



Official Solicitor and
Public Trustee Office

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Annual Report 1 April 2003 – 31 March 2004

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Annual Report

1 April 2003 to 31 March 2004

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1. Foreword

Foreword by Laurence Oates, The Official Solicitor and Public Trustee



I am pleased to present the third annual report for the office of the Official Solicitor and Public Trustee (OSPT). We represent in court adults who do not have mental capacity to do so for themselves and children.¹ We administer estates and trusts when there is no-one else suitable or able to do so. We are also responsible for the Secretary of State's Child Abduction Unit in England and Wales.

We have continued to protect the interests and promote the welfare of the people we represent. Some of our most noteworthy cases in which we have developed the law or secured a favourable outcome for their benefit are recorded in Section 11 of this report. They show the range of work we undertake. The cases recorded here are, however, only the tip of a much larger iceberg. The number of matters we are handling in all areas of our litigation work – family, civil and Court of Protection – is on the increase. As the Central Authority under the Hague Convention on Child Abduction we have maintained our record of helping parents efficiently and effectively. We have also continued to look after our estates and trusts whilst ensuring that we only accept new cases where we are needed.

During the year we conducted our first survey of our litigation and child abduction services and established a User Group bringing together a wide range of representative organisations with an interest in our work. We have completed the work necessary to make an application for the Legal Services Commission's Quality Mark accreditation for these services. We have achieved good results against the Key Performance Indicators set for the office.

Our Staff Opinion Survey results, which are an important barometer for us as an office, have been the best so far. Once again, I am glad to have this opportunity to thank all working here who have together continued to deliver our wide range of services to a diverse range of clients, many of whom are vulnerable.

I commend this report to all who are interested in any aspect of this work.

A handwritten signature in black ink, appearing to read 'Laurence Oates', written in a cursive style.

Laurence Oates

The Official Solicitor and Public Trustee

¹ Other than children who are the subject of child welfare proceedings. They fall within the remit of the Children and Family Court Advisory and Support Service

2. Operating Environment

We undertake the separate statutory functions of the Official Solicitor and Public Trustee (OS and PT). The office also contains the Child Abduction Unit (CAU) which administers the responsibilities of the Secretary of State as Central Authority under the Hague Convention on International Child Abduction.

This year has seen a continuing increase in demand for all our litigation services encompassing not only adult family work as I reported last year but also our civil, Court of Protection and child abduction work. We have appointed additional staff, both legal and caseworkers, to meet this need. During the year we have continued to act in a wide range of civil and family litigation cases including a number of high profile medical or welfare cases in the High Court, examples of which are set out in Section 11.

Our PT services have continued to show a small decline in numbers, in keeping with the policy agreed by Ministers since 1998 that we should only act where there is no-one else willing or able to do so. We now manage around 1350 trusts, with clients' monies in excess of £170m. During the year we have taken steps in line with the policy to secure our retirement or withdrawal from our responsibilities for pension and institutional funds. Arrangements have also been put in place under the terms of the 2004 Fees Order to facilitate the withdrawal of trusts where there is no need for them to be administered in the public sector.

We have continued to plan for the bringing together of the processes of the PT Trust service and the OS Estates services in a new mixed team working structure. This has been linked to a fundamental review of the cases in the estates area which is now coming towards an end. The new working structure will be introduced in June 2004. We expect it to deliver clear improvements in service to clients through more efficient ways of working.

During the year the Lord Chancellor's Department was reconstituted as the Department for Constitutional Affairs (DCA) under a new Secretary of State. We joined the operations arm of the Department which provided a welcome opportunity to share best practice with colleagues in the Court Service, the Public Guardianship Office and the Legal Services Commission (LSC).

We were also involved with the planning for future new services including the introduction by the Government of Child Trust Funds, an expanded CAU service to meet the requirements of the European Union Regulation on Parental Responsibilities (2201/2003), which comes into effect on 1 March 2005, and continuing work on the projected Mental Capacity legislation. We expect these to continue to feature in our work during 2004-05.

Our performance against our Key Performance Indicators and our 10 priority throughput measures for client services was as reported in Section 4 and Annex A. In resource terms we managed our budget efficiently staying within the targets set for us. We have also continued to focus on staff, once again achieving the targets set for us regarding completion of staff appraisals on time, filling of vacancies and training and development. Our Staff Opinion Survey results were the best we have achieved so far, including the fact that we outperformed the Government benchmark for staff opinion surveys in 13 out of 14 questions measured against that benchmark.

3. Vision and Aims

Our Vision is that by April 2007 we will be a single organisation recognised for providing a quality and customer-focused service of last resort.

We are here to:

Achieve justice for those who need our services.

We do this by:

- acting in legal proceedings to protect the welfare or property rights of a person under legal disability or
- preventing a possible denial of justice to any party to proceedings or to any person with a claim on an estate or trust, and
- administering estates or trusts;

where there is no other suitable person or agency willing or able to do so.

