

A close-up, high-angle portrait of a woman with short, light brown hair and blue eyes. She is wearing dark purple-rimmed glasses. The background is dark and out of focus. The image is used as a background for a report cover.

**Office of the
Public Guardian**

08/09
Annual Report & Accounts

April 2008 – March 2009

OPG Annual Report and Accounts

Annual Report by the Public Guardian to the Lord Chancellor on the discharge of his functions, presented to Parliament pursuant to Section 60 of the Mental Capacity Act, 2005.

Report and Accounts of the Office of the Public Guardian for the period April 2008 to March 2009, presented to Parliament pursuant to Section 7(2) of the Government Resources and Accounts Act 2000.

Ordered by the House of Commons to be printed 15 July 2009.

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ISBN: 9780102961416

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The role of the Public Guardian

“ **Safeguarding rights and
enabling and encouraging choice
for all who need our services** ”
The OPG vision



The role of the Public Guardian is to protect people who lack capacity, from abuse.

The Public Guardian, supported by the Office of the Public Guardian (OPG), helps protect people who lack capacity by:

- managing a register of Lasting Powers of Attorney (LPAs);
- managing a register of Enduring Powers of Attorney (EPAs);
- managing a register of Court orders that appoint Deputies;
- supervising Deputies, working with other relevant organisations (for example, social services, if the person who lacks capacity is receiving social care);
- instructing Court of Protection Visitors to visit people who may lack mental capacity to make particular decisions and those who have formal

powers to act on their behalf, such as Deputies;

- receiving reports from Attorneys and Deputies, as necessary and appropriate;
- investigating cases where there are concerns raised about the way in which Attorneys or Deputies are carrying out their duties; and
- providing reports to the Court of Protection as requested.

A separate Public Guardian Board scrutinises the work of the Public Guardian and then reports to the Lord Chancellor.

The Public Guardian is also personally responsible, as Chief Executive and Accounting Officer, for the management and organisation of the OPG, including the use of public money and the way it manages its assets.



Public Guardian's foreword

In presenting this annual report for the OPG's first full year as an executive agency, and giving my perspective both as Public Guardian and Chief Executive, there is no escaping that it has been a year of significant challenge, but also one of huge opportunity.

As an agency, we set a range of performance indicators which, as a package, proved impossible to achieve on the back of the major operational upheaval experienced in the first half of the year. This saw unprecedented volumes of applications for Lasting Powers of Attorney to be registered, more work for the Court of Protection to manage than expected, and many more calls and letters to

our contact centre than we were geared-up for. The first six months of 2008/09 will be remembered by our customers, and the staff of OPG, as a tough time for everyone concerned.

I'm glad to say we did not allow that experience to be a drag-anchor – far from it. I am very proud that, across the spectrum of OPG's business last year, we showed the determination and resilience to sort out problems, improve our performance, and plan and deliver for the future. I know we will not always have met everyone's expectations – therein lies a challenge for the future – but we have striven to be open and honest about our difficulties, being clear on levels of performance, and when improvements would be seen.

Our commitment to change and improve was signalled on a range of fronts:

- new designs of LPA forms were a priority, as a first phase of our wider work to review the implementation of the Mental Capacity Act 2005 (MCA). Come this autumn, shorter, clearer, more helpful forms will be in use;
- the move of the Court of Protection administration was another important reform – allowing users to be clearer on the respective roles of the Court and Public Guardian, but also giving the Court direct access to the wider knowledge, expertise and judicial resource

We showed the determination and resilience to sort out problems, improve our performance, and plan and deliver for the future



available in Her Majesty's Courts Service; and
■ from a standing start in the autumn, we set up and opened our new Birmingham office in April – now fully operational with new staff, processes and culture.

The OPG business plan for 2009/10 reflects and builds on these changes, providing a platform from which to develop our future strategy. That strategy must encompass upholding the principles of the MCA and it must reflect my statutory duties as Public Guardian. But in terms of how the OPG markets Lasting Powers of Attorney, how we develop what it is to supervise those appointed to make decisions for others, and how we strengthen the OPG investigative role in the Safeguarding agenda, we have many choices.

In making those choices I am determined that we continue to put our customers at the heart of everything we do. I am very grateful to the individuals, firms, representative groups and other institutions that have – as stakeholders, consultees

and complainants – helped us to improve. I would like to highlight the Public Guardian Board which, in its role to scrutinise and review what I do as Public Guardian, has been a strong source of constructive challenge and stakeholder engagement.

This annual report provides a snapshot of a year in transition. I have no doubt that future reports will depict rosier – not rose-tinted – pictures of what the OPG can deliver. Crucially what we are able to achieve as an organisation, is all about what our people can achieve – individually, in teams and as a whole. I have no doubt that together we shall rise to any challenge that the future presents us.

Martin John
Chief Executive and Public Guardian
9 July 2009

A key stakeholder's perspective

Caroline Bielanska is Chair of Solicitors for the Elderly, a not for profit organisation of more than 1,000 lawyers in the UK who undertake Court of Protection and Power of Attorney work on behalf of older and vulnerable adults, their families and carers.

'Over the last year, as Chair of Solicitors for the Elderly, I have been involved in continual dialogue with the Office of the Public Guardian. Both the Public Guardian and his staff have been open and receptive to constructive criticism and have listened to my views for the revision of the Lasting Power forms, process efficiencies and legal issues that arise.

'I have been particularly grateful to Jill Martin, the OPG legal officer, for the efficiency with which she has responded to my questions; enabling not only our members to benefit, but also those within the wider legal community, with whom I cascade the information.

'Having the chance to work with other stakeholders has been an unexpected bonus; understanding other viewpoints creates common bonds and shared respect, while creating opportunities to work more closely together outside of the OPG's forum.'

The OPG: who we are

The Office of the Public Guardian (OPG) is an executive agency of the Ministry of Justice (MoJ). It exists to safeguard the interests of people who may lack the mental capacity to make certain decisions for themselves, and to enable people to make provisions for their affairs to be looked after should they lose capacity in the future.

Our principal functions are: to register Lasting Powers of Attorney (LPAs) and Enduring Powers of Attorney (EPAs); to supervise Court-appointed Deputies; and to offer support and advice to those who use our services.

We provide practical, administrative support to ensure safeguards are in place to minimise the risk of Deputies abusing their powers, and to ensure that Attorneys and Deputies act with regard to the code of practice of the Mental Capacity Act.

Our role within the Ministry of Justice

The OPG sits within the Access to Justice business group of the MoJ, alongside such agencies as Her Majesty's Courts Service and the Tribunals Service. As such, our aims are in line with those of the MoJ: to create a safe, just and democratic society.

The OPG contributes to the Ministry's Departmental Strategy Objective of 'delivering fair and simple routes to civil and family justice'. In achieving this, the OPG has a duty to ensure its systems are efficient, effective and accessible.

The OPG's objectives include:

- Encouraging take-up of Powers of Attorney to avoid the need for Court of Protection intervention;
- Providing support to those appointed within the framework of the MCA; and
- Contributing to the MoJ performance and efficiency agenda by maintaining the OPG full cost recovery strategy.

The Government Ministers responsible for the OPG are: the Right Honourable Jack Straw MP, Lord Chancellor and Secretary of State for Justice; and Bridget Prentice MP, Parliamentary Under-Secretary of State at the Ministry of Justice.

The five principles of the Mental Capacity Act

1. All adults have the right to make decisions for themselves, unless it can be shown that they are unable to make them.
2. Everyone should be given all the help and support they need to make a decision before anyone concludes they cannot make their own decision.
3. People are allowed to make what we might think is an unwise or eccentric decision – this doesn't mean they lack capacity to make a decision.
4. Any actions made on behalf of someone who lacks capacity must be done in their best interests.
5. People who lack capacity must not have their rights and freedoms restricted unnecessarily by the decisions made for them.

As at 31 March 2009, the OPG employed 527 full-time equivalent staff, including temporary staff. As such, we are a relatively small and agile agency within the wider context of the MoJ.

Who uses our services?

The OPG has a number of types of customer. These include:

- **Donors** – people who have actively made Powers of Attorney to protect their finances and welfare in the future;
- **Attorneys** – people who have been appointed by Donors to manage their finances or welfare;
- **Client** – a person whose affairs are the subject of the proceedings before the Court of Protection;
- **Lay and professional Deputies** – individuals or authorities, such as local councils or solicitors, who have been appointed by the Court to look after a client's affairs; and
- **Other stakeholders** – these could include GPs, relatives of a client or Donor, representatives from charities, such as Age Concern or Mencap, or legal representatives.

