



Official Solicitor and
Public Trustee Office

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Annual Report 1 April 2006 – 31 March 2007

**OFFICIAL SOLICITOR and PUBLIC TRUSTEE OFFICE
ANNUAL REPORT
1 April 2006 to 31 March 2007**

The Roles of the Official Solicitor and of the Public Trustee

The Official Solicitor represents children and adults who lack mental capacity to act for themselves in legal proceedings. He does not act for children who are the subject of child welfare proceedings; they fall within the remit of the Children and Family Court Advisory and Support Service (CAFCASS). He administers estates and trusts when there is no one else suitable or able to do so. He is responsible for the Secretary of State's International Child Abduction and Contact Unit in England and Wales and the Reciprocal Enforcement of Maintenance Orders Unit. He also acts as registered contact for Child Trust Funds where there is no parent or no suitable parent.

The Public Trustee administers trusts and estates where he has accepted appointment to do so.

The Lord Chancellor appoints both postholders. Alastair Pitblado was appointed as Official Solicitor with effect from 13 November 2006 on the retirement of Laurence Oates. David Thompson was appointed as Public Trustee on 1 August 2006 in substitution for Laurence Oates. Their office is an Associated Office of the Department for Constitutional Affairs (DCA), now Ministry of Justice.

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Annual Report

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1. Foreword

Foreword by Alastair Pitblado, Official Solicitor and David Thompson, Public Trustee

We are pleased to present this Annual Report for the office of the Official Solicitor and Public Trustee (OSPT). This is the first report following the separation again to two individual office holders of the posts of Official Solicitor and Public Trustee. David Thompson became Public Trustee, as well as Director of Operations for the office, on 1 August 2006. Following the retirement of Laurence Oates, Alastair Pitblado took over as Official Solicitor on 13 November 2006.

We undertake the separate statutory functions of the Official Solicitor and Public Trustee (for further details see our websites www.officialsolicitor.gov.uk and www.publictrustee.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).

This year has again been a busy and challenging one. During the year the demand for the Official Solicitor's litigation services over a wide range of cases increased. The work of REMO has shown an increase, as has the work of ICACU. In relation to our trusts and estates activities (conducted separately both by the Official Solicitor and by the Public Trustee) we have continued rigorously 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 an 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. March 2007 was the first month where trusts and estates cases not deemed purely "last resort" started to be transferred to a private trustee representing a major milestone in a project which has been running for 2 years.

2006–07 saw the preparation for the merger of the OSPT and the Court Funds Office which became the Offices of Court Funds, Official Solicitor and Public Trustee on 1 April 2007. A first joint business plan was created for the combined offices together with a new website. January 2007 saw the move of last resort receivership work from the Public Guardianship Office (PGO) to the OSPT. As a result, the Official Solicitor replaced the Chief Executive of the PGO as Receiver of last resort.

We both commend the staff of OSPT for all their hard work and efforts during the year which have contributed to the successful delivering of the wide range of services OSPT provides to a diverse mix of vulnerable clients.

The following year will see further challenges when the Trusts and Estates Division will reduce from a complement of approximately 60 staff to 18 staff managing the last resort cases. The Litigation Divisions will meet the challenges of the Mental Capacity Act, the implementation of which will, among other things, bring the Official Solicitor's High Court medical treatment and welfare cases within the jurisdiction of the new Court of Protection.

We remain confident, however, that our staff will continue to justify the OSPT's reputation for the provision of excellent legal services.



2. Vision and Aims

Our vision is to be an organisation delivering excellent customer focused legal services for persons who lack capacity, 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 legal 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 and where there is no other suitable person or agency willing or able to act; and
- 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 excellent 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 excellent 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.

We contribute to the DCA's (now Ministry of Justice) 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'*.