Our aim is to:

Deliver and develop high quality and effective legal services. We shall achieve this through:

<p>Services to our Clients Protect the legal, welfare and financial interests of our clients through specialist services designed to meet their needs:</p> <ul style="list-style-type: none"> • in litigation by securing outcomes in accordance with our assessment of our clients’ best interests; • in estates and trusts by protecting and investing assets in the best interests of our beneficiaries. 	<p>Quality Processes Implement high quality services focussed on the needs of our clients in accordance with current best practices by:</p> <ul style="list-style-type: none"> • achieving LSC quality mark standards for litigation services; • developing common processes and standards for the administration of the OS’s and PT’s estates and trusts.
<p>Our Staff Motivate, support and develop staff and promote diversity and family friendly working practices by:</p> <ul style="list-style-type: none"> • being responsive to staff survey results; • ensuring enough training time is undertaken; • securing timely appraisals; • implementing our Equality and Diversity Action Plan. 	<p>Our Use of Resources Deliver efficient and high quality services that provide value for money to our clients and the taxpayer by:</p> <ul style="list-style-type: none"> • developing a baseline of current unit costs and then delivering year on year improvements; • meeting our budgetary targets for expenditure and cost recovery.

We contribute to the DCA’s Objective III, *to reduce social exclusion and protect the vulnerable.*

4. Key Performance Indicators

	Full year – 2003-04	
	Target	Outturn
<p>KPI 1 – Litigation Outcomes Extent to which this Office secures litigation outcomes in accordance with its assessment of its clients’ best interests</p>	N/A	97%
<p>KPI 2 – Investment Performance Proportion of trust cases reviewed with a view to adopting, where appropriate, the investment strategies suggested by the Strategic Investment Board</p>	100%	93%
<p>KPI 3 – Customer Satisfaction Maintain Customer Satisfaction levels in the OSPT</p>	N/A	79%
<p>KPI 4 – Client Service Delivery Percentage of high level throughput targets achieved</p>	100%	70%

KPI 2 reflects performance only for PT cases where investment management is conducted in-house. During 2004-05 we will be reviewing all of our Estates’ cases – where investment activity is conducted through private client fund managers – and assigning investment strategies in line with the Strategic Investment Board’s advice.

KPI 3 – following a survey of PT clients in 2002, for the first time we conducted a survey of our services in Litigation and Child Abduction. Overall 79% of respondents rated our services as being provided well or very well. See Section 9 for full details.

KPI 4 – Of the 10 indicators measured we achieved 7. We narrowly missed our target (93.5% versus 95%) to reply to correspondence within 15 working days. The other two indicators missed, relate to internal processes rather than customer facing activities. However, they are integral to the services we deliver and we have taken steps to improve performance in these areas for the future. See Annex A for details of the high level throughput targets.

5. Business Activities

Civil Litigation Division

The OS will consent to act, when there is no-one else suitable or able to act, as the litigation friend of a child or mentally incapacitated person who is a party to civil proceedings. There is a wide range of cases e.g. personal injury claims, possession actions or applications in respect of estates. 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 the OS seeks to assess what can be achieved on behalf of the party in need of our intervention and seeks to provide/ensure effective legal assistance to that end. Most of this litigation is conducted through external solicitors, but a minority is handled in-house.

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.

	New cases accepted			Active caseload*		
	2002-03	2003-04	% Change	2002-03	2003-04	% Change
Civil Litigation	328	368	+12.2%	1,068	1,038	-2.8%
Bails/Contempts	360	365	+1.4%	95	92	-3.2%

* The active caseload figures in this and the following tables are an average over the year.

Family Litigation Division

The OS represents children and mentally incapacitated adults in family and welfare proceedings (other than representing a subject child in child welfare proceedings which is now the responsibility of CAF/CASS). We can 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 and will also act in family proceedings as the guardian ad litem of a parent suffering from mental disorder. The OS will also assist the Court when requested to do so through investigating the conduct of litigation or briefing counsel to appear as advocate to the court. In these cases we will 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. In some cases, external solicitors are instructed, and in others the litigation is handled in-house.

The OS may also become involved in divorce case petitions, representing mentally incapacitated adults.

	New cases accepted			Active caseload		
	2002-03	2003-04	% Change	2002-03	2003-04	% Change
Children Act (or equivalent)	316	366	15.8%	368	387	5.2%
Adoption	106	120	13.2%	83	101	21.7%
Medical Legal	21	15	-28.6%	43	42	-2.3%
Advocate to the Court	8	2	-75.0%	16	16	0.0%
Divorce	83	125	50.6%	443	475	7.2%
Other	59	50	-15.3%	60	93	55.0%

Child Abduction Unit

The OS runs, on behalf of the Secretary of State, the CAU in England and Wales, as the Central Authority under the Hague Convention on International Child Abduction and European Convention on Recognition of Foreign Orders. The aim is to ensure that an aggrieved parent may, with minimal delay, where the convention based claim is made out, secure the return of an abducted child, and make application to enforce orders made in the child's home country. An important objective is to ensure the timely processing of applications in relation to both incoming and outgoing cases.

New cases accepted			Active caseload		
2002-03	2003-04	% Change	2002-03	2003-04	% Change
319	413	29.5%	299	286	-4.35%

An analysis of case outcomes appears at Annex B.

Court of Protection

The office 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 wishes and feelings, whether actual or in an assumed lucid interval. Many of the cases handled involve the making of a statutory will for the patient, others concern gifts for their needy relatives, or deeds of variation of wills where the patient is a beneficiary.