We aim to be:

- **Accessible:** We are committed to making our services available, affordable and easy-to-use for everyone;
- **Customer-focused:** We recognise that we exist to protect vulnerable people who need our services and we actively position customers at the heart of our organisation;
- **Flexible:** We are responsive to feedback and are continually improving and adapting our services to the needs of individuals; and
- **Supportive:** While we provide administrative and regulatory services, we also offer advice and support to both Donors and Deputies.





The Public Guardian is monitored, scrutinised and supported by an independent Public Guardian Board, chaired by Rosie Varley OBE. The Board reports annually on how well the Public Guardian has discharged his or her duties.

'The Public Guardian Board recognises that the OPG's first year of operation was a difficult one. Performance suffered because of overwhelming demand, which, when coupled with limited capacity, led to delays and problems in accessing the service.

'However, the Board is pleased to report that this situation was recognised early and measures put in place rapidly to tackle it. The incoming Public Guardian used the flexibility at his disposal to make significant differences to the organisation's processes and this had an early and marked impact.

'I am also pleased to report that there has been a significant decrease in the number of complaints received by the OPG. Of course, there's still a long way to go, but taken along with the comments we're getting from stakeholders, we feel the tide has turned.

'At the end of last year the Board made some important recommendations and I'm very pleased to say that most of these are 'in train'.

'I'm particularly encouraged that the project to review the Mental Capacity Act (MCA) is to have a stakeholder advisory board, which I will be chairing. I see this as an example of the very constructive relationship developing between the Board and the Public Guardian.

'Going forward, we want to make sure that in implementing the MCA the right balance is struck between empowering and safeguarding.

'The objective behind the Act was to make it easier for people to exercise choice over their future, not make it more difficult, and we want to assess whether this has been the case.

'The MCA marries very well with the personalisation agenda that now underpins health and social care services in the UK. They are both aspects of a fundamental cultural and policy shift towards empowering people and giving them control over their lives.'

**ROSIE VARLEY, OBE,
CHAIR OF THE PUBLIC GUARDIAN BOARD**

A year of change

Although the past 18 months have been challenging at times, we have made significant efforts to transform our operations and we're now in a strong position to capitalise on and take forward some positive changes.

In July 2008, Martin John was appointed as Public Guardian and Chief Executive of the OPG, taking over from Richard Brook.

The OPG has evolved in line with Martin's priorities over the past 12 months.

We have continued to expand due to a growing demand for our services, particularly in relation to the registration of Powers of Attorney.

We view this as a real sign of our success in promoting the work we do.

In order to maximise our potential for growth, in 2008-09, we implemented a more proactive media and communications strategy.

It has been our strategy to encourage more people to make Lasting Powers of Attorney (LPAs) while they still have the capacity to do so, and we have addressed this partly through direct marketing materials, such as leaflets in GP surgeries, and partly through press, radio and television interviews promoting our work (see right).

To cope with the steady increase in demand for our services, more staff have been recruited into key departments.

We have pressed forward with expansion into new premises, plans for which were put in place during 2008-09 (see *Moving forward*, page 36).



Becoming more accessible

Over the past year, the OPG has taken steps to ensure it is easier and more cost-effective for everyone to access our services. This work will continue with the Review of the Mental Capacity Act Implementation Project (RMIP) (see panel).

It has been a key priority for us to reposition customers at the heart of what we do, to ensure that the needs of the people we serve are at the forefront of all our processes.

As well as cultural changes, practical changes have also been made to improve the organisational efficiency of the OPG. One example of this has been the introduction of document

“ It has been a key priority for us to reposition customers at the heart of our organisation, to ensure that the needs of the people we serve are at the forefront of all our processes ”

scanning for all case correspondence at the point it is received, to ensure there is a robust electronic record.

Review of the Mental Capacity Act Implementation Project (RMIP)

When the Mental Capacity Act came into force in October 2007, the OPG made a commitment to Ministers, Parliament and the public that it would review the way the Act had been implemented.

This scheduled review got under way in October 2008, with the aim of identifying and simplifying any unnecessarily complex processes, assessing how the Act has impacted on society, and whether, in its implementation, the OPG is actually reaching the right people and making a positive difference.

Some of the changes suggested by the review will be commonsense and easy for the OPG to make, others may require amendments to legislation, so will be more complicated to apply. All changes are a work in progress as the agency aims to bring about continuous improvement.

After an initial consultation period in 2008, we have already progressed three key changes in 2009-10. These are:

- Simplification of the Lasting Power of Attorney application form;
- Introduction of an 'intermediate' supervision tier for Court-appointed Deputies; and
- Reorganisation of the OPG fee structure.

More details on each of these three changes can be found within the relevant sections of this report.





Empowering individuals to plan for the future

According to the Office for National Statistics, one in four UK adults will experience a mental health problem at some point in their lives. Instances of mental incapacity have steadily increased and are expected to continue to do so among the general population.

There is also an increased awareness of mental capacity issues in the media with, for example, celebrities acknowledging the impact that diseases such as Alzheimer's have had on their and their families' lives.

Therefore, the work that the OPG carries out has a direct effect on the lives of a growing number of people.

We have an important role to play in helping people plan for the future in the event that they are no longer able to make decisions about their health, welfare, property and finances for themselves.

No one can predict when this time might come and it is one of our key aims to raise awareness among younger people of their ability to make a Power of Attorney to safeguard their future, in the same way they might write a will or contribute to a pension fund.

Prior to October 2007, in order to protect their finances in the event of mental incapacity, people could make Enduring Powers of Attorney (EPAs).

EPAs that were made up until the end of September 2007 are still valid for registration under

2008-09 KPIs

- 1a) (i) On receipt of an invalid or incomplete LPA or EPA, we will notify 80% of applicants within 10 working days.
- 1a) (ii) On receipt of a valid LPA, in 80% of cases we will notify the party or parties not making the application within 10 working days.
- 1b) (i) We will register 98% of LPA applications within five working days of the end of the statutory waiting period.
- 1b) (ii) Where an Attorney makes an EPA application within 10 days of notifying relatives, we will register 98% within five working days of the end of the statutory waiting period.
- 1b) (iii) Where an Attorney makes an EPA application more than 10 days after notifying relatives, we will register 98% within 15 working days of receipt, or within five working days of the end of the statutory waiting period, whichever is the later.

For more on KPIs, see page 70

the new OPG regime. However, when the Mental Capacity Act (MCA) came into force, EPAs were replaced by Lasting Powers of Attorney (LPAs), which can cover health and welfare as well as property and finance decisions.

The increasingly high levels of applications for LPAs show that, despite some negative publicity, we have so far been very successful in publicising the value of Powers of Attorney.

“ While there is still a backlog of work to clear, gaps in our service have now been identified and we have put plans in place to plug these ”

Currently, we receive around 400 EPA registration requests and LPA applications per day, which equates to around 8,000 per month. At certain points in the past year, this peaked at 10,000 per month. The number of applications is steadily increasing and it is predicted that it will continue to do so as we do further work to promote our services.

The demand for our services is much higher than we originally anticipated, and this did create some difficulties for us during our first year of operation.

It was our aim during 2008-09 to significantly improve our rate of response to LPA applications, however during the first half of the year, as volumes continued to increase, the planned performance improvement took longer than expected and, in many cases, response times deteriorated.

Although there are still inconsistencies within the system, from July 2008, we began to see the first signs of improvement, as we met our target of acknowledging an LPA application and issuing notices within 10 days of receipt in some 90 per cent of cases.

Gaps in our service have been identified and we have put in place measures to plug these.

Our processes have improved to the point where we believe they are now robust, if not perfect.

We have increased staffing within the applications department, as well as improved our processes, with the effects of our new office in Birmingham already being felt (see *Moving forward*, page 36).

The applications process

When we receive an application, it must be checked for imperfections and acknowledged, and we must notify the party or parties that did not make the application. Once we have sent this notification, a 42-day statutory waiting period begins, during which time anyone entitled to object to the LPA has the opportunity to do so.

Application forms are categorised as either 'perfect' (no mistakes), imperfect (rectifiable



mistakes), or invalid (the form is unusable and a new form must be submitted).

There are still issues with forms that cannot be registered because certain information is incomplete or incorrect. However, a key difference in 2008-09 has been the move to allow many more 'imperfect' application forms to be resubmitted without the payment of a second application fee.

Previously, any material mistakes or missing essential information on the form would render it invalid. However in many cases now applicants can re-submit relevant sections of the form without a second payment. We also begin the statutory 42-day waiting period while the form is being resubmitted, hence cutting delays.

