

Official Solicitor and Public Trustee Office

Annual Report

1 April 2005 to 31 March 2006

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1. Foreword

Foreword by Laurence Oates, 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 seventh report as Official Solicitor and fifth as the holder of both posts. It will be my last, as I shall be retiring before the end of this year.

The need for involving the office in litigation to represent the interests of a mentally incapable adult is being increasingly recognised. The statistics contained in this report show the volume of cases handled; section 11 at the end gives examples of the most noteworthy. We have now absorbed the Central Authority work undertaken by the Reciprocal Enforcement of Maintenance Orders Unit, and the new cases received by the International Child Abduction and Contact Unit continue to grow. We have also taken on a small but important area of operation to manage a Child Trust Fund for a child who does not have any parents or anyone with parental responsibility suitable to do so. I was pleased that during the year we were awarded the full Quality Mark by the Legal Services Commission for our litigation and child abduction activities.

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 vulnerable clients. I should record that during the year there have been significant changes in the senior management of the office. I wish to express my thanks to my previous Deputy, Edward Solomons, my previous Director of Operations, Eddie Bloomfield, and my Finance Manager, Mark Shore, who have all moved on to take up more senior appointments elsewhere.

I look back with satisfaction how during my time the office has adapted to the changing workload. As I write this, preparations are about to commence for the way in which the operation is to run after my retirement. It has already been decided that the posts will, once again, be separated with a lawyer OS and non-lawyer PT being appointed. The two offices will, nonetheless, need to continue to work closely together, to be administered as a combined office along with the Court Funds Office. Plans have been announced for us to engage in a major exercise over the next two years to close down or retire from the majority of our existing trusts and estates work.

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

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

Laurence Oates

Official Solicitor and Public Trustee

2. Operating Environment

We undertake the separate statutory functions of the Official Solicitor and Public Trustee (OS and PT) (for further details see our website www.officialsolicitor.gov.uk). The office also contains the International Child Abduction and Contact Unit (ICACU), which administers the responsibilities of the Secretary of State as Central Authority under the Hague Convention on International Child Abduction, and the Reciprocal Enforcement of Maintenance Orders Unit (REMO). As OS we have also acquired the responsibility under the Child Trust Funds Act 2004 to manage CTF accounts in place of a parent for those children in care in England and Wales where there is no parent able to do so.

The high demand for the OS's litigation services over a wide range of cases has remained constant. Work dealing with the property and financial affairs of a patient in the Court of Protection has sharply increased. We have absorbed the work of REMO, which has shown an increase, as has the work of ICACU. This is the first year in which we are being appointed to manage a Child Trust Fund account where there is no parent able to do so (and have already taken on over 3,000 cases). In relation to our trusts and estates activities (conducted either as OS or PT) we have continued vigorously to pursue the policy that we only accept new cases as a matter of last resort when there is no-one else suitable and able to do so. Further to a NAO recommendation in relation to our fiduciary responsibilities for third party assets, significant strides have been made in producing an initial draft set of stewardship accounts. It is anticipated that these will be ready for publication during the first half of 2006–07.

Looking ahead, it is already clear that the operational environment will change in at least two significant respects. The first is the implementation of the Mental Capacity Act 2005, which is planned to come into force in April 2007. This will bring our High Court medical treatment and welfare cases within the jurisdiction of a new Court of Protection. The second is giving effect to the plans we have been preparing for our bulk exit from a significant proportion of our trusts cases in favour of a new corporate trustee alongside the closure of up to 1,000 of our existing cases which over the next two years will have come to an end. It is only when these plans are complete that we can truly say that we are a trustee of last resort.

On top of these changes there will be a re-organisation of the way the office is organised. The OS of the future will sit alongside the PT and Head of the Court Funds Office (CFO) to ensure that they can continue to meet their separate statutory functions, whilst the office is administered as one Associated Office of the DCA. The challenge will be to maintain the momentum gained from the efforts put in over the past year. We will explore and exploit, wherever possible, shared service functions with our colleagues at the CFO. Plans were put in place for a significant tranche of staff (investments & securities) to move to the CFO during May 2006.