New cases accepted			Active caseload		
2002-03	2003-04	% Change	2002-03	2003-04	% Change
433	504	+76.4%	503	466	-7.4%

Estates and Trusts Administration Group

Estates: The OS administers estates and trusts as Administrator/Trustee of Last Resort. The OS is also called upon to manage an estate for someone entitled to a Grant of Administration but who is incapable of applying because of mental illness. He may also act as the administrator of the estate of a deceased person, to facilitate a claim being brought under the Inheritance Act. The OS also acts as Judicial Trustee where there has been a dispute between the trustees, or between the trustees and beneficiaries, about the administration of an estate or trust. In such cases the OS will be appointed by the Court to complete the administration. The OS also manages a number of trust funds for children. These trust funds usually arise from an award from the Criminal Injuries Compensation Authority.

Trusts: The PT acts as executor or trustee where he has been appointed under a will or under a new settlement. The PT may also be asked to administer the estate of an individual who has died intestate. He may be asked to take over an existing trust or settlement, by the existing trustees or by Court Order. The PT may decline to accept a trust, but not on the ground only of the small value of the trust property. The PT also administers certain pension, friendly society and other institutional funds. In addition, the PT maintains a register of Notices affecting Land (Notices to Quit) under Section 18 of the Law of Property (Miscellaneous Provisions) Act 1994.

Estates & Trusts Acceptance Policy Both when acting as OS and as PT, the office operates a strict policy of accepting new cases only in the last resort. The broad acceptance criteria applied are to accept cases only where:

- the beneficiaries (or one of them) are vulnerable or under legal disability (minority or mental incapacity) and no-one else is apparently able or suitable to act for them;
- a trustee or personal representative is necessary to resolve legal proceedings and a suitable or agreed alternative cannot be found;
- without intervention, the assets might be lost or fall into the wrong hands because the real beneficiaries had not been ascertained;
- the PT is named as executor and there is no suitable alternative person available and willing to act.

In addition the office will usually wish to be satisfied that funding is available for our fees and that the total costs of administration will not exhaust the net estate or fund.

	New cases accepted			Total cases under administration at year end		
	2002-03	2003-04	% Change	2002-03	2003-04	% Change
Estates	22	10	-54.5%	818	767	-6.2%
Trusts	17	14	-17.6%	1,480	1,386	-6.4%

Table: Assets under Administration as at 31 March (£'000s)

	Trust		Estates ¹
	2003	2004	2004
Investments	205,000	225,720	14,182
Property ² & Chattels	28,385	23,307	10,393
Cash on Deposit ³	23,304	22,784	18,081
	256,689	271,811	42,656

The OSPT is not currently required to produce audited Stewardship Accounts, although, in line with a recommendation by the National Audit Office (NAO), in the longer term we plan to do so. However, details of third party assets are disclosed in the notes to the DCA's Resource Account which is subject to audit by the NAO. At the time of publication of this report the Department's accounts are still in draft form.

The values shown in the table are not adjusted to take account of funds distributed in-year.

Notes

¹ No prior year comparison available

² Freehold and Leasehold property values as at 30 September 2002

³ Excludes money on deposit at the Court Funds Office £7.547m at 31 March 2004

6. Improving the Way We Work

The following projects were taken forward during the year as part of our continuing Change Programme:

- **Client Services and Processes** (*Integration of our Estates and Trusts businesses into a single unified operational unit*) A planning workshop with staff was held to decide how the “mixed teams” of caseworkers, co-located with accountants and tax staff should be arranged. This enabled us to plan the move to mixed teams in more detail. In the run-up to the changes (which take place on 1 June 2004) open briefing meetings were held with staff to explain how the new way of working would operate and to answer any questions. In addition, as we moved towards the new structure our programme of training and mentoring of staff continued. We are confident that this new team based way of working will provide benefits to both staff and clients as we move forward in 2004/05.
- **IT Replacement** (*Consolidation of our IT service provision and the identification of the requirements to support the modernisation of our service and performance management*) A scoping study was carried out on our behalf by the Department’s IT contractor. This examined the possible options, costs and timescales to replace our legacy systems with modern IT. Final decisions on the most appropriate way forward will be taken in the context of the wider Investment and Banking Programme mentioned below.
- **Fees** (*To develop a single policy across OSPT in relation to fee recovery and fee targets*) During the year we did the necessary preparatory work to secure Ministers’ agreement to a new PT Fees Order. This Order takes us further towards full cost recovery for public trustee work. The terms of the Order also provide for a reduction in, or in small value cases, the removal of withdrawal fees. This will make it easier for those beneficiaries who agree that we should no longer administer a trust to secure our withdrawal from doing so. This will also take us further towards achieving our policy of providing a trustee service of last resort. We have also carried out the necessary preliminary work to set up an activity based cost model which would support any decision to move to activity based fees in the future.
- **Achieving the Specialist Quality Mark accreditation for Litigation Services** (*The introduction of quality systems to underpin our business by attaining Quality Mark accreditation from the LSC*) We carried out our first survey of the services we provide in litigation and child abduction which resulted in 79% of respondents rating our services as being provided well or very well (see Section 9 below for further details about this survey). We have also undertaken a great deal of work during the year to ensure that our services and processes are provided in a way which will comply with the LSC’s Specialist Quality Mark requirements. We expect the audit of our processes to take place in the summer of 2004.