Some 75 per cent of application forms are valid on receipt and get registered promptly. However we still have inconsistencies in process, and we are committed to addressing these problems.

We have identified design of forms as crucial to achieving better outcomes for our customers. The LPA application form is being redesigned to make it clearer and easier to use, therefore reducing the levels of incorrect and non-rectifiable application forms received.

Work on the new forms continued in February and March 2009, including some real-life testing to help users and professionals, such as solicitors, to inform the changes. New improved versions have been agreed and will, subject to Parliamentary approval, enter into general use in October 2009.

CASE STUDY: **Registering an existing EPA**

In 1991, Mr and Mrs D, who were in their mid-sixties with four grown-up children, decided it would be sensible to organise Powers of Attorney in the event of any future incident.

Two years ago, in 2007, Mr D passed away and Mrs D, now in her early eighties, found it difficult to cope both physically and mentally with the running of the house.

In 2008, following a fall, she became very confused, and was unable to remember where she lived. The family took the decision to register the EPA and arranged for Mrs D go into care.

The EPA enabled the family to put the house up for sale and the proceeds have been used for Mrs D's

benefit, including her care fees.

The EPA ensured that the family could properly support Mrs D through a difficult period.

CASE STUDY: **Processing an imperfect LPA**

In late May 2008, the OPG received an application to register a Lasting Power of Attorney (LPA) from a solicitor on behalf of his client.

When the application was checked, it was found to be invalid, as the first two boxes on part B of the form were omitted, and the registration application form (LPA 002) was also missing.



A letter was sent to the solicitor, explaining that the form was invalid, and that a new LPA would have to be submitted, along with the £150 re-submission fee.

In July, the solicitor contacted the OPG to request a review of its decision to reject the application on what he considered to be minor grounds.

In August 2008, the OPG's legal guidelines for LPA submissions were revised to enable applicants to re-submit 'imperfect' sections of their form with no fee required.

We therefore responded to the solicitor to advise him of the impact of the new guidelines and the fact he could re-submit the form, and at the same time the statutory 42-day waiting period was started.

The solicitor re-submitted the original part A of the application form, along with revised and now 'perfect' parts B and C in September 2008, and the registration team registered, scanned and dispatched the registered LPA at the beginning of October.

**Office of the
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2008–2009

2008-2009 KPIs

- 2a) 90% of new deputyship cases will be assessed and a supervision level set within 30 working days of the court order being served on the Public Guardian.
- 2b) 100% of ongoing deputyships with close supervision (type 1) will have a formal reassessment of the supervision level within 13 months of the previous assessment
- 2c) We will carry out a case review on no less than 4,000 type 2 cases during the year.
- 4a) We will put in place an approved action plan in 100% of investigations cases within 14 days of receipt.
- 4b) 75% of investigations will be completed within three months.

For more on KPIs, see page 70

As well as existing to encourage and assist people to plan for their future, the OPG is also responsible for safeguarding the rights of those people who lack mental capacity.

Where an individual has lost capacity but has not previously made a Power of Attorney, the Court of Protection (see page 26) needs to decide who will act as Deputy to manage the affairs of the client.

A Deputy may be a lay individual, such as a family member, or they may be a professional, such as a local authority officer, or a solicitor.

It is the Public Guardian's role to supervise the appointed Deputies.

Supervision involves monitoring Deputies' actions and decisions, and advising them on the execution of their responsibilities to ensure they are always acting in the best interests of the client. A key factor is allowing the client to make their own decisions as far as possible.

Supervision action ranges from written and telephone correspondence through to visits, or specific short-term interventions by the OPG while a Deputy adjusts to their role.

In 2008-09, the OPG assessed 13,148 cases (3,031 were reassessments of existing Deputies and 10,117 were new Deputies) and actively reviewed 2,609 Deputyship reports.

Types of supervision

The first six months of the OPG's operation were spent assessing and allocating new and existing cases to particular supervision levels, so that from April 2008, all cases were categorised.

Over the 2008/09 year we operated three levels of supervision: type 1 (close), type 2 (lighter touch) and type 3 (minimal). The different levels attracted different fees, based on the amount of intervention the OPG is required to undertake. The annual fee for a Deputy in the type 1 supervision category is higher than for a Deputy within type 2, and so on.

A fourth, intermediate level of supervision was introduced from 1 April 2009 as a result of our review work, which identified too great a gap between types 1 and 2 supervision. Some Deputies in the type 2 bracket wanted a closer level of support from the OPG in helping them carry out their role, and the OPG identified others as struggling to meet their responsibilities in this bracket. The new level is known as type 2a (intermediate).

This new level will enable us to put in a greater level of support in the initial stages of a Deputyship, where, for example, very little is yet known about the Deputy.

The new level will be partly populated by some existing type 2 cases where there is a need for greater intervention, and partly by some existing type 1 cases where we believe the risk is lower.

Protecting the vulnerable from abuse of power





It may be that just a short-term intervention is needed, where we offer some extra guidance and support before again referring the case to a type 2 regime.

We are also introducing a greater degree of flexibility so that movement between the supervision levels is more straightforward and the OPG can be more responsive to its customers' changing needs.

Which category?

As at 31 March 2009, there were approximately 1,200 cases within the type 1 supervision level. The reasons for placing a Deputy on this more closely monitored regime could be simply that they require extra support while getting used to their roles and responsibilities, or it could be because the Deputy is failing in his or her role and the OPG is applying to the Court to get them discharged.

The number of cases in type 2 supervision is much greater, reflecting the lower risk. Over the past 12 months, we took the decision to increase the number of checks we carried out on Deputies within this level to ensure cases were not slipping through our net of protection. Against a target of 4,000 checks, the team carried out more than 5,600.

Some of these checks were random sampling, but others had been risk assessed, based on feedback from visits to the Deputies (see pages 24-25).

A formal review of all type 2 cases is carried out regularly and periodically and this will be the same for type 2a cases.

Typically, cases are allocated to the type 3 supervision level when there is less than £16,000 of funds to be managed.

Investigating concerns

Since the implementation of the Mental Capacity Act in October 2007, there has been a 300 per cent



increase in referrals for investigation into the work of Deputies and Attorneys.

This is largely because of increased awareness of the role of the OPG and our powers to step in and take action to protect someone's wellbeing.

All staff within the agency have received training to help them recognise calls and correspondence where concerns are raised about the welfare of a vulnerable adult, so these get escalated to the investigations team within 24 hours.

The OPG takes seriously its responsibilities in the case of abuse of power by Deputies and in a number of cases, particularly with professional Deputyships, we have taken robust action in getting the Deputy dismissed.

In the 12 months to April 2009, we made 61 applications to the Court of Protection to discharge Deputies or remove Attorneys.

Safeguarding Vulnerable Adults policy

The OPG has a role to:

- Prevent abuse from occurring and/or continuing where possible;
- Identify abuse promptly;
- Ensure the abuse ceases and the perpetrator is dealt with wherever possible;
- Undertake to notify Local Authorities/Police and other appropriate agencies when an abuse situation is identified; and it will do so by carrying out its statutory duties, and by thoroughly investigating reported concerns about the conduct of Deputies and registered Attorneys.

In December 2008, we launched the Safeguarding Vulnerable Adults policy, which provides a framework for the delivery of our safeguarding role.

The policy is supported by a protocol on working jointly with local authority Adult Care Social Services departments to protect vulnerable adults.

Since the introduction of the policy, we have been able to respond more quickly to concerns about abuse. This is probably due to the fact that the policy sets out how to recognise abuse, and makes clear the responsibilities of all staff at the OPG in reporting abuse. All OPG staff have access to a copy of the policy.

We refer concerns and allegations relating to people not covered by this policy to the police or social services.

“ Since the implementation of the Mental Capacity Act in October 2007, there has been a 300 per cent increase in referrals for investigation ”

CASE STUDIES



CASE STUDY:

The role of an investigator

Martina Ross is an investigator for the OPG.

‘Since October 2007, my role has focused specifically on investigating concerns about potential abuses of power by Deputies and Attorneys.

‘We’ve definitely noticed the increase in workloads over the past 18 months – requests for investigations have tripled as people have become more aware of the service we provide. There is a lot of pressure, but it’s exciting to be part of a growing department within a growing organisation.

‘When I receive a case to be investigated, my first step is to create an action plan, detailing the concerns raised and pinpointing the steps I’m going to take.

‘I then contact the Attorney or Deputy outlining the concerns that have been raised against them, and asking for their comments, as well as evidence such as their bank statements. I may also contact others involved, such as a client’s nursing home, or family members, to gather more evidence.