This year we have reviewed the way in which we report our statutory functions to the DCA with greater emphasis on our performance management. A new monthly report format was developed during the final quarter, which we believe now more clearly reflects our performance, in terms of throughput of work and the areas of concern and the actions taken to address those issues. We will continue to refine this process to improve the quality and clarity of information from all areas of the office, but overall the content of our reporting is a positive step to reflecting accurately the work we do, the people who do it and the challenges we tackle.

3. Vision and Aims

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.

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;
- being appointed to manage a Child Trust Fund account when there is no parent 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</p> <p>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 retiring from cases we should no longer continue to hold and securing or delivering services comparable with the best in the regulated private sector. 	<p>Quality Processes</p> <p>Implement high quality services focused on the needs of our clients in accordance with current best practices by;</p> <ul style="list-style-type: none"> • maintaining 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.

Our Staff

Motivate, staff and family friendly working practices by:

- being responsive to staff survey results,
- ensuring enough training time is undertaken,
- securing timely appraisals,
- implementing our Equality and Diversity Action Plan.

We contribute to the DCA's Spending Review (SR)04 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

	Target 2005-06	2004-05 Outturn	2005-06 Outturn
<p>KPI 1 – Litigation Outcomes Extent to which the Office secures outcomes in accordance with its assessment of clients’ best interests</p>	To maintain the level historically achieved of at least 93.5%	95.9%	94.5%
<p>KPI 2 To have retired from, prematurely distributed or closed at least 500 Estates and Trusts cases</p>	500 Cases	new KPI	100%
<p>KPI 3 – Customer Satisfaction Maintain Customer satisfaction levels in the OSPT</p>	Implement Action Plan arising from the 2004-05 Litigation Survey	81%	Completed
<p>KPI 4 – Client Service Delivery Achieve high level throughput targets</p> <ul style="list-style-type: none"> • Respond to correspondence within 10 working days (REMO within 20 working days) • Complete preliminary enquiries within 3 months of request to act (Civil and Family cases) • To progress and forward all child abduction cases within the target times • Every Trust and Estates case, as a minimum, to be reviewed at least once during the year • To carry out annual Investments Review where OSPT manages the investments in-house • Bills of Costs drafted within 1 month of referral (Litigation and Estates) 		5/6	5/6
	90%	96.2% ⁽¹⁾	90.5%
	90% (from 85%)	93.9%	96.4%
	95%	99.1%	99.7%
	100%	new KPI	99.7%
	100%	new KPI	100%
	90%	84.8%	72%

(1) target in 2004-05 = 15 days

As well as these KPIs each business area has had its own lower level throughput targets. We have failed to meet a number of these targets in the Estates and Trusts, Court of Protection and Costs Sections. In the Estates and Trusts Division much work is still required to produce accurate and timely accounts; however new procedures, continuing training and adequate resourcing will lead to improved performance against targets and the elimination of significant

arrears. The Court of Protection team has suffered from a combination of increased workload and reduced resources. That is now being put right via further recruitment of two lawyers, together with concentrated efforts to address the backlog of correspondence. The continuing backlogs within the Costs Section have been ring-fenced and a fundamental re-organisation of roles will ensure that work progress is managed more effectively. Elsewhere targets are being met.

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. An increasing number arise from requests to act for claimants in order to judicially review decisions of public authorities and to act in applications for the displacement of nearest relatives under the Mental Health Act 1983.

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.