3. Key Performance Indicators

	Target 2006-07	2005-06 Outturn	2006-07 Outturn
KPI 1 – To have reduced the live caseload in Trusts and Estates group by 360 cases	360	New KPI	Target met 379 cases closed
KPI 2 – To respond to correspondence, whether by letter, fax or e-mail within 10 working days of receipt To respond to all correspondence within 20 working days	90%	91%	96%
	98%	92%	99%
KPI 3 – In civil litigation, divorce and patient parent cases, to have completed preliminary enquiries within 3 months of a request to act In all cases within 6 months of a request to act	90%	96%	95%
	100%	100%	100%
KPI 4 – In child abduction cases, process applications within target times (incoming and outgoing)			
• Outgoing cases forward to Central Authorities within 5 working days	95%	100%	100%
• In all cases within 10 working days	98%	100%	100%
• In incoming cases forwarded to solicitors within 1 working day	95%	100%	100%
• In all cases within 5 working days	98%	100%	100%
KPI 5 – In REMO, all new applications to be processed within 5 working days	99%	97%	99%
KPI 6 – In Child Trust Funds every case to be reviewed, as a minimum, at least once during the year, in respect of the choice of investment	100%	New KPI	100%
KPI 7 – Raise at least £4.79m in fees and costs	£4.79m	New KPI	Target met £4.83m recovered
KPI 8 – Ensure Quality Mark status is retained		New KPI	Achieved
KPI 9 – in Court of Protection cases, 80% of applications to be concluded before or within two weeks of first date set for hearing	80%	75%	76%

4. Business Activities

Civil Litigation Division

The Official Solicitor will consent to act, when there is no one else suitable or able to act, as the litigation friend of a child or person who lacks capacity and 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 who lacks capacity, or some person wishes to claim against an estate for which no personal representative is willing to act. He acts for claimants in applications for judicial review of decisions of public authorities and acts in applications for the displacement of nearest relatives under the Mental Health Act 1983, another activity is to review the cases of people committed to prison for contempt of court. Most of this litigation is conducted through external solicitors, but a minority is handled in-house.

	New cases accepted			Cases in hand*		
	2005–06	2006–07	% Change	2005–06	2006–07	% Change
Civil Litigation	333	459	+37.8%	1154	1207	+4.6%
Contempts	280	252	-10%	73	57	-21.9%

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

Family Litigation Division

The Official Solicitor represents adults who lack capacity and children in family and welfare proceedings (but not a subject child in child welfare proceedings, which is the responsibility of CAFCASS). He can intervene on behalf of a person in medical or welfare best interests cases where that person is incapable of consenting (or refusing consent) to the course of action proposed. He will also act in public law children proceedings as the guardian *ad litem* or *next friend* of a parent who lacks capacity. The Official Solicitor will assist the court when requested to do so through investigating the conduct of litigation or briefing counsel to appear as advocate to the court. The Official Solicitor may also become involved in divorce cases, representing adults who lack capacity. In most cases, external solicitors are instructed, and in others the litigation is handled in-house.

New cases accepted			Cases in hand		
2005–06	2007–08	% Change	2005–06	2006–07	% Change
860	1027	+19.4%	1365	1533	+12.3%

Court of Protection

The Official Solicitor represents people who lack capacity in proceedings concerning their property and affairs before the Court of Protection. His 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 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		
2005-06	2007-08	% Change	2005-06	2006-07	% Change
616	586	-4.9%	634	698	+10.1%

International Child Abduction and Contact Unit

The Official Solicitor 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.

New cases accepted			Cases in hand		
2005-06	2007-08	% Change	2005-06	2006-07	% Change
421	443	+5.2%	298	290	-2.7%

Reciprocal Enforcement of Maintenance Orders (REMO) Unit

REMO processes maintenance orders made by courts in England and Wales so that they can be registered and enforced by courts or other authorities in more than 100 countries and territories where reciprocal arrangements exist and vice versa.

New applications accepted		
2005-06	2006-07	% Change
815	922	+13.1%

Child Trust Funds

Child Trust Funds are for children living in the UK for whom child benefit has been awarded and who were born on or after 1 September 2002. They are held in long-term savings and investment accounts. Since 1 April 2005, the Official Solicitor has been appointed, in place of a parent, for those children in care in England and Wales where there is no parent appropriate to manage their CTF account. The drop in new cases is entirely due to 2005–06 being the start up year for this activity.

