

Official Solicitor and Public Trustee Office

Annual Report

1 April 2004 to 31 March 2005

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1. Foreword

Foreword by Laurence Oates, The Official Solicitor and Public Trustee



I am pleased to present this Annual Report for the office of the Official Solicitor and Public Trustee (OSPT). This is my sixth report as Official Solicitor and fourth as the holder of both this post and that of Public Trustee.

The year has seen steady increase in the amount of litigation the office has handled on behalf of people who cannot represent themselves, particularly in the area of family litigation. Some of our most noteworthy cases, in which we have developed the law or secured favourable outcome for the benefit of the people we have supported, are recorded in Section 11 of this report.

During the year we passed our final audit, subject to some final corrective action, for accreditation under the Legal Services Commission's Specialist Quality Mark. We also conducted a second survey of our litigation and child abduction services and are taking forward the findings through an action plan during 2005/06. This second survey showed an increase in satisfaction of the users of our services from a 79% to an 81% positive rating. During the year we have seen a decline in the number of complaints we have received and an increase in the number of letters of thanks, which we also monitor.

We have achieved good results against the Key Performance Indicators set for the office (see Section 4).

We have delivered the necessary planning work to prepare us for our new responsibilities:

- i. under the European Convention on Recognition of Foreign Orders and the revised Brussels II;
- ii. the Reciprocal Enforcement of Maintenance Orders (REMO), which transferred from DCA Headquarters on 1 April 2005; and
- iii. as the "registered contact" in a limited number of cases concerning looked-after children under the Government's new Child Trust Funds initiative.

Looking forward, we are playing an integral part in the planning for the implementation of the Mental Capacity Act 2005, which will provide a new basis upon which decisions are taken affecting people who lack capacity. We are also embarking upon processes which will enable us to retire from, prematurely distribute or close a number of our current trusts and estates cases which we should no longer continue to hold.

Once again, I am glad to have this opportunity to thank all working here who have together contributed to delivering our wide range of services to a diverse mix 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 dark ink, appearing to read 'Laurence Oates', written in a cursive style.

Laurence Oates

The Official Solicitor and Public Trustee

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 and, from April 2005, the Reciprocal Enforcement of Maintenance Orders Unit (REMO).

This year has seen a continuing increase in demand for our litigation services. We have appointed additional staff, both lawyers 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 these cases are contained in Section 11.

Our PT services have continued to show a 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 2,000 estates and trusts, with clients' monies in excess of £200m. 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 were 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.

During the year we brought together, as planned, many of the processes of the PT trust service and the OS estate services in a new mixed team working structure. We also completed our fundamental review of the cases in the estates area. Our work in estates and trusts continues to be influenced by our response to the recommendations in the NAO review of our stewardship of client funds. This report, and the need for us to produce auditable stewardship accounts, is driving forward further changes and improvements to our estates and trusts processes. We have had the benefit of significant input to these changes from colleagues in the DCA's Investments and Banking Team.

We have also this year completed our planning for future new services. These include:

- our acting as a "registered contact" under the new Child Trust Funds legislation in a relatively small number of cases in which there are children in care who have no parent suitable or able to fulfil this responsibility;
- an expanded Child Abduction Unit service to meet the requirements of the European Union Regulation on Parental Responsibilities (2201/2003) which came into effect on 1 March 2005;
- the transfer of REMO from DCA Headquarters; and
- preliminary work in preparation for the implementation of the Mental Capacity Act 2005.

Our performance against our Key Performance Indicators and our 6 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 target set for us. We have also continued to focus on staff, once again achieving the people targets set for us regarding timely completion of staff appraisals and the filling of vacancies. It is pleasing to note that our staff turnover is down this year as is our sick absence rate. These areas will continue to be a focus of attention as we go forward into 2005-06.

3. Vision and Aims

Vision Statement

Our vision is to be an organisation delivering high quality customer focused legal services for vulnerable persons, where those services need to be provided by the public sector, and to assimilate the new functions given to us and by April 2007 to reduce our estates and trusts cases to core last resort work.

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;
- facilitating legal proceedings by acting where otherwise they could not properly be constituted;
- administering estates or trusts so long as it is necessary that we should do so;

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

And by:

- acting as the Central Authority for England and Wales in relation to international child abduction and reciprocal enforcement of maintenance orders.