	New cases accepted			Cases in hand*		
	2004–05	2005–06	% Change	2004–05	2005–06	% Change
Civil Litigation	425	333	-21.6%	1073	1154	7.5%
Contempts	265	280	5.6%	76	73	-3.9%

* 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 CAF/CASS). 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			Cases in hand		
2004–05	2005–06	% Change	2004–05	2005–06	% Change
854	860	0.7%	1329	1365	2.7%

Court of Protection

The OS represents people 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			Cases in hand		
2004-05	2005-06	% Change	2004-05	2005-06	% Change
457	616	34.8%	460	634	27.4%

International Child Abduction and Contact Unit

The OS runs, on behalf of the Secretary of State, the ICACU 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 swift processing of applications in relation to both incoming and outgoing cases.

New cases accepted			Cases in hand		
2004-05	2005-06	% Change	2004-05	2005-06	% Change
368	421	14.4%	339	298	-12.1%

Reciprocal Enforcement of Maintenance Orders (REMO) Unit

REMO is the process by which maintenance orders made by UK courts on behalf of UK residents can be registered and enforced by courts or other authorities in more than 100 countries and territories where reciprocal arrangements exist and vice versa. The arrangements are governed by international conventions, which means that foreign maintenance orders in favour of individuals abroad can likewise be registered and enforced by UK courts against UK residents. The unit deals with applications by residents from England & Wales (there are separate authorities for Scotland and Northern Ireland).

New applications accepted		
2004-05	2005-06	% Change
745	815	9.39%

Child Trust Funds

The Government introduced the Child Trust Fund for children living in the UK for whom child benefit has been awarded and who were born on or after 1 September 2002. It is a long-term savings and investment account. From 1 April 2005, the Official Solicitor may be appointed, in place of a parent, for those children in care in England and Wales where there is no parent able to manage their CTF account.

New Cases accepted	Cases in Hand
3459	3357

Estates and Trusts Administration Group

The OS administers estates and trusts as administrator/trustee of last resort. This includes where the OS is 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 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 manages a number of trust funds for children, most of which arise from an award from the Criminal Injuries Compensation Authority.

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			Cases in hand		
	2004–05	2005–06	% Change	2004–05	2005–06	% Change
OS Estates & Trusts	12	12	0%	747	591	–20.9%
PT Trusts	8	1	–87.5%	1,329	1,147	–13.7%

During 2005–06, a considerable amount of work has been completed to enable OSPT to produce a first set of auditable Stewardship Accounts, in line with the recommendation of the National Audit Office (NAO). External consultants have been employed to work closely with us to establish a starting balance at 31 March 2005. All assets have been reconciled to the physical assets and the office records at that date and again as at 30 September 2005. This is the first time such an extensive exercise has been completed and has enabled us to verify, at individual fund and case level, as well as at a global level, the assets for which OSPT is responsible. Reconciliation has enabled us to ensure individual case records are accurate and comprehensive.

During 2005–06, we reviewed each trust or estates case and commenced an individual plan of action according to need. For instance, we identified a high number of cases where the case could or should be closed. We closed more than 500 cases during the year, enabling us to concentrate resources on “live” cases more effectively.

At the same time, we embarked on a fee collection exercise to recover past years’ fees alongside the annual scale fee. This enabled us to contact beneficiaries where a significant amount of fees were due, working with them to find a tailored solution to suit the different individual circumstances and needs.

We have progressed those cases where the beneficiary, in response to our letter about fees in April 2005 (and in April 2004) expressed an interest in either transferring the trusteeship of their case, or in bringing the trust to a premature close. There are 212 cases within this category and work is proceeding on all possible cases to bring our involvement to an end.

Finally, we have changed our working practices to improve service and to align ourselves closer to the exacting standards set by the Financial Services Act 2002, which apply to private sector professional trust providers. We will now be able to provide an annual account for each of our ongoing cases and a dedicated team has been set up for this purpose.

Assets under the control of OSPT as at 31 March (£'000s)

	2005	2006
Investments	242,648	177,732
Property ¹ and Chattels	33,709	31,526
Cash on Deposit ²	49,268	40,541
	325,625	249,799

Notes

(1) Freehold and Leasehold property values as at 30 September 2002.