‘Occasionally the investigation will extend to a visit to the Deputy and the client or OPG engagement in Protection of Vulnerable Adults conferences.

‘I usually work to a six-week timescale, so if the Deputy doesn’t respond after I’ve written twice, I’ll either recommend that we pursue further or that we decide matters on the evidence available. Nine times out of 10, the Public Guardian will agree with my recommendation.’

CASE STUDY:

Vital intervention by the OPG

Mrs W, 49, collapsed unexpectedly in 2006. She successfully sued for negligence the hospital that was treating her and received a sum of more than £2 million in settlement.

Her husband, Mr W, was appointed by the Court of Protection as her Deputy to manage the funds.

The OPG received a letter from a whistleblower claiming that Mr W was spending Mrs W’s funds inappropriately.

The OPG contacted Mr W, detailing the concerns raised by the whistleblower, and requesting his accounts.

Mr W responded to the OPG’s letter and an investigator visited the house and interviewed him.

From a review of the previous year’s accounts, it appeared he had spent a significant proportion of his wife’s settlement. The investigator’s report recommended that the Deputy be discharged and the security bond be called in so that Mrs W’s money could be recovered.

The Deputy was duly discharged by the Court of Protection and a solicitor was appointed to manage Mrs W’s affairs.

A police investigation is now underway into Mr W’s actions.

Office of the
Public Guardian

2008–2009

The investigator’s report recommended that the security bond be called in so that some of Mrs W’s money could be recovered

CASE STUDY:

Proportionate action

The OPG received a letter alleging that Mr A, a professional Deputy, was releasing too much money to his client, Mr P, who was spending it inappropriately.

The OPG investigated the concern and found that while Mr P was choosing to spend his money in ways others may consider unwise, it was beyond the power of Mr A to control his actions, and would contravene the principles of the Mental Capacity Act to restrict his freedoms to spend his money.

As Mr P was capable of making many of his own decisions, the investigator’s report recommended that there was no further action to be taken against Mr A.

Visitors – ‘the eyes



In 2008-09, the OPG carried out more than 4,500 scheduled visits to Deputies in order to check they were fulfilling their role in accordance with the Mental Capacity Act (MCA) code of practice, and that they were receiving the support they needed from the OPG.

The OPG has a panel of 41 visitors throughout England and Wales, most of whom are engaged under contracts for service.

However, as part of our long-term approach, we have also directly employed three permanent visitors, who took up post at the start of 2009. While each is based at home in order to cover one of three regions, they are OPG staff and as such have received a greater depth of training, direction and management than freelance visitors.

The benefits of employing visitors directly include the fact that we can be more flexible and respond more quickly to requests for visits where necessary. Such visitors have access to confidential

CASE STUDY: **A visitor's role**

Barbara Joyce is one of the OPG's newly appointed, directly employed visitors.

An experienced social worker, she is able to assist other OPG staff where they need specialist welfare advice in their casework, and to build the capacity of the team to deal with the supervision of personal welfare Deputies and investigations of Deputies and Attorneys.

'Ours is a supporting role. We're the eyes and ears of the OPG.

'When we're instructed to visit a Deputy, the commission could come from the Court, or from the OPG supervision and investigation team and the reasons for the visit can be varied.

'There can be a whole host of reasons why someone isn't fulfilling their role as a Deputy correctly, so we have to tread a fine line between supporting and policing the people we visit.

and ears of the OPG'

casework files and OPG systems, which freelance visitors do not.

The employed visitors receive more training and have a deeper understanding of the OPG, so we tend to use them primarily for urgent or complicated visits – for example, where there are applications to have a Deputy removed.

We plan to employ directly a further nine visitors across the UK in due course to provide increased coverage and resilience.

Why do we visit?

Visitors carry out visits on the instructions of the Public Guardian, or as directed by the Court of Protection (see p26).

Before the introduction of the Mental Capacity Act (MCA), visitors were required to visit clients in their home, whereas now their role is more balanced, with a focus on visiting the Deputy to offer advice, support and help with supervision. They will also commonly seek to see clients to help

ensure the Deputy is acting in the client's best interests.

Importantly, visitors do not provide direct instruction, but help the Deputy should they need assistance, for example by showing them where to go for financial advice.

Under the terms of the MCA, the Public Guardian has a duty to support Deputies, and the majority of feedback from those visited has been positive.

All new visitors now undergo induction sessions and training to ensure they are aware of how to meet their remit. A handbook has also been developed and piloted among the visitors and in January 2009, a visitors' conference was held in Birmingham, which was attended by some 35 visitors.

All visitors have been given access to a Secure Mailbox email account so that the transfer of sensitive documents and data related to cases can be assured.

'It makes sense that the emphasis is now on visiting the Deputy instead of the client – although we also involve the client and seek their views on the Deputyship where they are able to express an opinion.

'I've met with some hostility as Deputies and Attorneys are not used to being inspected, and some can be a bit defensive as they adjust to the new rules under the MCA.

'But the OPG has had to develop from the supporting, nurturing role of the Public Guardianship Office, and now also has a regulating role as well as a safeguarding duty, so it is right those empowered to make decisions on people's welfare and finances are scrutinised.

'Part of my role is to ensure that the standard of care the clients receive is reflective of their income – in other words, that the Deputy is making sure their client receives the standard of care he or she can afford. This could, for example, be having the home adapted for easier access, or employing a carer a few times a week.

“ It is right that those with Powers of Attorney over people's welfare and finances are scrutinised ”

'I often liaise with other agencies and partners, such as the Care Quality Commission, the police or adult social services as a result of my visits, in order to ensure the necessary improvements or safeguards are put in place.

'As well as supporting the OPG's regulatory and investigatory work, the evidence that we are able to give as a result of our visits often proves a valuable contribution to a person's safeguarding strategy.'

The Court of Protection

Over the year of this report, the administration of the Court of Protection was provided by the OPG. From 1 April 2009, this changed, and the Court is now administered by Her Majesty's Courts Service (HMCS).

The Court will, on application, appoint a Deputy where a person has lost capacity and there are no arrangements in place (i.e. no Power of Attorney) to look after their financial affairs or personal welfare. It can also make one-off decisions relating to someone's health and welfare.

The supervision of the Court-appointed Deputies falls to the Public Guardian, who helps ensure that Deputies always act in the best interests of their client.

Applications to the Court

The Court of Protection is responsible for making decisions where objections have been raised to the application for registration of a Lasting Power of

Attorney (LPA) or Enduring Power of Attorney (EPA). Once the Public Guardian receives a valid notice of objection, he cannot register the EPA or LPA until the Court determines the objection and directs the Public Guardian to register.

More than half of all applications to the Court are made by professionals, such as solicitors and local authorities. Other applications are made by the family or friends of someone who has lost capacity.

The majority of applications to the Court are submitted as paper evidence and decisions can be made based on these papers. In around 95 per cent of cases, there is no need for a person to actually come and present evidence in Court.

However, the Court has a team of specialists who can deal with more complex orders, for example the appointment of new trustees, or where families want large gifts made. In some cases, where an application is disputed, an attended hearing may be necessary.





The amount of time taken to process new applications to the Court has gradually improved over the past 12 months. At 31 March 2009 new applications were being dealt with within 16 weeks, rather than 21 weeks. This timescale includes the statutory 42-day waiting period from when relatives and other interested persons are notified of the application.

Until June 2008, there was a transition provision in the MCA legislation for people who had been made 'Receivers' under the old system to come back to the Court and be given a new Deputy order for no fee.

The demand for these transitional cases was much higher than anticipated and volumes initially overwhelmed the Court. However, by the end of December 2008, all transition cases had been seen and all new Deputy orders sent out.

As a result, in January 2009, all 1,500 applications to the Court met their target times.

A separate contact team was set up to handle Court-related queries. This receives approximately 200 calls per day from applicants and Deputies. A team of technical advisers deals with the more complex cases, and they are supported by the more experienced Court staff.

Emergency cases

The safeguards that have been added to the Deputyship process since the introduction of the MCA have had the intended protective effect, but

the increased level of formality has presented some challenges for those using the Court, particularly as 70 per cent of the Court's clients are elderly and often there is pressure to make decisions quickly.

To respond to this need, in 2008-09 the Court developed an urgent and fast-track process to deal with such cases. The OPG and HMCS websites explain how to bring an urgent matter to the Court's attention, and cases will be referred to a judge within 10 working days of such notification.

Emergency matters, such as where consent is needed for lifesaving medical treatment, receive a judge's attention within eight hours.