New cases accepted			Cases in hand		
2005–06	2006–07	% Change	2005–06	2006–07	% Change
3113	1369	n/a	3357	3954	+17.8%

Estates and Trusts Administration Group

The Official Solicitor administers estates and trusts as administrator/trustee/receiver of last resort. He manages a number of trust funds for children, most of which arise from awards by the Criminal Injuries Compensation Authority.

The Public Trustee acts as executor or trustee where he has been appointed under a will or under a new settlement. He 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. The Public Trustee may decline to accept a trust, but not on the ground only of the small value of the trust property. He also administers certain pension, friendly society and other institutional funds. In addition, he 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 the Official Solicitor and the Public Trustee operate 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 lack mental capacity) 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 Public Trustee is named as executor and there is no suitable alternative person available and willing to act.

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

	New cases accepted			Cases in hand*		
	2005–06	2006–07	% Change	2005–06	2006–07	% Change
OS Estates & Trusts	12	21	+75%	591	419	–29.1%
PT Trusts	1	2	+100%	1147	959	–16.4%

During 2006–07, a considerable amount of work was undertaken to produce a set of auditable Stewardship Accounts, in line with the recommendation of the National Audit Office (NAO). Following a further audit by the NAO, the OSPT has been granted full approval of our Stewardship Accounts for the year ending 31 March 2006 and work is underway on the 2007 set of Stewardship Accounts.

During 2006–07, the Official Solicitor and Public Trustee continued to review trust and estates' cases and identified a number of cases where the case could or should be closed. 379 cases were closed during the year, enabling resources to be concentrated on “live” cases more effectively. This ensured that the En Bloc Project, to retire in favour of the Private Trustee, could proceed successfully.

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

	2006	2007
Investments	177,732	157,000
Property ¹ and Chattels	31,526	31,564
Cash on Deposit ²	40,541	40,550
	249,799	229,114

Notes

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

(2) Excludes money on deposit at the Court Funds Office (£5.881m).

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 2007.

Receivership Division

The aim of the Public Guardianship Office (PGO) since April 2001 has been to exit from the role of receiver of last resort.

There remained 42 cases for which the Chief Executive of the PGO continued to act as the receiver of last resort. These are cases where the PGO had not been able to identify a suitable alternative to take on the duties of receiver. The Mental Capacity Act 2005, which is due to come into force in October 2007, makes no provision for the Public Guardian to provide a last resort deputyship service. Consequently, the PGO had to make plans to fully withdraw this role before October 2007 when the Act is implemented.

It was agreed that the Official Solicitor would be appointed receiver for these remaining 42 cases replacing the Chief Executive as receiver. As a result the receivership team moved to the OSPT on 8 January 2007.

No of cases as at 8 January 2007	New cases up to 1 April 2007	Total cases as at 1 April 2007
42	3 already at OS [but transferred]	45

5. 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 2007

£'000s	Litigation		Estates & Trusts		Total	
	2005-06	2006-07*	2005-06	2006-07*	2005-06	2006-07*
Paybill (excluding agency staff)	2,382	2,534	3,212	2,887	5,594	5,421
Other administration costs	1,714	1,614	924	760	2,639	2,374
Total administration costs	4,096	4,148	4,136	3,647	8,233	7,795
Depreciation	–	–	–	–	–	–
Other non-cash costs	–	–	–	–	–	–
Accommodation charges	1,059	1,027	1,405	1,082	2,464	2,109
HQ Overheads	233	247	232	260	465	507
Total non-cash costs	1,292	1,274	1,637	1,342	2,929	2,616
Total Full Cost	5,388	5,422	5,773	4,989	11,161	10,411
Fee Recoveries	(653)	(572)	(4,376)	(4,260)	(5,028)	(4,832)
Net Position	4,735	4,849	1,397	729	6,133	5,579
% Recovery	12.1%	10.6%	75.8%	85.4%	45.1%	46.4%

* Central costs have been allocated across all cost categories and business entities based on headcount.