In addition, alongside other offices’ within the operations command of the DCA, we used the European Foundation Quality Mark (EFQM) Business Excellence Model to assess our performance across the whole range of business activity. The results of this work have helped us to identify further areas for improvement which are included in our business plan for 2004/05. The process also helped us to share best practice on a wider basis with colleagues in other parts of DCA’s operations command.

OSPT User Group

For the first time we set up an OSPT User Group to discuss with representative groups our issues and services (including those relating to the CAU). The group comprises representatives from both the voluntary sector who represent the interests of our client profile and organisations representing the legal profession with whom we work (a full list of external delegates is attached at Annex C). The terms of reference are available on the OSPT website and set out the following priorities for the group:

- to provide a forum for representatives of those either affected by the work of or represented by the OS and PT to raise issues relevant to our work and services;
- to maintain a network where key issues reflecting our client base are identified and addressed;
- to support the OSPT's aim to deliver and develop high quality and effective legal services;
- to help ensure that the OSPT is outward looking and client focused in providing quality services to a vulnerable sector of society.

The group first met in October 2003 and included an introduction to our services and the standards to be expected from OSPT along with details of our Change Programme and the results of our 2003 Litigation Services survey. Our second meeting was held in January 2004 with an agenda influenced by the interests of User Group delegates. This included PT fees and how we select solicitors to act on our behalf. From now on the User Group will meet every six months.

During the year we also set up a sub-group of User Group members to advise on alternative options on how we might best achieve our policy of last resort PT work.

Investment and Banking Programme

The DCA has appointed a Director of Investment and Banking to take direct responsibility for investment and banking activities within the OSPT, Court Funds Office and the Public Guardianship Office. An integrated action plan relating to the Department's investment and banking activities has been developed and we are working closely with the investment and banking review team to implement those recommendations which affect the OSPT. The immediate priority is to remove risk and then to move towards best practice in terms of controls for those activities which must remain with the Department.

We are committed to outsourcing investment management for our institutional funds and steady progress is being made in this direction. The institutional fund work is inconsistent with our longer term aim to be a trustee of last resort and we are also seeking to withdraw from the trusteeship where this is possible.

In conjunction with the review team, we are actively considering outsourcing of the investment management for the private trusts.

The Department's new Equity Index Tracker Fund has been available to the OSPT for investment since 1 March 2004. The Fund closely tracks the performance of specific market indices – the FTSE All Share Index (80%) and the FTSE World ex-UK Index (20%) – and is now the main vehicle for equity investment by this office. The advice of the Strategic Investment Board (SIB)¹ is that the Fund offers a lower cost means of investing in equities which is likely to suffer less volatility than some other investment options. The migration to this Fund will be a long-term process because of various factors related to the trust portfolios, principally Capital Gains Tax (CGT) constraints.

We have now completed the process of reviewing investment portfolios where the PT acts as trustee in order to identify the SIB-recommended asset allocation which is appropriate to particular trust funds and where rebalancing of portfolios in accordance with the recommended asset allocation will be required.

NAO Review of Stewardship Arrangements

During the year NAO carried out a review of our stewardship of trust clients' monies and corporate governance more generally. This confirmed that while lower level controls were operating effectively there were opportunities to strengthen the governance arrangements, internal control and financial reporting arrangements currently in place. The recommendations will be taken forward alongside the Investment and Banking Programme in 2004-05.

¹ A list of the members of SIB is contained in Annex C.

7. People and Learning

Our performance against our people indicators has shown a further improvement from last year. The timeliness of completing annual appraisals has reached 98%, an improvement of 6% from the previous year. The staff satisfaction levels obtained from the Staff Opinion Survey increased by 8% to 75%. We are particularly pleased with the results from the survey which showed that we outperformed the Government benchmark in 13 out of 14 questions measured (the only lower result being a question about pay). Although staff turnover doubled from the previous year this was in the main due to the retirement of 11 members of staff during the year. Disappointingly, sick absence remained high due to the number of staff on long term sick leave.

Performance Measures	2002-03	2003-04
Staff Satisfaction Survey	67%	75%
Timely Staff Appraisal	91.7%	98%
Staff Turnover	7.6%	15.8%
Sick Absence (average days in a year per person)	12.7	12.4

Training

The main training and development target for the year was that 80% of our staff should attend at least two days training in the year. This year the office improved on last year's performance of 66.8% and achieved 81%.

This year, staff have attended a total of 1415 training days (including desk training) which equates to 8.37 days training per member of staff.

	2002-03	2003-04
External Training	121	171
Lawyers Training (DCA)	29	40
DCA Training Events	319	467
Desk Training	84*	738
Total Training Days		1,415

* These figures are incomplete

Particular features this year have been:

- the introduction of further and better induction procedures, including the Induction Manual, about which new staff have been very complimentary, and which has been favourably commented upon by Internal Audit and IIP;
- the introduction of monthly Training Reports, with figures showing staff training by Division;
- the Work Awareness Week (69 staff involved);
- training on handling difficult telephone calls (DCA training tailor-made for this office; 25 staff involved);
- 9 staff taking part in the Pitmans Government Pilot Scheme on IT;
- Legal Network Television lunchtime video sessions (26 staff involved);
- the Modernising Government in-house presentations (56 staff involved);
- DCA-wide Health & Safety Awareness Training (137 staff involved so far); and
- an office-wide IT Training Needs Analysis.