Our aim is to:

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

Services to our Clients

Protect the legal, welfare and financial interests of our clients through specialist services designed to meet their needs;

- in litigation by securing outcomes in accordance with our assessment of our clients' best interests,
- in estates and trusts by retiring from cases we should no longer continue to hold and securing or delivering services comparable with the best in the regulated private sector.

Quality Processes

Implement high quality services focussed on the needs of our clients in accordance with current best practices by;

- achieving LSC quality mark standards for litigation services,
- concentrating on our areas of key strengths in resolving intractable disputes in estates and trusts.

<p>Our Staff</p> <p>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</p> <p>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.
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We contribute to the DCA's Spending Review (SR) 02 Objective III, *'To reduce social exclusion and protect the vulnerable'*, and also to SR04 Objective II, *'To ensure that the public, especially the socially excluded and vulnerable, have access to excellent services, which enable them to exercise their rights in law and understand, exercise and fulfil their responsibilities'*. We are also an integral part of the Department's Objective IV, *'To create a modern, efficient and effective Department that has the capacity and capability to deliver excellent public services'*.

4. Key Performance Indicators

	2003-04 Outturn	2004-05 Outturn
KPI 1 – Litigation Outcomes Extent to which we secure litigation outcomes in accordance with its assessment of its clients’ best interests	97%	95.9%
KPI 2 – Investment Performance Proportion of trusts’ cases reviewed with a view to adopting, where appropriate, the investment strategies suggested by the Strategic Investment Board	93%	100%
KPI 3 – Customer Satisfaction Maintain customer satisfaction levels	79%	81%
KPI 4 – Client Service Delivery Percentage of high level throughput targets achieved	70%	83%

KPI 4 represents 6 high level indicators, of which we achieved 5. In the sixth (bills of costs drafted within one month of referral) we improved our performance compared to 2003-04 and achieved 84.8% against a 90% target.

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*		
	2003-04	2004-05	% Change	2003-04	2004-05	% Change
Civil Litigation	368	425	15.5%	1,038	1,073	3.4%
Bails/Contempts	365	265	-27.4%	92	76	-17.4%

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

Family Litigation Division

The OS represents mentally incapacitated adults and children in family and welfare proceedings (but we do not represent a subject child in child welfare proceedings, which is the responsibility of CAFCASS). We can intervene on behalf of a person 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 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		
	2003-04	2004-05	% Change	2003-04	2004-05	% Change
Children Act (or equivalent)	366	444	21.3%	387	511	32.0%
Adoption	120	143	19.2%	101	115	13.9%
Medical Legal	15	40	166.7%	42	58	38.1%
Advocate to the Court	2	5	150.0%	16	8	-50.0%
Divorce	125	154	23.2%	475	509	7.2%
Other	50	68	36.0%	93	128	37.6%

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 the 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		
2003-04	2004-05	% Change	2003-04	2004-05	% Change
413	368	-10.9%	286	339	18.5%

An analysis of case outcomes appears at Annex B.

Court of Protection

The OS 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		
2003-04	2004-05	% Change	2003-04	2004-05	% Change
504	457	-9.3%	466	460	-1.3%

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 incapacity. We 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. We may be asked to take over an existing trust or settlement, by the existing trustees or by Order of Court. 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			Active caseload*		
	2003-04	2004-05	% Change	2003-04	2004-05	% Change
Estates	10	12	20.0%	767	747	-2.6%
Trusts	14	8	-42.9%	1,386	1,329	-4.1%

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

	2004	2005
Investments	239,902	242,648
Property ¹ & Chattels	33,700	33,709
Cash on Deposit ²	40,865	49,268
	314,467	325,625

The OSPT is not currently required to produce audited Stewardship Accounts, although, in line with a recommendation by the National Audit Office (NAO), we are working to produce fully audited accounts for 2005-06. 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 and represent the value as at 31 March 2005.

Notes

¹ Freehold and Leasehold property values as at 30 September 2002

² Excludes money on deposit at the Court Funds Office (£7.237m)

6. Improving the Way We Work

- **Achieving the Specialist Quality Mark accreditation for Litigation Services and Child Abduction Unit** (*The introduction of quality systems to underpin our business by attaining Specialist Quality Mark accreditation from the LSC*). In 2004 we were awarded the provisional Quality Mark for our litigation and child abduction activities following an audit in July to ensure that our processes and procedures complied with the LSC's Specialist Quality Mark requirements. Some corrective action was required. We expect to have completed this process and be awarded the full Quality Mark in summer 2005.