Judges

There has been a considerable amount of pressure on the judges working at the Court of Protection. The MCA stated that from October 2007, only judges could make judgments in the Court (previously, Court officers empowered by the Lord Chancellor were able to process non-contentious matters), and so there has been an increased workload.

To assist, the President of the Family Division arranged for judges from the regions to come to the Court of Protection headquarters at Archway Tower in London to assist in getting through all the work.

He has also agreed to extend the complement of judges necessary to carry out all the work, so this will increase from 4.2 judges to six in the 2009/10 year.

Moving on

The Court of Protection moved under the jurisdiction of Her Majesty's Courts Service (HMCS) on 1 April 2009. The move will give the Court greater flexibility and has helped make the distinction between the Court and the OPG clearer.

The Mental Capacity Act provided for the Court to become more formal than it had been previously, bringing it logically in line with other Courts, so it made sense for it to be administered by HMCS. The move has also provided the Court with greater flexibility for sharing judges and Court rooms.

Ensuring the appropriate level of care

Miss M was 93 and lived at home. Following a fall, she was admitted to hospital for treatment and an assessment was made by her doctors and other care professionals as to the feasibility of her returning home. It was proposed, at a meeting with family members, that she move to a residential care home while further assessments were made by a multi-disciplinary team.

“ Miss M’s daughter had strong objections to this plan and made representations that her mother should return home ”

Miss M’s daughter had strong objections to this plan and made representations that her mother should return home. The local authority and the Care Trust made an application to the Court of Protection to decide whether or not Miss M should be placed in residential care pending assessment.

A hearing was arranged six days later. At the hearing, the judge directed that a Court of Protection visitor make a report to the Court as to Miss M’s capacity to make decisions regarding her future care and residence. It was also ordered that Miss M should not be moved without permission of the Court. A further date was set to consider the matter.

At the subsequent hearing, after seeing the visitor’s report, the judge decided that Miss M lacked the necessary capacity to make decisions for herself, and a solicitor was asked to represent her personal interests. It was also declared it was in Miss M’s best interests that she resided in a nursing care facility, to be arranged by both the Care Trust and Miss M’s sister.

It was ordered that a property and affairs Deputy be appointed from the Court’s panel of independent Deputies.

Enabling family to act in someone’s best interests

Mrs J has a small portfolio of investments, as well as money deposited with building societies and National Savings. Her son N had been appointed several years ago as Mrs J’s Receiver and was operating under the First General Order, made by the Court of Protection under the Mental Health Act 1983. In early 2008, a small amount of capital was required to fund the purchase of an electric wheelchair for Mrs J. N made an application to the Court for permission to withdraw some money from a building society account.

The Court made a full Deputyship Order, giving N the wider powers of a Deputy now afforded by the Mental Capacity Act 2005. This meant he could now deal with any financial institution in which his mother had an account, and could therefore sell some of his mother’s stock market investments without having to come back to the Court for permission.

Seven months later, when it was decided that Mrs J could no longer live at home and needed the professional support of residential care, N was able to put her house on the market, negotiate its sale and invest the net proceeds of sale all without any further authorisation from the Court of Protection.



Listening and responding

Office of the
Public Guardian

2008–2009



A key part of the OPG's aim to become a more responsive and accessible organisation is improving the experience of customers who make contact with us, whether they have queries about a process or complaints about the service they have received.

The OPG contact centre, which was established in 2007, has continued to face challenges in terms of the volume of calls, emails and letters

received from customers in 2008-09.

The centre receives between 1,100 and 1,200 calls per day, and 60-70 per cent of these relate to the making and registration of Powers of Attorney.

Complaints have been disproportionately high in the past year. This has mainly been due to the delays in the Lasting Power of Attorney (LPA) registration process.

As performance within the applications and

2008-2009 KPIs

- 3a) We will respond to 95% of correspondence (including letters, faxes and emails) within 15 working days of receipt.
- 3b) 85% of telephone calls to the Contact Centre will be answered within 60 seconds.

For more on KPIs, see page 70

processing department has improved, the number of complaints received by the contact centre, and OPG generally, has fallen.

We have a target to answer 85 per cent of calls within 60 seconds, which we have broadly met since August 2008.

Improvements in the system

A team of specialist technical advisers has been set up to deal with more complex calls that need escalating. This team has a higher level of technical knowledge about the Lasting Power of Attorney (LPA) and Enduring Power of Attorney (EPA) process, and can identify more effectively where the problem with an application lies, and advise customers accordingly.

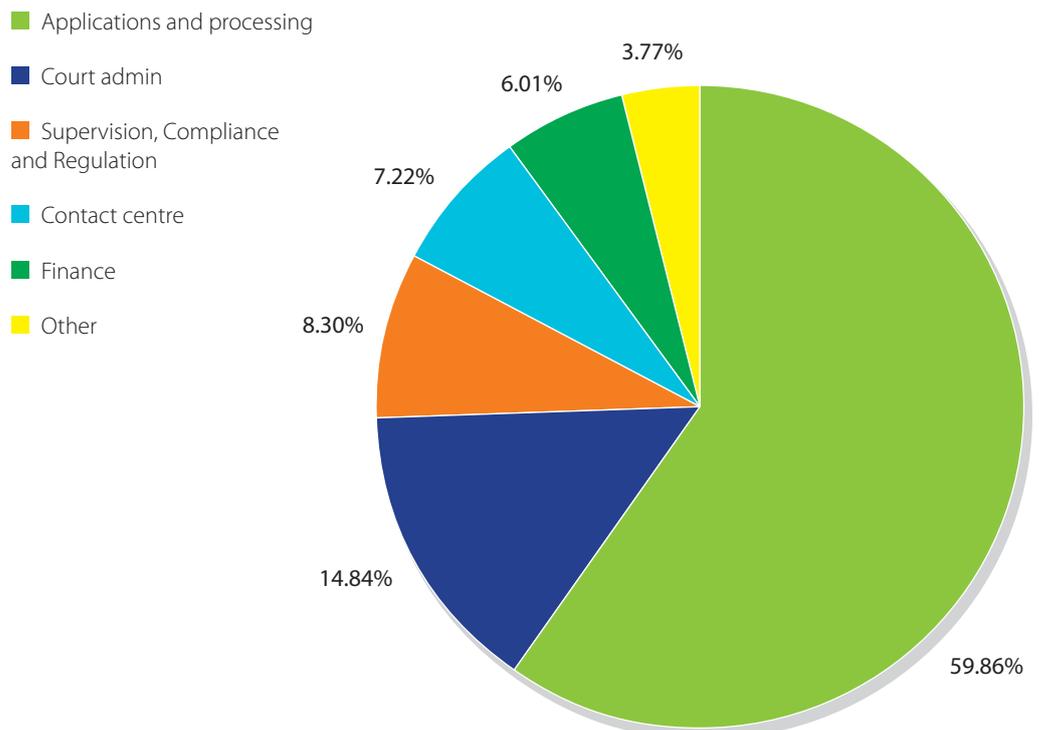
A system has been developed to ensure we are targeting the most pressing complaints within 48 hours, but this target has not been met in all cases.

New processes for resolving complaints have been put in place and improvements are now starting to show. It is predicted that during the 2009-10 financial year, the contact centre will be reaping the benefits of the systems we have implemented over the past 12 months.

There is a robust system of training in place for contact centre staff so that they are competent, confident and conscientious when assisting callers.

Since January 2009, the call lines have been opened one hour later at 10am on one day a week, in order to increase training updates and activity.

Area of complaint	April 08–June 08	July 08–Sept 08	Oct 08–Dec 08	Jan 09–March 09	Total
Applications and Processing	406	512	289	177	1384
Court Admin	120	107	61	55	343
Supervision, Compliance and Regulation	60	45	42	45	192
Contact Centre	71	46	17	33	167
Finance	47	38	28	26	139
Other	20	15	23	29	87
Total number of complaints	724	763	460	365	2312





CASE STUDY: Technical advisers

Andrew Pearce and Murry Santry are technical advisers for the contact centre. They specialise in queries about Powers of Attorney.

‘Our role involves dealing with cases that the contact centre escalates, for example a difficult query about the execution of a Power of Attorney.

‘One of the key challenges we face on a daily basis is dealing with customers who are upset, frustrated and angry, but we have become quite experienced at dealing with difficult situations.

‘We can’t always give a commitment to the customer as to when their query will be fully resolved, because the case can be quite complex, but we try to figure out as much as possible over the phone. It’s a case of “unsticking” the ones that get stuck.

‘We have an in-depth understanding of Powers of Attorney, so if we do need to refer a case to the applications department, we have already pinpointed what needs fixing, which speeds things up a bit.