8. Equality and Diversity

The OS and PT's Equality and Diversity Advisory Group has continued to meet to review progress against our plan introduced in 2002. Out of the 40 original actions identified in the plan, 33 have been achieved or are embedded in the organisation and are on going. The remaining 7 are largely around client facing issues and are being taken forward as part of the Quality Mark Project. Quiet room facilities for prayer and contemplation available to all staff have been introduced and the Department's network group has delivered a roadshow to the office.

9. Customers and the Community

Customer Survey for Litigation Services

For the first time we carried out a survey of our services in Litigation and the CAU in May 2003.

Number surveyed

As in many or all of our cases we cannot survey the person/child under disability directly, we surveyed three “classes” of individual as proxies for our clients. They were: 69 judges who presided over OSPT cases, 206 solicitors and barristers whom we instruct to act on our behalf and 200 solicitors and barristers who acted for other parties in Court of Protection proceedings in which we were involved. The respondents’ details were extracted from our case files.

Results

475 postal questionnaires were sent out in total. A 45% response rate (215 replies) was achieved overall; this comprised 54% judges, 50% solicitors whom we instructed and 54% other parties’ solicitors.

The proxies for our clients were asked to rate the performance of the OS over the last 12 months. We achieved the following results:

- Overall of those who responded 79% rated the OS’ services as being provided well or very well. This figure comprises 64% of judges, 74% of solicitors whom we instruct and 86% of other parties’ solicitors;
- Overall 85% of respondents rated the approachability of the OS or his staff as good or extremely good;
- Overall 81% rated technical/legal competence positively; and
- Our performance on speed of response was rated as well or extremely well by 67% of respondents.

The results of the surveys were shared with:

- the President of the Family Division;
- the Senior Master, Queen’s Bench Division;
- HM Council of Circuit Judges;
- the OSPT User Group; and
- the Association of District Judges.

For the first time, we obtained some data on our possible client profile including gender, age, ethnicity and disability by type of work. We plan to conduct further surveys and hope to build on our client profile data by including some questions on future needs including language and other requirements.

Next steps

On 5 March 2004 we met the Association of District Judges to discuss the survey results, open dialogue with the judiciary and discuss how OSPT can improve. The meeting was extremely useful and identified a potential knowledge gap at District Bench level in the OS's residual role in litigation since the creation of CAFCASS. We will therefore be submitting information to the quarterly District Judges' bulletin in October 2004. We are also preparing a judicial leaflet setting out our role and how to contact us for more information which will be circulated by autumn 2004. In addition we will seek a slot in the annual District Judges' event in 2005 and enquire with the Judicial Studies Board about the need for information to be included in refresher seminars and/or bench books amongst other things. We have offered to conduct talks at district bench circuit meetings or training days. We will also consider whether protocols and OS Practice Notes should be amended and reissued to reflect our current work.

Complaints

A total of 56 complaints were recorded between 1 April 2003 and 31 March 2004. This represents a fall of 19% from the previous year when 69 complaints were received.

The complaints were classified as shown below:

Bias/Incompetence on part of OSPT representative	4
General Procedures	21
Fees/Investments	6
Disagreement with Court Decision	2
Failure to act promptly/delay/inertia	21
Other, or complaint unintelligible	2
Total	56

The number of complaints that were deemed as being justified increased from 29% to 30% (see table below).

Category	2002-03	2003-04
Justified	29%	30%
Partly Justified	26%	26%
Not Justified	45%	44%

There was a fall in the number of complaints relating to the failure to act promptly/delay/inertia although complaints about the office's general procedures increased. For the second year running no complaints were received about Equality or Diversity issues. We set ourselves a target of answering 95% of the complaints we received within 15 days. We achieved 96%.

We also log the formal letters of thanks we receive and during this period we recorded 71.

10. Financial Performance

Unaudited Income and Expenditure Statement

The office is not required to produce its own audited accounts. However, the office's income and expenditure is an integral part of the DCA's Resource Account, which is subject to audit, and a summary of income and expenditure by activity is disclosed in the notes to the account (segmental analysis).

Gross Provision £7.121m (from £6.879m in 2002-03)

£'000s	Litigation*		Estates & Trust**		Total	
	2003-04	2002-03	2003-04	2002-03	2003-04	2002-03
Paybill (excluding agency staff)	1,558	1,264	3,313	3,300	4,871	4,564
Other administration costs	1,193	703	1,147	1,361	2,340	2,064
Total administration costs	2,754	1,967	4,449	4,661	7,203	6,628
Depreciation	6	8	13	28	19	36
Other non-cash costs	2	3	6	13	8	16
Accommodation charges	550	428	1,166	1,217	1,716	1,645
HQ Overheads	439	346	951	1,020	1,390	1,366
Total non-cash costs	997	785	2,136	2,278	3,133	3,063
Total Full Cost	3,748	2,752	6,596	6,939	10,344	9,691
Recoveries	(560)	(564)	(3,597)	(3,388)	(4,157)	(3,952)
Net Position	3,187	2,188	3,000	3,546	6,187	5,739
% Recovery	15.0%	20.5%	54.5%	48.8%	40.2%	40.8%

* Includes Child Abduction Unit

** Includes Pension & Institutional and Minors Funds

The OSPT's financial target was a net **direct** operating cost (total administration costs less recoveries) of £3.045m. Actual outturn was £3.054m. The expenditure target was exceeded slightly, but the office managed to match this by also exceeding its income target.