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

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 2006.

6. 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).

Budget Analysis for the Year Ended 31 March 2006

£'000s	Litigation*		Estates & Trusts		Total	
	2004-05	2005-06	2004-05	2005-06	2004-05	2005-06
Paybill (excluding agency staff)	1,750	2,382	3,346	3,212	5,096	5,594
Other administration costs	987	1,714	1,363	2,471	2,350	2,639
Total administration costs	2,737	4,096	4,709	5,683	7,446	8,233
Depreciation	6	0	12	0	18	0
Other non-cash costs	2	0	5	0	7	0
Accommodation charges	631	1,059	1,123	1,405	1,754	2,464
HQ Overheads	270	233	558	232	828	465
Total non-cash costs	910	1,292	1,698	1,637	2,607	2,929
Total Full Cost	3,647	5,388	6,407	7,319	10,053	11,162
Recoveries	(632)	(653)	(4,274)	(4,376)	(4,907)	(5,028)
Net Position	3,014	4,735	2,133	2,944	5,147	6,133
% Recovery	17.3	12.1	66.7	59.8	48.8	45.0

* Includes International Child Abduction and Contact Unit and for 2005-06 the Reciprocal Enforcement of Maintenance Unit

Our net **direct** operating cost (total administration costs less fee recoveries) in 2005-06 amounted to £3.205m.

Income received was £5.028m, 86.7% of which was accounted for by trusts and estates. The remainder was made up of Court of Protection (7.5%) and litigation (5.8%).

Additional expenditure of £1.447m (mainly consultancy costs) was incurred during the year in respect of the work done in relation to our trusts and estates cases to prepare stewardship accounts, undertake other remedial activity, and to set up the bulk exit plans now being pursued. Total full costs, including this expenditure, were, therefore, £12.608m.

7. Improving the Way We Work

Achieving the Specialist Quality Mark accreditation for Litigation Services and International Child Abduction and Contact 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 and in summer 2005 following a further audit we were awarded the full Quality Mark.

We have continued to improve the information about the office through the publication of guides. In summer 2005 three booklets were published, "A Guide to our Services" aimed at lawyers followed by an up-dated booklet for the ICACU and also a booklet providing information on Child Trust Fund accounts managed by the Official Solicitor.

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 1). The terms of reference of the User Group are available on the OSPT website: www.officialsolicitor.gov.uk. The fifth meeting took place in July 2005 and the sixth in March 2006. The agenda for both meetings were influenced by the interests of the User Group delegates and key aspects of service provision within the OSPT. This included Investments and Banking Policy developments and the role of the Litigation Friend.

8. People and Learning

Our staffing position was relatively stable with staff turnover having fallen slightly from last year. Timely staff appraisals remained constant, still exceeding the 90% target of completing appraisals on time. Disappointingly sick absence has risen from 10.8 days per person to 13.1. The new managing attendance policy introduced in DCA in December 2005 will assist in tackling this problem.

Performance Measures	2004-05	2005-06
Staff Turnover	8.4%	7.3%
Sick Absence (average days in a year per person)	10.8	13.1
Timely Staff Appraisal	93%	93%

Training

We again 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 70% although all members of staff have received some training.

	2004-05	2005-06
External Training	148.5	282
Lawyers Training (DCA)	28	27.5
DCA Training Events	316.5	292
Desk Training	434.2	445.5
Total Training Days	927.2	1047

The last twelve months has seen a greater emphasis on identifying training needs across the whole of the estates and trust area. Four full time trainers were appointed resulting in significant training being delivered in the operation of the Internet Banking Project and new procedures arising as a result of the work done on the Stewardship Accounts and the reconciliation of the TABS system. In addition we continued to run Fraud Awareness sessions and, with the introduction of a new filing system, a Manual Handling Course to address Health and Safety concerns.

In the Litigation divisions, lawyers and case managers have continued to receive training to acquire basic understanding of the law, maintain professional knowledge and keep up with developments in new areas of law.