En Bloc Expenditure

	1,447	2,513
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Our net **direct** operating costs (total administration costs less fee recoveries) were £2.96m in 2006-07 compared with £3.20m in 2005-06.

Income received was £4.83m, 88% of which was accounted for by Trust & Estates (£4.26m). The remainder was made up of Child Trust Funds (£0.14m), Family Litigation (£0.07m), Civil Litigation (£0.14m) and Court of Protection (£0.23m).

Total expenditure in 2006–07 was £10.41m, a reduction of £0.75m on the 2005–06 costs. A decline in overall headcount of 5 staff (average) was the main factor in the reduction of costs.

Trust & Estates had a large decrease in headcount, with an average of 10.4 less staff in 2006–07. This was reflected in a decrease of £0.49m in overall costs. There was an increase in average headcount in the Family Litigation, Child Trust Funds and Court of Protection divisions, which is reflected in the marginal increase in costs for Litigation. Also, the Receivership Division was transferred to OSPT bringing with them 4 staff.

6. Improving the Way We Work

Maintaining 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.

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 latest meeting took place in March 2007.

7. People and Learning

Staff turnover rose slightly from last year with a small increase in resignations and retirements. Sick absence remains a problem with the office being some way in excess of the departmental target. The introduction of new policies and more robust procedures in the office should lead to improved performance. Timely staff appraisals remained constant.

Performance Measures	2005–06	2006–07
Staff Turnover	7.3%	11.9%
Sick Absence (average days in a year per person)	13.1	13
Timely Staff Appraisal	93%	90%

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 65% although all members of staff have received some training.

	2005–06	2006–07
External Training	282	250
Lawyers Training (DCA)	27.5	29
DCA Training Events	292	300
Desk Training	445.5	384.8
Total Training Days	1047	963.8

8. Equality and Diversity

We have continued to participate in the DCA, now Ministry of Justice, Diversity Programme. We have contributed to the production of the Race, Gender and Disability Equality Schemes and have drawn up action plans which will be reviewed next year.

Outreach

We have continued to actively participate in work experience initiatives with local schools from London and the surrounding areas. In 2006–07, the OSPT accommodated 10 requests for placements.

Wider outreach activities have also taken place during the year. They were:

- 2 members of staff gave a presentation at the North Wales Family Justice Council;
and
- membership and active participation in the National Task Force for supporting parents with learning disabilities.

9. Customers and the Community

Customer Survey for OSPT Services

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. From 1 July 2006, this was expanded to include all distribution cases closed in the Estates and Trusts division during the months of August, November, February and May each year.

The feedback forms take the format of a page of high level customer service issues. Respondents are asked to identify the case concerned, particularly if they have any criticisms of the service they have received. This allows those criticisms to be referred to the relevant divisional manager for analysis of whether any corrective action needs to be undertaken.

Between April 2006 and March 2007, a total of 1536 forms were sent out. A 47% response rate was achieved compared to 39% the previous year. Respondents were asked to rate the overall performance of the Official Solicitor in dealing with the case. Overall, of those who responded, 90% the same as last year 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:

- Court of Protection – 92% of those who responded rated the Official Solicitor's services as being provided well or extremely well.
- Civil Litigation – 90% of those who responded rated the Official Solicitor's services as being provided well or extremely well.
- Family Litigation – 90% of those who responded rated the Official Solicitor's services as being provided well or extremely well.
- Divorce – 71% of those who responded rated the Official Solicitor's services as being provided well or extremely well.
- Estates and Trusts – 67% of those who responded rated the Official Solicitor's services as being provided well or extremely well.

Complaints

A total of 70 letters of complaint were recorded (some contained more than one grievance) between 1 April 2006 and 31 March 2007. The complaints were classified as shown below:

Failure to act promptly/delay/inertia	34
General Procedures	22
Other, or Complaint Unintelligible	6
Behaviour of Staff	9
Disagreement with Court Decision	9
Fees/Investments	7

Category	2005-06	2006-07
Justified	34%	23%
Partly Justified	25%	29%
Not Justified	41%	48%

The increase in complaints, compared with last year's figures, was spread across the different business areas. The number of complaints deemed justified has decreased while there has been an increase in those deemed not justified. We set ourselves a target of answering 95% of the complaints we receive within 15 days and we achieved 98.5% this reporting year.