The improved cost recovery position in Trust and Estates compared with 2002-03 was achieved through a combination of increased fee income and a reduction in costs commensurate with the declining caseload. The PT fees were increased on 1 April 2003, the first year of planned increases intended to move the activity to full cost recovery (less allowable remissions). The planned fee increases alone will not achieve this objective, but are coupled with improvements in efficiency primarily through the introduction of modern IT systems.

Caseload in the Litigation section of the office increased significantly (as evidenced elsewhere in this report), thus expenses for this area also necessarily increased. Since it is only possible to recover costs, (or partial costs) on a small number of these cases, the percentage recovery rate for this area has fallen.

Headquarters' overheads and accommodation costs have both shown slight increases.

11. Noteworthy Cases

EP and HM

The office represented two young people victims of vCJD. Their cases followed that of Jonathan Simms and *JA v An NHS Trust* (noted in last year's annual report). The President of the Family Division also found in these cases that it was lawful as being in their best interests that they should receive the untried treatment of intracerebral infusion of pentosan polysulphate. Protocols for the treatment plans were established. The disease of vCJD is invariably fatal. Of these cases, JA died before the treatment was given. It continues to be given to Jonathan Simms, EP and HM. At the time of writing this report they remain alive.

HE v A Hospital NHS Trust and AE

This was an urgent application in which the father of his unconscious 24 year old daughter, whom this office represented, sought a declaration that it was lawful as in her best interests that a blood transfusion should be given. She had been brought up as a Jehovah's Witness and had signed an advance directive excluding her consent. There was evidence that she had since become betrothed and would revert to her original Muslim faith. She had also indicated that she did not want to die. Mr Justice Munby found that the advance directive did not in those circumstances have effect although it had not expressly been revoked, and that she should be given the life-saving treatment in accordance with her best interests.

A Local Authority v A Health Authority and Ms A

This office represented a group of adults with disabilities and children who were residents in a home. The issue was whether a report containing details about their circumstances should be published. The President in balancing their rights under Article 8 of the ECHR to a private and family life with the Article 10 freedom of expression came down in favour of recognising the importance of protecting the vulnerable adults and children. So far as the former were concerned the court's inherent jurisdiction could be invoked to make the appropriate declaration supported by an injunction restraining publicity.

An NHS Trust v D

At an earlier hearing in November 2002 the Judge (Coleridge J) found that it was lawful as being in her best interests for a termination of pregnancy to be carried out on a young woman unable to decide this for herself. The Judge heard further argument and gave Judgment upon the general principles involved as to when court approval should be obtained.

R v GMC ex p. Burke

This judicial review was brought by a capable 44 year old who is suffering from a degenerative brain condition and who anticipates that a time will come when he will lose the ability to swallow and will require artificial feeding by tube in order to remain alive. He complained that the Guidance issued by the General Medical Council in August 2002 did not sufficiently protect him in that they appear to allow doctors to withhold or withdraw such treatment where death is not imminent or it is known that the patient would wish the treatment to continue. The Disability Rights Commission were joined as an interested party and this office intervened to assist the court in relation to incapacitated patients.

Re T

In 1996 two children, then aged 5 and 11, were severely brain damaged when they were knocked down by a lorry driver on a pedestrian crossing. Their parents instructed solicitors prior to moving to a neighbouring county. Unfortunately, the distress of the parents at what had happened to their children, combined with the stress of the litigation, resulted in a failure to give proper instructions to the solicitors and eventually, with the trial date only a few months away, the Official Solicitor was appointed by the court as litigation friend in place of the children's mother. It was then possible for instructions to be given to the solicitors in respect of expert evidence and the presentation of the case and an application was successfully made for the trial to be adjourned for that purpose. Once a full schedule had been prepared and submitted to the defendants negotiations were entered into and a settlement of £7m achieved for the two children without the need to go to trial. The court approved the settlement and the parents were satisfied with the result.

Claire F v Secretary of State for the Home Department and ANR

CF was a prisoner who sought to retain her baby in a prison mother and baby unit. The OS agreed to represent the separate interests of her baby, LF. The mother's several challenges to the decision of the prison service to separate her from her baby failed, but a separate challenge by the OS based on a procedural error by the prison service succeeded. As a result LF remained with her mother until she was 16 months old, rather than being separated at around 9 months.

Bus Pension Funds

The OS is sole shareholder in two companies which administer funds on behalf of National Bus pensioners following successful litigation to recover £360 million from the Secretary of State for Transport on whom the pension funds devolved when the National Bus Company was privatised. The board of each company comprises current and deferred pensioners, a professional pensions trustee and a member of the Official Solicitor's office. The High Court approved a scheme for distributing the funds amongst the various classes of pensioners and the majority have now been paid in full. A tracing exercise has recently identified many pensioners whose current address was unknown and it is anticipated that further payments will be made shortly.