9. Equality and Diversity

We have continued to participate in the DCA Diversity Programme which was formed to implement the recommendations contained in the Minority Report. We have been represented on the Delivering Services Project and subsequently on the Outreach Forum. The office helped pilot the Diversity Excellence Framework and will be taking forward some of the recommendations.

Outreach

The OSPT actively participates in work experience initiatives with local schools from London and the surrounding areas. In 2005/06, the OSPT accommodated approximately 8 requests for placements. The OSPT appreciates the value of these placements for students and arranges placements with the following three objectives in mind;

- To give the student an insight into the work of the OSPT;
- To give the student the opportunity to gain an insight into working life and the day-to-day running of an office; and
- To assist the student in formulating plans and ideas for their future professional aspirations.

At the end of a placement, students are asked to complete a feedback form, amongst other things, assessing the overall usefulness of their placement. All placements to date have rated their placement as extremely useful.

10. Customers and the Community

Customer Survey for Litigation Services

Following the 2004 OSPT annual survey, recommendations were received on how to improve the level of customer feedback on OSPT service provision. As a result of these useful recommendations, the OSPT revised its survey methodology to ensure we receive comprehensive and pertinent feedback at the time it is most relevant to the customer.

From 1 February 2006, at the closure of a case, a feedback form is sent to the solicitor instructed by the Official Solicitor, or in the case of the Court of Protection, to the solicitor who represented a party to the proceedings in which the Official Solicitor represented the patient. Given the majority of our clients for whom we act are under a legal disability, the aforementioned professionals are surveyed as proxies on their behalf.

The feedback forms target high level customer service issues identified through the previous 2004 annual survey. This also allows an element of comparability with previous survey results.

In February and March, a total of 233 forms were sent out. A 39% response rate was achieved overall. Respondents were asked to rate the overall performance of the Official Solicitor in dealing with the case. Overall, of those who responded 90% rated the Official Solicitor's services as being provided well or extremely well. Respondents were also asked to rate the performance of the business area with which they worked. The following results were achieved:

- Civil Litigation – 95% of those who responded rated the Official Solicitor's services as being provided well or extremely well.
- Divorce – 100% of those who responded rated the Official Solicitor's services as being provided well or extremely well.
- Family Litigation – 88% of those who responded rated the Official Solicitor's services as being provided well or extremely well.
- Court of Protection – 91% of those who responded rated the Official Solicitor's services as being provided well or extremely well.

Complaints

A total of 44 letters of complaint were recorded (some contained more than one grievance) between 1 April 2005 and 31 March 2006. The complaints were classified as shown below:

Failure to act promptly/delay/inertia	27
General Procedures	10
Other, or Complaint Unintelligible	7
Behaviour of Staff	5
Disagreement with Court Decision	4
Fees/Investments	0

Category	2004-05	2005-06
Justified	20%	34%
Partly Justified	30%	25%
Not Justified	50%	41%

A more detailed analysis of the above figures is encouraging. Although workloads in the litigation areas have risen, the number of complaints has reduced slightly. Work in estates and trusts has continued to decline, and complaints have also fallen from 27 last year to 23 in 2005-06. We set ourselves a target of answering 95% of the complaints we receive within 15 days and we achieved 100% this reporting year.

We have logged 45 formal letters of thanks our staff received during this year.

11. Noteworthy Cases

An NHS Trust v (1)A and (2)SA

The OS represented A an elderly Muslim man who was at least 86 years of age who returned from Pakistan with chronic renal failure. The treating clinicians wanted to withdraw life sustaining treatment on the basis that such treatment was futile, invasive and at times undignified and would only result in a brief extension of the dying process. A's family objected on the grounds that they believed that their religion forbade the removal of life sustaining treatment. The family's medical expert disagreed with the findings of both the treating clinicians and the OS's medical expert. At first instance it was held that the withdrawal of life sustaining treatment was in A's best interests. The family appealed. The Court of Appeal upheld the decision considering that whilst the views of A and his family might be highly material factors they were not determinative. The Court of Appeal also held that the Bolam test was of limited application in a case where the court had to evaluate all the expert evidence and decide which carried greater weight. The Court also found that Article 2 of the European Convention on Human Rights was not engaged if the withdrawal of treatment hastens death unless such a withdrawal was unlawful.

