on how to approach these cases.

Re H – House of Lords – Child Abduction Unit – unmarried father can invoke the Hague Convention to secure return of child to Eire based on the custody vested in the Irish court through custody and guardianship proceedings

Re C – Court ordered HIV positive mother to submit baby for testing. OS acted as child's gal. Mother then abducted child!

Re M – Judge ordered unwilling teenage girl to undergo heart transplant in out of hours hearing.

Re AMR – High Court accepted Official Solicitor's submissions in finding recognition by English law of legal consequences of Polish guardianship order (decision since followed in Re AGN).

Re A (Adoption: Mother's objections) – In this High Court adoption matter, in which the Official Solicitor acted as the child's guardian ad litem, the 19 year old mother, who had discovered that she was pregnant shortly after starting at university, placed the baby voluntarily for adoption at birth but changed her mind three months after he had been placed with prospective adopters and, within the adoption proceedings, sought his return. Granting the adoption order sought, the judge ruled that the mother had been unreasonable in changing her mind. To return the baby, now almost one year old, to her would pose too great a risk of disturbance and lasting damage to him.

Re P – in a matter in which the Official Solicitor assisted the High Court as amicus curiae, helpful guidance was given in relation to the powers and jurisdiction of the English court to make mirror orders, as required by the American court, to facilitate contact in this jurisdiction between father and child.

Z & Others -v- The UK – The OS brought civil proceedings for compensation for 4 children who had suffered severe psychological damage as a result of social services failure to take them into care. the claim was struck out, the House of Lords ruling that local authorities effectively had immunity for the way they carried out their statutory duties in respect of children. The OS took the case to Europe where the Commission on Human Rights ruled unanimously that the UK was in breach of its obligations to protect children from inhuman and degrading treatment under Article 3. They also found unanimously that there was a breach of Article 6, the right of access to a court. The case was heard by the European Court of Human Rights in June and judgment is awaited.

LB Enfield -v- B (a minor) – OS represented a minor defendant in the first case to test the court's powers to grant injunctions under the Housing Act 1996. The Court of Appeal held that the Act did not permit an injunction to be made so as to protect persons simply working or engaged in a lawful activity in the locality of local authority housing.

1 April 1999 to 31 March 2000

Child Abduction Unit – Returns by Outcome

	Requesting Central Authority*		Requested Central Authority†	
	No.	%	No.	%
1. Outcome: Child Returned				
(a) Judicial Return	21	17.5%	69	53.1%
(b) Voluntary Return	40	33.3%	7	5.4%
2. Outcome: Child NOT Returned				
(a) Judicial Refusal	5	4.2%	8	6.2%
(b) Access to Child Ordered	4	3.3%	1	0.8%
(c) Access to Child Refused	1	0.8%	0	0.0%
(d) Access to Child Agreed	10	8.3%	7	5.4%
(e) Registration Ordered (of Other Country's Court Order)	3	2.5%	1	0.8%
(f) Registration Refused	0	0.0%	2	1.5%
3. Outcome: Other (inconclusive)				
(a) Rejected by UK Central Authority (Application did not meet criteria)	7	5.8%	7	5.4%
(b) Rejected by Requested Central Authority (ditto)	5	4.2%	–	
(c) Child not traced	0	0.0%	4	3.1%
(d) Child traced to Non-Convention Country	1	0.8%	2	1.5%
(e) Child traced to Other Convention Country (resulting in new case)	2	1.7%	6	4.6%
(f) Application Withdrawn	21	17.5%	16	12.3%
Total	120		130	
4. Cases Pending	74	–	50	
GRAND TOTAL	194		180	

* Where child has been taken from England and Wales

† Where child has been brought to England and Wales

Produced by the Lord Chancellor's Department
and Official Solicitor's Office
October 2000

Designed by Martin Pearce Associates