‘We can also spot trends, for example, if the same problem is occurring again and again, we feed this back to the applications team to help improve their processes.

‘We have an ongoing remit to improve the knowledge in the contact centre about applications, so all contact centre staff are more accurate with the information they provide.

“ **There is now
nowhere near the same
volume of complaints** ”

‘Things have definitely improved over the second half of the year. There is nowhere near the same volume of issues. The whole organisation is evolving, as we avoid creating frustrations for customers and learn how to deal more effectively with them.

‘Being on the phones drives home the fact that we are helping real people. It’s a good feeling when you manage to sort things out, as the customers are usually very grateful – it’s great when we receive thank-you letters.’

Summary of the 2008-09 OPG customer satisfaction survey

The OPG appointed Ipsos MORI to carry out a customer satisfaction survey for the period 2008-09 to provide a comparison to the initial benchmarking of customer views carried out in 2008. This work allows the OPG to gauge the perceptions of its users, identify any areas for improvement and set an appropriate future key

performance indicator for customer satisfaction.

A postal survey was conducted with five key customer groups of the OPG. In total 5,500 questionnaires were distributed for the survey and 1,888 were completed and returned which equates to a 34 per cent response rate.

Survey results are as follows:

Contact Centre

82%

of people were either satisfied or very satisfied with the speed at which their call was answered.

Key area for improvement

Whether or not the first person a customer spoke to could help answer their question is closely associated with a customer's satisfaction with the OPG. There are indications of an increase in the proportion of customers having to call back more than three times to resolve their issue, which we need to improve on.

Court of Protection

73%

of Deputies felt very or fairly confident about the process of applying to become a Deputy. This is an increase of 20% on the previous year.

Key area for improvement

Only **36%** of Deputies found the form used to apply to become a Deputy easy and **37%** found it difficult. However, there are signs that this is improving with a 10% decline in those who found the form difficult from 2008. Nevertheless, more needs to be done.

Supervision

90%

of respondents said they understood why they had been allocated to a particular level of supervision. This is a 3% rise on the previous year.

Registering Powers of Attorney

87%

of respondents felt they understood their responsibilities as an Attorney.

Key area for improvement

Only **45%** of those completing LPA forms found it easy. We are revising the LPA form currently and we will be looking to increase the customer satisfaction in this area in the coming year.



OPG policies

■ Equal opportunities

The OPG is an equal opportunity employer. Our aim is to be fair to everybody; to ensure that no eligible job applicant or employee receives less favourable treatment on the grounds of race, colour, nationality or ethnic or national origins, age, gender, sexual orientation, marital status, disability, religion or religious affiliation, or is disadvantaged by conditions or requirements which cannot be shown as justifiable. Our policy builds on the Civil Service Code of Practice on Employment of Disabled People and the statutory obligations of employers under the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Race Relations (Amendment) Act 2000, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003 and the Employment Equality (Age) Regulations 2006.

■ Learning and development

The priority of the Learning and Development team between April 2008 and March 2009 was to ensure staff were equipped with the business skills they needed in order for the OPG to operate successfully as a business unit. This has included training local experts within different departments to disseminate information and running training courses for new staff, focusing on inductions to the OPG and understanding the organisation's processes.

Some training modules are still being developed and piloted, and the aim is to introduce a more consistent, structured approach to the way all staff are trained.

■ Employee engagement

We attach considerable importance to ensuring the fullest involvement of employees in delivering the OPG's aims and objectives. We have therefore

continued our practice of keeping employees informed on matters affecting them and on the performance of the agency. This is achieved through the intranet, a regular two-weekly newsletter, regular organisational briefings and circulation of press releases, annual reports and office notices. Formal and informal meetings are also held with employees, serving the purpose of consultation and feedback, as well as regular meetings with recognised trade unions.

■ **Creditor payment, policy and performance**

The OPG pays all supplier invoices in accordance with the Government's payment performance targets. These require us to pay all invoices not in dispute within 30 days or within the agreed contractual terms. They also require us to pay 100 per cent of invoices, including disputed invoices once the dispute has been settled, on time within these terms. From 1 April 2008 to 31 March 2009, we paid 100 per cent of invoices within this time span. Payments are only made once they have been properly authorised under the terms of the our scheme of financial delegation. No interest was paid under the Late Payment of Commercial Debt (Interest) Act 1998. In October 2008, the government made a commitment to speed up the payment process. The OPG, in keeping with public sector organisations, aims to pay suppliers within 10 days, and in the part-year in 2008-09 we paid 99 per cent of invoices within this time span.

■ **Health and safety**

The OPG acknowledges its legal responsibilities in relation to the health, safety and welfare of its employees and for all people using its premises. We comply with the Health and Safety at Work Act 1974 and all other legislation as appropriate.

In maintaining health and safety, a Health and Safety Committee meets quarterly to discuss relevant matters and to ensure key staff are kept informed of changes in legislation, practices and procedures. Relevant training for staff and managers is provided to ensure compliance.

We remain committed to continual improvement in this field, in consultation with staff and trade union representatives who have played a constructive part throughout.

■ **Sustainability**

The OPG is committed to sustainable development which can be defined as development which meets the needs of the present without compromising the ability of future generations to meet their own needs. We implement the following strategies to support this statement.

■ **Energy:** Staff are reminded to switch off their CPU and monitor every night to reduce carbon emissions, while photocopiers and lights are switched off by the security staff.

■ **Resources:** OPG booklets and forms have been printed on recycled paper, and the same content can also be obtained on a CD-Rom when requested. Clients are also encouraged to seek information via the internet and email the office where possible.

■ **Staff information:** Is communicated via the intranet, which is a well-used tool within the organisation.

■ **Water filter machines:** Are provided on each floor, which minimises the use of bottled mineral water and the need to operate individual kettles for hot water.

■ **Recycling:** Recycling points for paper, plastic bottles and cans can be found on each floor.

■ **Transport:** Staff members are encouraged to use public transport when travelling to an external meeting.





Welsh language scheme

The OPG Welsh language scheme came into effect on 14 September 2007.

The OPG scheme was prepared under Section 21 of the Welsh Language Act 2005, in accordance with guidelines issued by the Welsh Language Board under Section 9 of the Act.

The scheme has been running for 18 months now, and we continually inform our staff of our responsibilities under the scheme. We also inform our customers of its existence through our literature and our website.

The delivery of the service

Publications

OPG guidance booklets are available in Welsh on our website and in printed format on request. The Lasting Power of Attorney forms for Property & Affairs and Health & Welfare are also available bilingually on our website.

The OPG's Welsh language scheme recognises that it is not practicable to produce all the OPG's publications in Welsh. Publications are put through a scoring system to identify the documents that should be produced in Welsh.

Customers

If a customer requests to be conversed with in Welsh, there are systems in place to ensure that files and cases are noted and that this is observed.

Correspondence in Welsh is welcomed. Any correspondence in Welsh is treated on an equal

basis to English. Service delivery standards are the same for both English and Welsh.

Corporate identity

The OPG has a bilingual logo that is used on correspondence to the Welsh public.

“ The first year of operating the scheme has set a standard of fulfilling our Welsh language commitments ”

Monitoring

The scheme is monitored on an annual basis and details are sent to the Welsh Language Board.

Summary

The first year of operating the scheme has set a standard of fulfilling our Welsh language commitments. However, we recognise that more could be done to promote our Welsh services and our aim for 2009/10 is to further promote these to the general public, our stakeholders and customers.

Moving forward

As the OPG continues to develop, it is important that the progress we have made so far is not jeopardised by any of the planned changes to our structure, culture or ways of working.

The OPG change programme launched officially in March 2009, at a full staff conference, which helped pull together all the different aspects of the organisation for the first time, and help embed the idea of a more collective, joined-up way of working.

Temporary and contract workers were included in this event to ensure our priorities were clearly communicated to as wide an audience as possible.

The post of 'head of change and development' was created at the start of 2009, in order to drive the cultural and organisational changes forward, while maintaining staff engagement.

“ We want to embed a continuous improvement culture within the organisation ”

All our business processes are currently undergoing a review, with the aim of removing any processes that don't add value, or that cause unnecessary delays.

People engagement is a vital part of the process and staff are being asked to contribute to and 'own' the changes by helping to identify proactively any inefficiencies in their area of work, and making suggestions for improvement.

We want to embed a continuous improvement culture within the organisation, and lay down the foundations of becoming a customer-responsive business.

We believe our staff have the potential to make this a reality and we want to maximise our people's skills in order to deliver our services as effectively as possible.

New accommodation



The OPG is currently registering 85,000 applications per year and we expect this to double over the next few years.