We have also worked towards providing information about the office through the publication of guides. Our first publication entitled "A Guide to our Services for the Judiciary" was published in 2004. The booklet, aimed at members of the judiciary, sets out the requirements for the Official Solicitor to act in a case together with details of how to contact each of our work areas. Summer 2005 will see the publication of a booklet aimed at specialist lawyers together with an updated booklet for our Child Abduction Unit.

- **IT Replacement** (*Consolidation of our IT service provision and the identification of the requirements to support the modernisation of our service and performance management*) The project as originally envisaged was put on hold during the year pending further policy work on our estates and trusts business. Work has been undertaken to specify our IT requirements for the litigation side of our activities, including child abduction, and this is now proceeding as a stand-alone project.
- **Investments and Banking** (*Aimed at reducing risk and moving our activities towards best practice in terms of our responsibilities for private clients' monies*) We took forward during the year the recommendations of an NAO report into our stewardship of private client monies. We have made good progress in this context, working alongside colleagues in the Department's Investments & Banking Team.
- **Estates Recovery** During the year we completed a fundamental review of all of our estates cases. This included transferring all the balances held by us onto our TABS computer system. The next step will be to produce opening balances for 2005/06 accounts, which will be subject to audit by the NAO.
- **ASBOs in the county courts** We have taken part in a pilot project (funded by the Home Office) extending the powers of the county courts to make anti-social behaviour orders (ASBOs) against persons under 18 years of age.

OSPT User Group

The OSPT User Group, set up in 2003, continues to meet every six months to discuss with representative groups our issues and services. 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 of the User Group are available on the OSPT website: www.offsol.demon.co.uk. The third meeting took place in July 2004 and the fourth meeting in January 2005. The agendas for both meetings were influenced by the interests of the User Group delegates. This included the criteria for the OS's involvement in litigation and the Mental Capacity Bill.

The OSPT Change Programme was formally wound down in January 2005 following the completion (or very near completion) of the majority of its projects.

7. People and Learning

Once again this year we have maintained a good performance against our people indicators and targets. We have exceeded our target of completing 90% of appraisals within the deadline, having achieved 93% on time. Staff turnover has reduced during the year by almost half from 15.8% to 8.4%. We also continued to see a healthy level of interest in jobs that we advertised. Sick absence, although still higher than we would like, has also reduced this year from 12.4 days per person to 10.8. There was no Staff Opinion Survey undertaken by the DCA during 2004-05.

Performance Measures	2003-04	2004-05
Staff Satisfaction Survey	75%	N/A
Timely Staff Appraisal	98%	93%
Staff Turnover	15.8%	8.4%
Sick Absence (average days in a year per person)	12.4	10.8

Training

Once again we set ourselves the stretching target for training and development that 80% of our staff should attend at least 2 days training in the year. The figure achieved was 73.2%, and of those 73.2% the average number of training days was 5.6 per individual.

	2003-04	2004-05
External Training	171	148.5
Lawyers Training (DCA)	40	28
DCA Training Events	467	316.5
Desk Training	738	434.25
Total Training Days	1,415	927.25

Particular features this year have been:

- Mandatory training for all staff regarding fraud awareness and money laundering (separate events).
- A further programme of work awareness training with teams giving presentations to their colleagues about the work of their respective sections (36 staff presenters; 70 staff attended).

8. Equality and Diversity

We have taken forward this year a number of client facing diversity issues as part of our Quality Mark project. For example we have leaflets about our services which can now be made available in different languages on request. We can say with some pride that many of our approaches to equality and diversity are now embedded within our normal working systems, for example regular appraisal benchmarking and an open-minded approach to alternative working patterns across the organisation. This year has seen our first senior appointments in a job share role at divisional manager level. We have a seat on the Programme Board for the DCA's Diversity Implementation Programme and a number of our staff attended the Departmental launch event. In addition, other members of staff have attended various events this year including the launch of the DCA Women's Network and the Annual Carers' Conference where one of our Management Board members spoke about balancing work with care and responsibilities.

9. Customers and the Community

Customer Survey for Litigation and Child Abduction Services

We carried out a second survey of the services we provide in our Litigation and Child Abduction Unit divisions in November 2004.