We have logged 32 formal letters of thanks our staff received during this year.

10. Noteworthy Cases

Trust A and Trust B v H (an Adult Patient)

The Official Solicitor acted for H, a 45 year old woman who had a large ovarian tumour in her abdomen. H suffered from schizophrenia and was severely delusional, believing amongst other things that she was married but had no children when in fact she was divorced and was the mother of two children. She refused to give consent stating she wanted to have children. The medical experts gave evidence that even if the tumour was benign she would die if it was not removed. The experts were unanimous in their assessment that H lacked capacity to give consent. The claimant NHS trusts sought a declaration that it was lawful and in H's best interests to have a total abdominal hysterectomy to remove the tumour and for appropriate physical restraint and or sedation to be used.

The President found that, having regard to the positive (not absolute) obligation imposed by EHRC Art 2, to give life-sustaining treatment where responsible medical opinion was of the view that such treatment was in the patient's best interests, the proposed surgery was in H's best interests. He also determined that in a case of a patient lacking capacity to consent to treatment and who was resisting such treatment after it had been deemed to be in the patient's best interests, it was lawful to overcome non-cooperation by sedation and a moderate and reasonable use of restraint, but that consideration had to be given to the patient's rights under EHRC Art 3 not to be subjected to degrading treatment.

Ms B and Mr J

B is a profoundly disabled young woman in full time permanent residential care. When B was a small child she was awarded some £90,000 in relation to a vaccine damages payment. Sometime later her father, J, managed to become sole trustee of her funds that were settled in a trust, and took some £60,000. J was later arrested, convicted and imprisoned in relation to the purchase and sale of stolen cars. While J was in prison, he had admitted that he still had control of some £26,000 of B's money. We then instructed solicitors to recover those funds if possible. The situation became quite urgent as J sought and was granted a day's leave from prison and real concern arose as to any ability he may still have had to access the funds that day and misappropriate them.

Our solicitors acted very quickly and obtained a freezing order on the funds, the first time this has been obtained by the Official Solicitor. Following this step J agreed to transfer the monies to the care of our solicitor whereupon our solicitor agreed to act as trustee for the funds, to ensure J could not gain access to the remainder of the monies – currently we are hoping to transfer the monies to a new trust, administered by a major charity and to obtain judgment against J so that any judgment could be enforced in the future in the unlikely event that J comes into money unexpectedly.

Mr B

Mr B has severe learning difficulties. Mr B's father's will left all of his property to Mr B for life with the remainder passing to other relatives at the death of Mr B. The trustees of the will trust were not discharging their trustee duties properly; in particular, the income being earned for Mr B (primarily from properties owned by the trust) was below what it should have been given the size of Mr B's father's estate. Mr B's Receiver applied to Court for the removal of the trustees and for an order for sale of the properties owned by the trust. At the Court's request,

and in the absence of any other suitable and willing trustee, the Official Solicitor agreed to act as trustee to ensure that the trust is administered properly and the interests of justice are met.

JE v DE and Surrey County Council

The Official Solicitor acted for DE who had a long-standing relationship with JE to whom he had recently been married. DE lacked capacity to make decisions about his residence and the arrangements for his social care, having suffered a major stroke which left him severely disabled. There were concerns about JE's ability to care for DE and difficulties in the relations between JE and Surrey. These problems culminated in JE leaving DE in the street in pyjamas, claiming that she had been forced to do so because of lack of support from Surrey. Surrey placed DE in a residential care home, which due to his incapacity, he was unable to leave without assistance. DE made repeated requests to return home to live with JE. When JE herself sought DE's return home, Surrey refused to allow this and threatened JE with the police. Surrey stated that it would facilitate DE's residence anywhere else apart from with JE: it stated that it was restricting DE's residence under the doctrine of necessity. Surrey did not seek to regulate the situation with a declaration as to best interests from the High Court. Instead JE brought her own proceedings, some 10 months after DE had been placed in residential care, claiming that Surrey had breached the ECHR Article 5 rights of DE. Evidence was given by Surrey that it did not restrict DE's activities in and around the care home; that it facilitated trips away from the care home; and that save for a brief period, when JE was mentally unwell, it did not restrict contact between her and DE.