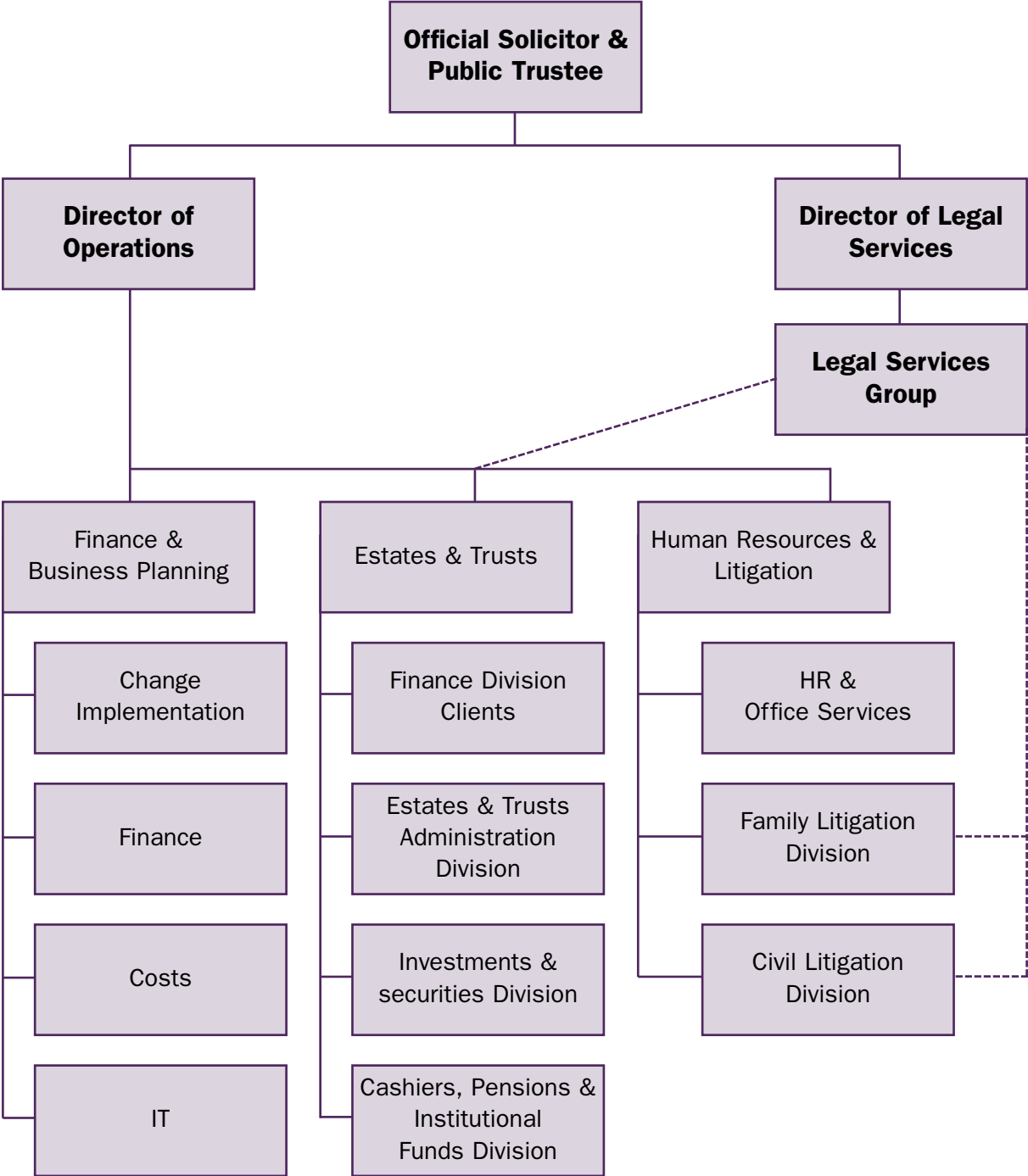
Longcare Homes

Between 1983 and 1993 residents of two private residential homes for learning disabled adults in Buckinghamshire were subjected to an abusive regime, including sexual abuse, neglect and over-medication. The OS was approached in 1995 by a solicitor representing some of the residents, who was concerned that others had a claim but there was no way of finding out who they were. The OS was able to obtain details of all the victims from the police and from Buckinghamshire County Council, who had investigated the homes, and contacted their relatives where their details were recorded. Where there were no relatives to act the OS acted as litigation friend, representing 24 of the 54 claimants. Many had suffered severe disturbance as a result of the abuse. The company owning the homes had gone into liquidation and the perpetrators had no recoverable assets, so a claim was brought against the County Council on the basis of its failure as the registration and inspection authority to protect the residents. This was a ground-breaking claim which was eventually settled by agreement with the County Council.

Re G

The OS was invited by the Court of Appeal to act as advocate to the court in an appeal by a father against, inter alia, his conviction and committal to prison for contempt of court in publishing information about his custody battle with his child's mother. The committal order had been made by a county court judge on his own initiative, following evidence being given of the 'publication' of details of the case through the father seeking advice as a litigant in person from the website of Families need Fathers. The President, in her judgment, accepted the arguments put forward on behalf of the OS that the father had been denied the minimum rights to which he was entitled under Article 6(3)ECHR, having been given no chance to be represented, and, further, that as the father was not in breach of any order nor committing a contempt in the face of the court the county court judge had no jurisdiction to make a committal order.