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: 142 judges who presided over OSPT cases, 318 solicitors and barristers whom we instructed to act on our behalf and 225 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.

A slightly different approach was taken for the 2004 survey. Both active and closed cases were covered and a slightly longer questionnaire was used to obtain feedback on specific customer service issues.

Results

685 postal questionnaires were sent out in total. A 59% response rate (405 replies) was achieved overall; this comprised 51% judges, 62% solicitors whom we instructed, 63% other parties' solicitors and 53% barristers. This compares favourably to the 52% response rate achieved for the 2003 client survey.

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 81% rated the OS's services as being provided well or extremely well. This comprised 73% of judges, 75% of solicitors whom we instructed and 91% of other parties' solicitors. This compares favourably to the overall performance rating of 79% in 2003;
- overall 85% of respondents rated the approachability of the OS and his staff as good or extremely good; the same result as in 2003;

- overall 83% rated technical/legal competence positively, compared with 81% in 2003; and
- our performance on speed of response was rated as well or extremely well by 71% of respondents. This compares favourably to 67% in 2003.

For the first time, solicitors and other parties' solicitors were also presented with more detailed customer service issues. The four most important customer services issues identified by the proxies were as follows:

- doing what has been promised;
- professionalism of staff;
- quality of legal or procedural advice given;
- helpfulness of staff.

Next steps

We have changed the frequency of the survey from an annual survey to every 18 months. This will allow recommendations to be acted upon and for any resulting changes to feed through into improvements in performance. Following suggestions for improvements put forward by proxies, an action plan has been compiled and will be taken forward throughout 2005-06.

Complaints

A total of 49 complaints was recorded between 1 April 2004 and 31 March 2005. This represents a fall of 12.5% from the previous year when 56 complaints were received (continuing a downward trend).

The complaints were classified as shown below:

Behaviour of Staff	9
General Procedures	5
Fees/Investments	2
Disagreement with Court Decision	3
Failure to act promptly/delay/inertia	23
Other, or complaint unintelligible	7
Total	49

The number of complaints that were deemed as being justified fell to 20% from 30% last year (see table below).

Category	2003-04	2004-05
Justified	30%	20%
Partly Justified	26%	30%
Not Justified	44%	50%

A more detailed analysis of the above figures is encouraging. Although our workloads in the litigation areas have risen, the number of complaints has stayed broadly the same. While our work in estates and trusts has continued to decline, complaints have also fallen in this area from 37 last year to 27 in 2004-05. We set ourselves a target of answering 95% of the complaints we received within 15 days. We achieved 98%, with only one complaint failing to be dealt with within the target time.

Once again this year we have also logged examples of the formal letters of the thanks we received and during the year these numbered 74, a small increase on the previous year.

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 are 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)

£'000s	Litigation*		Estates & Trust**		Total	
	2003-04	2004-05	2003-04	2004-05	2003-04	2004-05
Paybill (excluding agency staff)	1,558	1,750	3,313	3,346	4,871	5,096
Other administration costs	1,193	987	1,147	1,363	2,340	2,350
Total administration costs	2,754	2,737	4,449	4,709	7,203	7,446
Depreciation	6	6	13	12	19	18
Other non-cash costs	2	2	6	5	8	7
Accommodation charges	550	631	1,166	1,123	1,716	1,754
HQ Overheads	439	270	951	558	1,390	828
Total non-cash costs	997	909	2,136	1,698	3,133	2,607
Total Full Cost	3,748	3,646	6,596	6,407	10,344	10,053
Recoveries	(560)	(632)	(3,597)	(4,274)	(4,157)	(4,906)
Net Position	3,187	3,014	3,000	2,133	6,187	5,147
% Recovery	15.0%	17.3%	54.4%	66.7%	40.2%	48.8%

* 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 £2.589m. Actual outturn was £2.539m. Although Trust and Estates income was less than budget, expenditure was also reduced and this helped to give a better net recovery performance.

The improved cost recovery position in Trust and Estates compared with 2003-04 resulted from increases in PT fees and a reduction in DCA Headquarters' overhead re-charging.

Once again caseload in the Litigation section of the office increased (as evidenced elsewhere in this report) but here also overall costs were marginally lower due to reduced overheads.