The judge, in a judgment which closely analysed the jurisprudence of the European Court, determined that Surrey was preventing DE from leaving the residential care home and returning to live with JE until such time as it considered appropriate, which might be never, and found that in so doing, Surrey had deprived and was continuing to deprive DE of his liberty for the purposes of Article 5. The issue of whether the detention was lawful is still to be determined.

Child S

Child S, a healthy baby at birth, was shaken violently when she was 7 months old. The shaking left her severely brain-damaged, blind and quadriplegic. Child S is now 7 years old; her life expectancy remains very uncertain in light of her injuries. She will always need 24 hour care. The Criminal Injuries Compensation Authority has made substantial awards in respect of the injuries sustained by Child S and the care costs which will be incurred in looking after her. At the request of the Criminal Injuries Compensation Authority (and to ensure the safe-keeping of the funds awarded by this public body), the Official Solicitor holds these funds in trust for Child S to ensure that they are used for her benefit and that neither Child S's natural parents nor the perpetrator of the injuries benefit in any way from the monies.

The X Will Trust

A Testatrix had four adult children to whom she wished to leave her estate, one of whom has learning difficulties and is unable to properly manage his affairs. She left the share of that child in trust for him and made two of her other children the trustees. However, he proved to be a difficult and demanding beneficiary and the other two children were unable to cope as trustees. No professional trustee was willing to act and, accordingly, the Public Trustee agreed to act to protect the interests of this vulnerable beneficiary.

Annex 1

External Delegates to the OSPT User Group

Delegate	Organisation
John Riddett	Probate Section of the Law Society
Barbara Esam	NSPCC
Denise Carter OBE	Reunite
Fiona Freedland	AVMA
Henry Frydenson	Contentious Trust & Probate Specialist Association
David Harvey	Society of Trust and Estate Practitioners
Nina Hansen	Resolution – first for family law
Joanne Sulek	MIND
Caroline Little	Association of Lawyers for Children
Chris Belcher	Solicitors for the elderly
Kirsty Swann	Solicitors Regulation Authority
Colin Pipe	Civil and Family Policy – MoJ
Assistant Master Prime	Court of Protection – MoJ
Frances Swaine	Association of Personal Injury Lawyers
Pauline Thompson	Age Concern
Jonathan Wheeler	Association of Child Abuse Lawyers
Caroline Willbourne	Family Law Bar Association
Ann Baxter	Association of Directors of Children’s Services
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

Annex 2

International Child Abduction and Contact Outcomes for Calendar Year 2006

	Annual Statistics relating to the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction 1 January 2006 to 31 December 2006 International Child Abduction Unit – Outcome of Cases			
	Children brought to England and Wales		Children removed from England and Wales	
Return Application Outcomes				
Judicial Returns	92	30%	27	8%
Voluntary Returns	19	6%	42	12%
Judicial Refusals	16	5%	21	6%
Contact Ordered	15	5%	5	1%
Contact Application Outcomes				
Contact Ordered	3	1%	6	1%
Contact Refused	Nil	–	Nil	–
Contact Agreed	2	1%	2	1%
Registration Application Outcomes				
Registration Ordered	1	0.05%	9	2%
Registration Refused	Nil	–	Nil	–
Other Case Outcomes				
Case Rejected by Central Authority	3	1%	10	3%
Child Not Traced	2	1%	9	3%
Child Traced to Non Convention Country	2	1%	1	1%
Child Traced to Other Convention Country	7	2%	2	1%
Applications Withdrawn	54	18%	57	16%
Total Cases Pending at end of 2006	90	30%	155	45%
GRAND TOTAL	306	100%	346	100%

Please note that the above table provides statistical information for the 2006 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.