People are recognising the importance of LPAs in protecting their wellbeing as well as their financial affairs.

To ensure that our customers receive the service standards that they deserve and need, and to ensure the OPG effectively manages increased demand for services, we are moving to become an organisation based in a number of locations around the country.

The first part of this plan was the move of the applications and processing team to Hagley Road in Birmingham in April 2009.

Some 70 members of OPG staff now work in our Birmingham office, and a secondary expansion to premises in Nottingham will take place at the end of 2009.

OPG finance and accounts

Financial activity

The OPG is funded by the Ministry of Justice (MoJ), from its Parliamentary Supply, and by income derived from fees and charges from external customers.

In common with other Government agencies, future funding has to be approved by our sponsor department, the MoJ, and by Parliament.

“ As an organisation, we are in a position of growth, and expanding our operation to meet the challenge of increasing demands for our services ”

Such approval has already been given for 2009/2010 and there is no reason to question future funding. The financial statements have therefore been prepared on a going-concern basis for financial reporting and asset valuation purposes.

1 April 2008 – 31 March 2009

Summary

The OPG had a net cost of operations of £5.9m, due mainly to the deficit on fees and charges cost recovery and the cost of fee exemptions and remissions (Financial Statements Note 6. Fees and Charges). The OPG's net assets at 31 March 2009 amounted to £10.8m.



Operating income

Total operating income from fees and charges relating to services provided to users of OPG and the Court of Protection (CoP) was £23.2m (OPG £17.1m and CoP £6.1m). The significant increase in the annual income reflects the very high levels of activity experienced by OPG and CoP. Extrapolation of the first six months of operations of income to a full year shows an overall increase of 26 per cent with 112 per cent in applications to register Lasting Powers of Attorney and Enduring Powers of Attorney. The CoP experienced a 50 per cent increase in court applications.

Fee Exemptions and Remissions

A substantial increase in fee exemptions and remissions to £3.3m (OPG £1.9m and CoP £1.4m) was experienced. The criteria for fee exemptions and



remissions changed with the implementation of the Mental Capacity Act 2005 making more people eligible. In turn, the media helped publicise the availability of fee exemptions and remissions, so the volume of applications increased in line with this.

Around 14 per cent of all fees were exempted or remitted and the agency is more proactive so that people find our services affordable and accessible, in-line with Access to Justice. Where people are exempt from paying a fee the OPG has a role to play in proactively identifying these cases.

Operating Expenditure

The operating expenditure amounted to £26.4m, including staff costs for CoP and OPG of £15.3m (58 per cent) for 484 staff (OPG 376 and CoP 108 including 5 judiciary), non-staff operating costs of £4.7m (18 per cent) and notional and non-cash

charges of £6.4m (24 per cent).

Looking ahead

The financial outlook for the OPG is very positive. As an organisation, we are in a position of growth, and expanding our operation to meet the challenge of increasing demands for our services. We are also mindful of the level of fees charged for services.

From 1 April 2009, a new OPG fee structure came into force. This takes into account the feedback from our consultation, including rationalising what things cost against public opinion about their value, for example reducing the Lasting Power of Attorney application processing fee in-line with the Enduring Powers of Attorney fee (from £150 per application to £120) and introducing a new fee for the intermediate (Type 2a) supervision level (see page 18).

Remuneration report

Remuneration policy

The remuneration of senior civil servants is set by the Prime Minister following independent advice from the Review Body on senior salaries.

The salaries for the members of the Agency Board are determined by the Permanent Secretary of the Ministry of Justice (MoJ) in accordance with the rules set out in Chapter 7.1 Annex A of the Civil Service Management Code.

In reaching its recommendations, the Review Body has regard to the following considerations:

- The need to recruit, retain and motivate suitably able and qualified people to exercise their different responsibilities;
- Regional/local variations in labour markets and their effects on the recruitment and retention of staff;
- Government policies for improving public services, including the requirement on departments to meet the output targets for the delivery of departmental services;
- The funds available to departments as set out in the Government's departmental expenditure limits; and
- The Government's inflation target.

The Review Body takes account of the evidence it receives about wider economic considerations and the affordability of its recommendations.

Salary

'Salary' includes gross salary; performance pay or bonuses; overtime; reserved rights to London weighting or London allowances; recruitment and retention allowances; private office allowances and any other allowance to the extent that it is subject to UK taxation.

Benefits in kind

The monetary value of benefits in kind covers any benefits provided by the employer and treated by the HM Revenue and Customs as a taxable emolument.

Service contracts

Civil service appointments are made in accordance with the Civil Service Commissioners' Recruitment Code, which requires appointment to be on merit on the basis of fair and open competition, but also includes the circumstances when appointments may otherwise be made.

Unless otherwise stated below, the officials covered by this report hold appointments that are open-ended until they reach the normal retiring age of 60. Early termination, other than for misconduct, would result in the individual receiving compensation as set out in the Civil Service Compensation Scheme.

Non-executive directors were appointed on a three or four-year fixed contract.

Salary and pension entitlements

The following sections provide details of the remuneration and pension interests of the members of the Executive Board and sub-Boards.

Remuneration				
Members	2008-09		2007-08 ¹	
	Salary £'000	Benefits in kind (to nearest £100)	Salary £'000	Benefits in kind (to nearest £100)
Martin John Chief Executive and Public Guardian (from 10 July 2008)	55-60 (75-80 full year equivalent)	–	–	–
Richard Brook Chief Executive and Public Guardian (to 1 August 2008)	30-35 (100-105 full year equivalent)	–	55-60 (105-110 full year equivalent)	–
Louise Lawrence Head of performance and change (to 27 March 2009)	55-60	–	25-30 (55-60 full year equivalent)	–
Craig Mcilwrath Head of applications and processing (to 9 January 2009)	40-45 (50-55 full year equivalent)	–	25-30 (50-55 full year equivalent)	–
Stephen Taylor Head of finance and resources	60-65	–	30-35 (60-65 full year equivalent)	–
Steve Rider Head of customer contact centre	50-55	–	25-30 (50-55 full year equivalent)	–
Angela Johnson Head of supervision	50-55	–	25-30 (50-55 full year equivalent)	–
Sandra Hodgson Head of change and development (from 15 December 2008)	10-15 (45-50 full year equivalent)	–	–	–
Rosie Varley Non-executive director	15-20	–	5-10 (10-15 full year equivalent)	–
Maurice Rumbold Non-executive director	5-10	–	0-5 (5-10 full year equivalent)	–
Bob Niven Non-executive director	5-10	–	0-5 (5-10 full year equivalent)	–
Lionel Joyce Non-executive director	5-10	–	0-5 (0-5 full year equivalent)	–
Susan McCarthy Non-executive director	0-5	–	0-5 (0-5 full year equivalent)	–
Deep Sagar Non-executive director	0-5	–	0-5 (0-5 full year equivalent)	–
Sue Whittaker Non-executive director	0-5	–	0-5 (0-5 full year equivalent)	–

¹Figure quoted is for 6 months for the period 1 October 2007 to 31 March 2008.

Pension benefits

Members	Accrued pension at age 60 as at 31/3/09 and related lump sum	Real increase in pension and related lump sum at age 60	CETV at 31/3/09	CETV at 31/3/08*	Real increase in CETV	Employer contribution to partnership pension account
	£'000	£'000	£'000	£'000	£'000	Nearest £100
Martin John <i>Chief Executive and Public Guardian (from 10 July 2008)</i>	15-20 plus lump sum of 45-50	0-2.5 plus lump sum of 0-2.5	197	177	6	–
Richard Brook <i>Chief Executive and Public Guardian (to 1 August 2008)</i>	0-5 plus lump sum of –	0-2.5 plus lump sum of –	65	55	8	–
Louise Lawrence <i>Head of performance and change (to 27 March 2009)</i>	15-20 plus lump sum of 45-50	0-2.5 plus lump sum of 0-2.5	221	196	7	–
Craig Mcilwrath <i>Head of applications and processing (to 9 January 2009)</i>	15-20 plus lump sum of –	0-2.5 plus lump sum of –	188	165	7	–
Stephen Taylor <i>Head of finance and resources</i>	5-10 plus lump sum of 15-20	0-2.5 plus lump sum of 0-2.5	106	86	13	–
Steve Rider <i>Head of customer contact</i>	20-25 plus lump sum of 60-65	0-2.5 plus lump sum of 5-7.5	350	299	29	–
Angela Johnson <i>Head of supervision</i>	0-5 plus lump sum of –	0-2.5 plus lump sum of –	27	13	12	–
Sandra Hodgson <i>Head of change and development (from 15 December 2008)</i>	15-20 plus lump sum of 55-60	0-2.5 plus lump sum of 0-2.5	313	290	(2)	–

*The figure may be different from the closing figure in last year's accounts. This is due to the CETV factors being updated to comply with the Occupational Pension Schemes (Transfer Values) (Amendment) Regulations 2008.