11. Noteworthy Cases

W Healthcare NHS Trust v H and Others

The OS represented a 59 year old woman who had suffered from multiple sclerosis for 20 years. She lived in a nursing home and required 24 hour care. She had been fed through a percutaneous gastrostomy tube (PEG) for 5 years. In August 2004 the tube fell out and she was admitted to hospital. It was the unanimous view of the treating clinicians that the tube should be reinserted, but the family did not want this to happen since they believed that in the circumstances she would rather die. The Hospital Trust, supported by the OS, sought a declaration that H lacked capacity to make a decision about reinsertion of the PEG tube and that in the circumstances it was in her best interests for the PEG to be reinserted. The Judge at first instance held that there was no clear expression of the patient's wishes that would amount to an advance directive. In the circumstances the court held that it was in H's best interests for the PEG to be reinserted and made the declaration sought. The Court of Appeal upheld the decision on the same day.

An NHS Trust v Miss T

Miss T believed her blood to be evil, and for this reason (without intending suicide) repeatedly cut her own wrists, intending to rid her body of the evil blood. She resisted the treatment offered by the local NHS Trust, in particular the giving of blood transfusions needed to save her life. There was some difference of opinion between medical practitioners as to whether she had sufficient mental capacity to make that decision for herself. The court agreed with the submission of the OS that an interim declaration could be granted, to preserve her life while further evidence was obtained. At a later hearing the court accepted further medical evidence of her lack of capacity, and made a final declaration allowing transfusions.

R v Department of Health ex parte MH

MH is a severely learning disabled woman who was removed from her mother's care under an Emergency Order under the Mental Health Act 1983 and detained in hospital under s.2 of that Act for assessment. It was held by the Court of Appeal that s.2 is incompatible with Article 5(4) of the European Convention on Human Rights where a patient is incapable of exercising on her own initiative her right to apply to a tribunal. It was also held that s.29(4) of the Act is incompatible with Article 5(4) as there is no provision for reference to a court in the case of a patient detained under s.2 where the 28 day period for detention is extended indefinitely as a result of an application to remove her nearest relative. Permission to appeal to the House of Lords was given and its judgment on this appeal is awaited.

R v Home Department ex parte D

D was a young man on remand in Pentonville, where he was on suicide watch having self-harmed on three occasions in the previous month. He became distraught after hearing his daughter had been taken into care. He was found, still alive but badly brain damaged, hanged, using his bed linen which had been left in his cell despite a noose having been found earlier that day. It was held that the Prison Services' procedure for investigating attempted suicides by way of an internal review failed to comply with its legal duty to protect life pursuant to Article 2 of the ECHR. It was ordered that an independent public enquiry with a power to compel witnesses, who could be cross-examined by the prisoner's representatives, was necessary in such cases of attempted suicide in custody, where the authorities were on notice that the prisoner posed a real and immediate risk to his own life.

Lewis v Gibson

The OS intervened in an appeal by Mrs Lewis against an order of the county court removing her as nearest relative of her daughter, the order being made on grounds that she unreasonably objected to her daughter being made the subject of a guardianship order under the Mental Health Act. The patient had not been represented in the county court, because the Rules expressly prevented her from being a party. The OS made submissions, accepted by the Court of Appeal, that, the rule having been amended to allow the patient to be a party (following representations to the Rule Committee by the OS) it was good practice in all cases for the court to notify the patient or a litigation friend on her behalf of the proceedings and the right to be joined as a party to those proceedings.

Sowden v Lodge

The claimant suffered a catastrophic head injury in a road traffic accident aged 13. Liability was agreed at 50%. At issue was the proper approach of the courts to the issue of the basis of compensation and the extent to which defendants can argue that claimants should rely on State provision. The Court of Appeal reaffirmed that the test is a subjective one and a claimant has a right to choose what he considers will meet his reasonable needs. The fact that the claimant will receive only a percentage of his damages should not affect the basis of the assessment of damages.

Re B

Application was made to the Court of Protection for authority to make a will for a mentally incapacitated patient who had previously wanted to make a will, but whose wishes as to his estate were unknown. The application was made by the professional holder of an Enduring Power of Attorney, who sought a will with most of the estate passing to one person whom he had been led to believe was the only close family member. It appeared each of three branches of the family was unaware of the nature of the relationship of the others with the patient. It was also said that a missing branch of the family had transgressed strict Catholic traditions and would not be favoured by the patient. The OS represented the interests of the patient. Enquiries identified the missing family members who had suffered at the hands of their violent father, and whose mother, the patient's sister, died prematurely. They disclosed unexpected evidence of a further compartmentalised part of the patient's life history. The court approved a settlement brokered by the OS, under which the presumed wishes of the patient were honoured by making appropriate provision for all the members of the family.