Ms C

The Official Solicitor acted for Ms C in an application by an NHS Trust in respect of Ms C's pregnancy. At the time of the application Ms C was between 34-36 weeks pregnant. Ms C suffered from a mental illness and was an informal patient in a hospital. She had not attended for any ante natal care and had only allowed limited examination and assessment of her because she did not believe that she was pregnant. Ms C had no known partner, relatives or friends. There was some question about Ms C's capacity to consent to medical treatment. The Trust was concerned about the treatment that could be provided for her when she went into labour. The application was to ensure that she received appropriate care. The case was heard in London. The Trust witnesses, solicitor and counsel for the Trust and Ms C appeared by video link from a court outside London. The Official Solicitor's counsel appeared before the Judge in London. The Official Solicitor had arranged for an agent to visit Ms C and to attend court with her. Ms C wished to address the court and despite her visible pregnancy when questioned by the judge did not accept that she was pregnant. A declaration was made in the terms sought.

Mr A

Mr A died leaving minor children from his first marriage and minor children from a relationship with a girlfriend. The estate passed to his children equally. The estate could not be administered because of disputes between the relatives of the children. An independent trustee from the private sector was unwilling to administer the estate. The Official Solicitor agreed to administer the estate to ensure that the children receive the benefits to which they are entitled.

Mr B

A wife was killed by a husband leaving a minor child and no other immediate family. Other relatives of the two sides of the family were in dispute as to who should look after the interests of the minor child. As a result it was considered necessary for an independent trustee to administer the estate of the wife which passes to the child. As no other suitable and willing person could be found to administer the estate, the Official Solicitor administered the estate to ensure that the child received his inheritance and the interests of justice were met.

Re R

A trust was established for an adult with severe learning disabilities. Disputes arose between the trustees and the beneficiaries of the trust and as a result the trust was not being properly administered. The trustees wished to retire as trustees but were unable to find suitable replacements. As the main beneficiary was a vulnerable person the Official Solicitor agreed to take over as trustee, subject to court approval which was given, to look after the interests of the vulnerable beneficiary.

The W Children

The mother of three young children committed suicide, and shortly thereafter their father disappeared. Despite a nationwide police search no trace of the father has been found, dead or alive. The Local Authority issued care proceedings in respect of the three children and have the benefit of an interim care order. They were concerned that the substantial family home remained unoccupied and that there was no financial provision for the children. The mother died intestate with her entire estate passing to the father who, under English Law, cannot be presumed dead until 7 years has elapsed without his being sighted. All the family assets were, therefore, tied up in the father's estate with no access for financial assistance for the children. The Local Authority approached the OS for assistance in resolving this quandary. The OS applied to the Court for authority to extract a Grant to the mother's estate thereby enabling a claim to be brought against it on behalf of the children under the Inheritance (Provision for Family and Dependents) Act.

In re B (a Patient) (Court of Protection: Appeal)

A patient's son appealed an order authorising her receiver to execute a will on the patient's behalf, which replaced him as executor. His appeal was dismissed by the nominated judge and the son sought leave to appeal to the Court of Appeal. The application for permission to appeal was adjourned to be heard before two Lords Justices with a direction that the OS be represented by counsel to assist the court on the question whether permission to appeal was required. The Court of Appeal accepted the OS submissions that the statutory provision and machinery for appeal from the decision of a judge nominated under Part VII Mental Health Act 1983 fell outside the ambit of Civil Procedure Rules R.52.3. Permission was required only where the appeal was from a judge sitting in the High Court or the County Court. Although a nominated judge derived his position from his office as a High Court judge, when exercising his jurisdiction under Part VII of MHA 1983 he was not sitting in the High Court. The President commented that this might be an unintended anomaly.