12. Organisation



The Management Board Members during the year were: Laurence Oates (OSPT), Eddie Bloomfield (Director of Operations), Edward Solomons (Director of Legal Services and Deputy OSPT), Mark Shore (Finance and Business Planning), David Charles (Human Resources and Litigation) and Mrs Chris Walker (Non-Executive Member, Family Policy Division, DCA HQ)

Annex A

KPI 4 Priority Lower Level Indicators

	2003-04				
	Target	Measured	Achieved	% Achieved	Hit?
Whole Office Respond to correspondence with 15 working days	95%	14,326	13,398	94%	X
Trust Number of cash movement postings to computerised records and ledgers made within 3 working days of receipt of relevant bank statement	99%	33,579	28,657	85%	X
Civil Litigation Preliminary enquiries completed within 3 months of request to act	80%	604	562	93%	✓
Child Abduction Unit Incoming cases forwarded to solicitors within 1 working day (subject to necessary documentation being provided and availability of solicitors to accept instructions)	95%	185	181	98%	✓
Outgoing (Hague Convention return) cases forwarded to Central Authorities within 5 working days of receipt of necessary documentation	95%	156	148	95%	✓
Family Litigation Preliminary enquiries in Divorce cases completed within 3 months of request to act	75%	172	140	81%	✓
Preliminary enquiries in Patient/Parent cases completed within 3 months of request to act	75%	443	403	91%	✓
Statements in Patient/Parent cases filed within 9 months of allocation	85%	185	173	94%	✓
Estates In Trust and Guardianship cases to produce an annual account and submit case to Finance Division for costs to be assessed within 1 month of the relevant account date	90%	295	295	100%	✓
Finance Bills of Costs drafted within 1 month of referral	90%	862	54	76%	X

Annex B

Child Abduction Outcomes

1 April 2003 to 31 March 2004 Child Abduction Unit – Returns by Outcome								
	Requesting Central Authority		Requested Central Authority		Requesting Central Authority		Requested Central Authority	
	Cases Received prior to 1 April 2003 and order made 1 April 2003 to 31 March 2004				Cases Received 1 April 2003 to 31 March 2004 and order made in same period			
Child Returned								
Judicial Return	12	25%	6	8%	62	52%	11	11%
Voluntary Return	3	6%	9	12%	12	10%	40	39%
Child NOT Returned								
Judicial Refusal	3	6%	14	19%	8	7%	4	4%
Access								
Access Ordered	4	8%	2	3%	6	5%	1	1%
Access Refused	0		0		0		0	
Access Agreed	2	4%	10	14%	1	1%	1	1%
Registration								
Registration Ordered	3	6%	1	1%	1	1%	2	2%
Registration Refused	0		0		0		0	
Other (Inconclusive)								
Rejected by UK Central Authority	0		1	1%	8	7%	11	11%
Rejected by Requested Authority	0		2	3%	1	1%	6	6%
Child not traced	1	2%	0		1	1%	1	1%
Child traced to Non-Convention Country	0	0	1	1%	1	1%	0	
Child traced to Other Convention Country	1	2%	1	1%	1	1%	2	2%
Application Withdrawn	19	40%	27	36%	17	14%	23	23%
TOTAL	48	100%	74	100%	119	100%	102	100%
Cases Pending	11		33		61		130	
GRAND TOTAL	59		107		180		232	

Annex C

External Members of the OSPT User Group

Delegate	Organisation
Jenny Rawstorne	Personal Injury Panel of the Law Society Clinical Negligence Panel of the Law Society Children Panel of the Law Society Family Law Panel of the Law Society
Hilary Lloyd	Strategic Policy Advisor of the Law Society
Frances Swaine	Association of Personal Injury Lawyers
Jonathan Wheeler	Association of Child Abuse Lawyers
Henry Frydenson	Contentious Trust & Probate Specialist Association
Alan Benstock	Probate Section of the Law Society
Denise Carter OBE	Reunite
Christopher Goulden	Solicitors Family Law Association
Caroline Willbourne	Family Law Bar Association
Caroline Gardner	Society of Trust and Estate Practitioners
Joanna Sulek	MIND
Bill Prouse	Age Concern
Joan Wilson	Mental Incapacity Division DCA HQ
Colin Pipe	Family Justice Division International Branch, DCA HQ
Barbara Esam	NSPCC
Master Lush	Court of Protection
Richard Peel	Solicitors for the elderly
Caroline Little	Association of Lawyers for Children

Members of the Strategic Investment Board 2003-04

Chairman

Dr Colin Price¹

Appointed Members

Mr Alan Clifton

Mr Andrew Hutton

Mr Laurence O'Mara

Mr David Ritchie²

Professor Janette Rutterford³

Ex Officio Members

Mr Laurence Oates (OSPT)

Mr Rab Harley (Head of Investments and Banking DCA)⁴

Mr Ian Hyams (Director, Supreme Court Group)

Mr David Lye (Chief Executive, PGO)

Master Denzil Lush (Master of the Court of Protection)

¹ Re-appointed 1 January 2004

² Re-appointed 1 January 2004; Resigned 31 March 2004

³ Re-appointed 1 January 2004

⁴ Appointed 26 January 2004