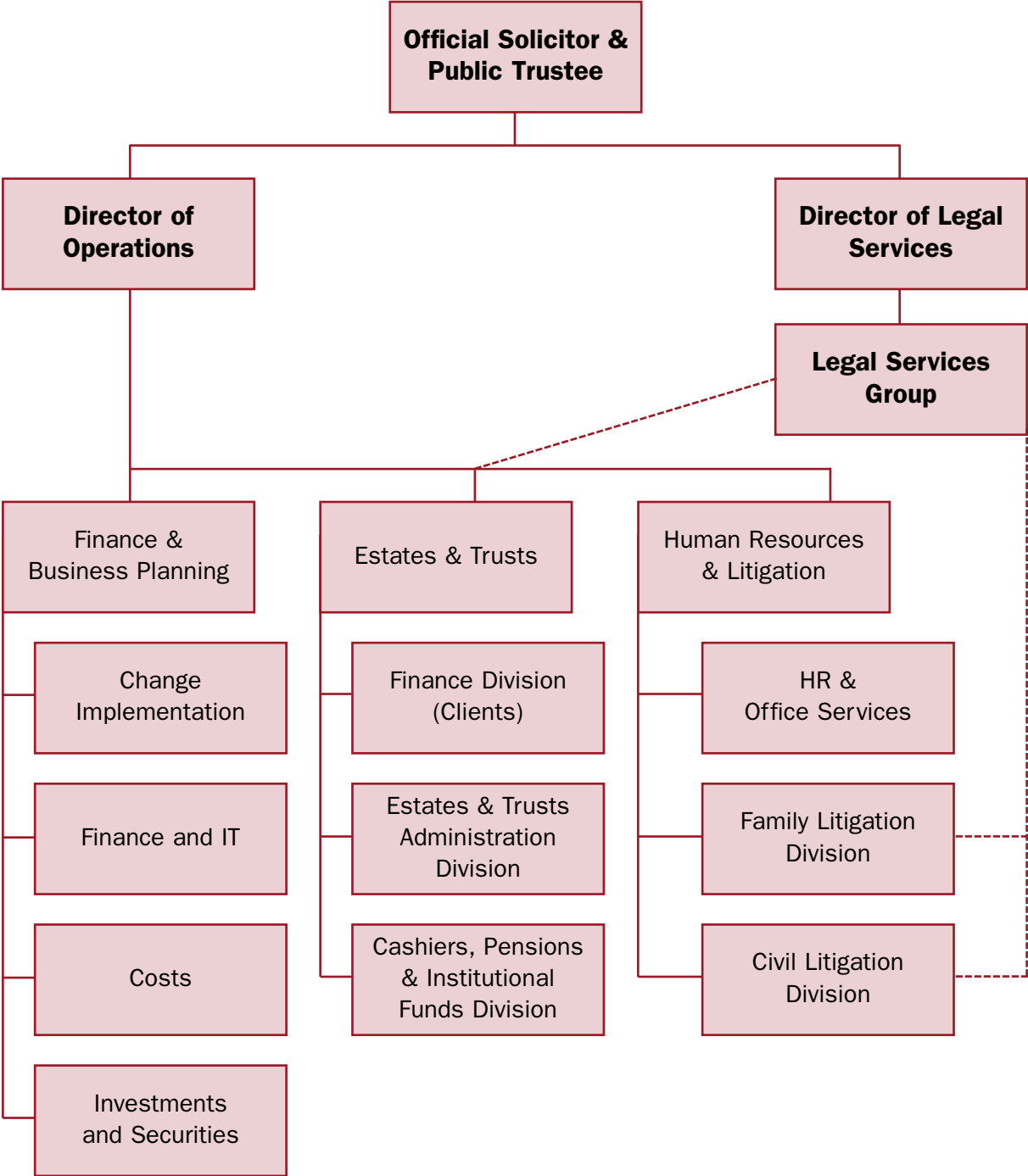
Child A

Child A was physically abused by both his parents. He was taken into care whilst his parents served a custodial sentence. Following the sentence, the child was allowed to live with his parents once again. The Criminal Injuries Compensation Authority (CICA) made an award to the child to compensate him for his injuries. Due to the fact that the child was under 18, it was inappropriate for the award to be given to him directly. The CICA were concerned to ensure that the parents, as perpetrators of the injuries, could not benefit from the award directly or indirectly, and so required that a trust was established which excluded the parents from such benefit, and with the OS as independent trustee. The OS accepted appointment.