Child A

When A was 2 years and 8 months old he was struck by a car driven by a drunk driver, resulting in severe brain damage. Now 17 he has language and learning difficulties, occasionally disturbed and sometimes aggressive behaviour, epilepsy and physical problems which have limited his ability to walk, so that he needs a wheelchair for longer distances. A dispute within his family resulted in the OS being substituted as litigation friend for his compensation claim. A is a boarder at a specialist school, the defendant's insurers paying the boarding costs and the local authority covering the day school fees. It was agreed by both parties that A would require 24 hour care on leaving full time education, but there was disagreement as to how that care should be provided and how the cost should be met, the defendant's insurers arguing that the best care regime for A would be in a residential care home funded through the provisions of the National Assistance Act 1948, which because of the ring-fencing of damages held by the COP or in trust would be at no cost to A. We argued that the best care regime for A was to live in his own home with a team of carers, and that domiciliary care provided under s29 National Assistance Act did not attract the same ring-fencing as residential care provided under s21. Our arguments prevailed and the defendants agreed to settle at £4m. At the settlement hearing we successfully obtained an order that neither A nor the defendant should be identified, to prevent press intrusion on A, who the judge accepted was vulnerable to exploitation, and his family.

Annex 1

External Delegates to the OSPT User Group

Delegate	Organisation
Alan Benstock/Jan Wright	Probate Section of the Law Society
Barbara Esam	NSPCC
Denise Carter OBE	Reunite
Fiona Freedland	AVMA
Henry Frydenson	Contentious Trust & Probate Specialist Association
Caroline Gardner	Society of Trust and Estate Practitioners
Nina Hansen	Resolution – first for family law
Michael Konstam	MIND
Caroline Little	Association of Lawyers for Children
Hillary Lloyd	Strategic Policy Advisor of the Law Society
Richard Peel	Solicitors for the elderly
Colin Pipe	Civil and Family Policy – DCA
Assistant Master Prime	Court of Protection
Jenny Rawstorne/Tim Spencer-Lane	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
Frances Swaine	Association of Personal Injury Lawyers
Pauline Thompson	Age Concern
Jonathan Wheeler	Association of Child Abuse Lawyers
Caroline Willbourne	Family Law Bar Association

Annex 2

International Child Abduction and Contact Outcomes for Calendar Year 2005

	Annual Statistics relating to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction 1 January 2005 to 31 December 2005 International Child Abduction Unit – Outcome of Cases			
	Children brought to England and Wales		Children removed from England and Wales	
Return Application Outcomes				
Judicial Returns	83	29%	40	10%
Voluntary Returns	30	10%	44	11%
Judicial Refusals	7	2%	18	5%
Contact Ordered	9	3%	7	2%
Contact Application Outcomes				
Contact Ordered	4	1%	4	1%
Contact Refused	0	0	0	0
Contact Agreed	3	1%	6	2%
Registration Application Outcomes				
Registration Ordered	2	0.6%	5	1%
Registration Refused	3	1%	1	0.3%
Other Case Outcomes				
Case Rejected by Central Authority	3	1%	15	4%
Child Not Traced	0	0	3	0.7%
Child Traced to Non Convention Country	1	0.4%	2	0.5%
Child Traced to Other Convention Country	7	2%	2	0.5%
Applications Withdrawn	51	18%	77	21%
Total Cases Pending at end of 2005	87	31%	154	41%
GRAND TOTAL	290	100%	378	100%

Please note that the above table provides statistical information for the 2005 calendar year. In line with the 'Guide to Good Practice' Central Authorities are encouraged to maintain accurate statistics concerning the cases dealt with by them under the Convention, and to make annual returns of statistics to the Permanent Bureau in The Hague.