Child B

A husband and wife had one child. When the child was one year old, the father was convicted of the murder of the mother. The mother died without leaving a will. Under the laws of intestacy the mother's estate would pass to the child at age 18 but in the meantime would be held upon trust for the child. The administrator of the estate, and therefore the trustee for the monies to be held for the child, would usually be the father (as husband of the deceased). In the circumstances, the OS agreed to apply to the court for appointment instead of the father, and will hold the fund until the child reaches the age of majority.

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), Mrs Chris Walker (Etates and Trusts Group Manager) and Keith Lock (Senior Lawyer, Court of Protection Litigation)

Annex A

KPI 4 Priority Lower Level Indicators

	2004-05				
	Target	Measured	Achieved	% Achieved	Hit?
Whole Office Respond to correspondence with 15 working days	95%	17,093	16,449	96.2%	✓
Trust Number of cash movement postings to computerised records and ledgers made within 3 working days of receipt of relevant bank statement	99%	33,644	33,440	99.4%	✓
Pay the available income to a beneficiary by the due date whenever indirect income arrangements operated	95%	1,262	1,234	97.8%	✓
Civil Litigation Preliminary enquiries completed within 3 months of request to act	85%	1,445	1,357	93.9%	✓
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) and Outgoing (Hague Convention return) cases forwarded to Central Authorities within 5 working days of receipt of necessary documentation	95%	320	317	99.1%	✓
Finance Bills of Costs drafted within 1 month of referral	90%	817	693	84.8%	✗

Annex B

Child Abduction Outcomes

1 April 2004 to 31 March 2005 Child Abduction Unit – Returns by Outcome								
	Requesting Central Authority		Requested Central Authority		Requesting Central Authority		Requested Central Authority	
	Cases Received prior to 1 April 2004 and order made 1 April 2004 to 31 March 2005				Cases Received 1 April 2004 to 31 March 2005 and order made in same period			
Child Returned								
Judicial Return	8	11%	9	19%	10	14%	49	50%
Voluntary Return	14	19%	2	4%	29	39%	15	15%
Child NOT Returned								
Judicial Refusal	6	8%	2	4%	2	3%	6	6%
Access								
Access Ordered	6	8%	10	20%	1	1%	5	5%
Access Refused	0		0		0			
Access Agreed	5	7%	1	2%	0		2	2%
Registration								
Registration Ordered	1	1%	0		0		1	1%
Registration Refused	0		0		0		1	1%
Other (Inconclusive)								
Rejected by UK Central Authority	2	3%	4	8%	6	8%	3	3%
Rejected by Requested Authority	3	4%	0		3	4%	0	
Child not traced	3	4%	1	2%	2	3%	0	
Child traced to Non-Convention Country	0	0	0		1	1%	2	2%
Child traced to Other Convention Country	3	4%	2	2%	2	3%	0	
Application Withdrawn	23	31%	20	39%	18	24%	15	15%
TOTAL	74	100%	51	100%	74	100%	99	100%
Cases Pending	76		16		111		77	
GRAND TOTAL			92		180		232	

Annex C

External Members of the OSPT User Group

Delegate

Jenny Rawstorne

Nina Hansen

Frances Swaine

Caroline Willbourne

Jonathan Wheeler

Caroline Gardner

Henry Frydenson

Michael Konstam

Alan Benstock

Bill Prouse

Denise Carter OBE

Colin Pipe

Barbara Esam

Norman Prime

Richard Peel

Caroline Little

Hilary Lloyd

Fiona Freedland

Organisation

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

Resolution – First for Family Law

Association of Personal Injury Lawyers

Family Law Bar Association

Association of Child Abuse Lawyers

Society of Trust and Estate Practitioners

Contentious Trust & Probate Specialist Association

MIND

Probate Section of the Law Society

Age Concern

Reunite

Family Justice Division International Branch, DCA HQ

NSPCC

Court of Protection

Solicitors for the elderly

Association of Lawyers for Children

Strategic Policy Advisor of the Law Society

AVMA