Civil service pensions

Pension benefits are provided through the Civil Service Pension (CSP) arrangements. From 30 July 2007, scheme members may be in one of four defined benefit schemes: either a 'final salary' scheme (classic, premium or classic plus); or a 'whole career' scheme (nuvos). These statutory

arrangements are unfunded with the cost of benefits being met by monies voted by Parliament each year. Pensions payable under classic, premium, classic plus, and nuvos are increased annually in line with changes in the Retail Price Index (RPI). Members joining from October 2002 may opt for either the appropriate defined benefit

arrangement or a good-quality 'money purchase' stakeholder pension with a significant employer contribution (partnership pension account).

Employee contributions are set at the rate of 1.5 per cent of pensionable earnings for classic and 3.5 per cent for premium and classic plus. Benefits in classic accrue at the rate of 1/80th of pensionable salary for each year of service. In addition, a lump sum equivalent to three years' pension is payable on retirement. For premium, benefits accrue at the rate of 1/60th of final pensionable earnings for each year of service. Unlike classic, there is no automatic lump sum (but members may give up [commute] some of their pension to provide a lump sum). Classic plus is essentially a variation of premium, but with benefits in respect of service before 1 October 2002 calculated broadly in the same way as in classic.

The partnership pension account is a stakeholder pension arrangement. The employer makes a basic contribution of between 3 per cent and 12.5 per cent (depending on the age of the member) into a stakeholder pension product chosen by the employee from a selection of approved products. The employee does not have to contribute, but where they do make contributions the employer will match these up to a limit of 3 per cent of pensionable salary (in addition to the employer's basic contribution). Employers also contribute a further 0.8 per cent of pensionable salary to cover the cost of centrally-provided risk benefit cover (death in service and ill-health retirement).

The accrued pension quoted is the pension the member is entitled to receive when they reach 60, or immediately on ceasing to be an active member of the scheme if they are already aged 60 or over.

Further details about the CSP arrangements can be found at the website:

www.civilservice-pensions.gov.uk

Cash Equivalent Transfer Values

A Cash Equivalent Transfer Value (CETV) is the actuarially assessed capitalised value of the pension scheme benefits accrued by a member at a particular point in time. The benefits valued are the member's accrued benefits and any contingent spouse's pension payable from the scheme. A CETV is a payment made by a pension scheme, or arrangement to secure pension benefits in another

pension scheme, or arrangement when the member leaves a scheme and chooses to transfer the benefits accrued in their former scheme. The pension figures shown relate to the benefits that the individual has accrued as a consequence of their total membership of the pension scheme, not just their service in a senior capacity to which disclosure applies. The CETV figures, and from 1 April 2003 the other pension details, include the value of any pension benefit in another scheme or arrangement that the individual has transferred to the CSP arrangements, and for which the Cabinet Office's Civil Superannuation Vote has received a transfer payment commensurate to the additional pension liabilities being assumed. They also include any additional pension benefit accrued to the member as a result of their purchasing additional years of pension service in the scheme at their own cost. CETVs are calculated within the guidelines and framework prescribed by the Institute and Faculty of Actuaries and do not take account of any actual or potential reduction to benefits from Lifetime Allowance Tax which may be due when pension benefits are drawn.

Real increase in CETV

This reflects the increase in CETV effectively funded by the employer. It does not include the increase in accrued pension due to inflation, contributions paid by the employee (including the value of any benefits transferred from another pension scheme or arrangement) and uses common market valuation factors for the start and end of the period.



Martin John

Chief Executive and Public Guardian

9 July 2009

- Further information about the work of the Civil Service Commissioners can be found at www.civilservicecommissioners.gov.uk
- Further information about the work of the Review Body can be found at www.ome.uk.com



Corporate governance

Governance structure

The OPG governance structure was reviewed and a new structure was put in place to focus on key elements of the business. It consists of an Executive Board and five sub-Boards – Delivery, Policy, People, Customer and Change – in support of the Executive Board. One non-executive director supports each sub-Board. The Executive Board and its sub-Boards have accountability for strategy, management overview, and operational control of the OPG in supporting the Chief Executive. The Public Guardian Board continues to fulfil its statutory role, as does the Audit Committee.

The Executive Board as at 31 March 2009 comprised five executive staff members, all permanent civil servants, as follows:

- Martin John
Chief Executive and Public Guardian
- Stephen Taylor
Head of Finance and Resources
- Steve Rider
Head of Applications and Contact Centre
- Angela Johnson
Head of Supervision
- Sandra Hodgson
Head of Change and Development

The sub-Boards include the following chairpersons and non-executive directors from the Public Guardian Board:

- Delivery Board
Chair: Stephen Taylor
NED: Maurice Rumbold
- Policy Board
Chair: Angela Johnson
NED: Suzanne McCarthy
- People Board
Chair: Steve Rider
NED: Sue Whittaker

- Customer Board
Chair: Steve Wade (From 1 April 2009)
NED: Lionel Joyce
- Change Board
Chair: Sandra Hodgson
NED: Bob Niven

Governance framework

The OPG Framework Document, laid before Parliament on 17 September 2007, sets out the financial and organisational framework within which the OPG operates as an agency and the responsibilities of those involved.

The Secretary of State for Justice and Lord Chancellor is the Minister accountable to Parliament for the activities and performance of the OPG. The Chief Executive is appointed to manage the OPG and the Secretary of State delegates to him or her responsibility for the exercise of its functions as set out in the Framework Document and for its day-to-day performance.

The Permanent Secretary for the Ministry of Justice (MoJ) is the Department's principal accounting officer and is the principal adviser to the Secretary of State on matters affecting the MoJ as a whole, including allocation of resources to the OPG, expenditure and finance. The Permanent Secretary, as principal accounting officer, must be satisfied that the OPG has adequate financial systems and procedures in place, both to promote the efficient and economical conduct of its business and to safeguard public and client funds.

The Permanent Secretary designated the Chief Executive as agency accounting officer for the Agency's administrative expenditure by letter, in a form approved by HM Treasury, which defined the Chief Executive's responsibilities and the relationship between the role of agency

accounting officer and the role of principal accounting officer.

The Chief Executive

The Chief Executive is responsible for the management of the OPG. He or she is directly accountable to the Secretary of State for the effective, efficient and economic operation of the OPG. In particular, he or she is responsible for:

- Ensuring the proper management and propriety in handling public and client funds;
- Carrying out the functions entrusted to him or her by the courts or by statute;
- The quality of the service provided to clients;
- Setting operational policy and strategy;
- Managing the OPG's resources efficiently, effectively and economically;
- Risk management and corporate governance within the OPG;
- Preparing the OPG's corporate and business plans, and proposed key performance measures;
- Submitting quarterly performance reports to the Ministry of Justice;
- Achieving the OPG's agreed key targets;
- Preparing accounts and signing audited accounts;
- Operating an effective complaints procedure;
- Leadership of staff; and
- Ensuring effective consultation with the OPG's clients and stakeholder groups.

The Chief Executive, as agency accounting officer, is responsible for the proper and economical use of resources and expenditure of money voted by Parliament and for ensuring that correct procedures are followed for securing the propriety and regularity of public and client funds for which s/he is responsible. S/he is responsible for ensuring that the requirements of Managing Public Money as notified to him or her are met, and observes any general guidance on accounting matters issued to him or her by HM Treasury and the Cabinet Office.

The Chief Executive ensures that any recommendations of the Public Accounts Committee, other Parliamentary Select Committees or other Parliamentary Authority accepted by the Government and notified to him or her, are put into effect and provides regular reports to the

Permanent Secretary on progress in compliance with such recommendations.

Relationships between the Chief Executive and the Court of Protection

The OPG, as an executive agency of the MoJ, is committed to delivering its priorities in partnership with the Court of Protection. The Agency provides administrative support for the Court and the members of the judiciary working for it.

The President, Vice President, and Senior Judge of the Court of Protection are nominated by the Lord Chief Justice of England and Wales, with the concurrence of the Lord Chancellor and Secretary of State for Justice.

The Senior Judge ensures the Court operates effectively, advises the president on interpretation of rules and regulations to ensure consistency of approach, and suggests practice directions where necessary.

The Chief Executive: provides support to the judiciary in carrying out its judicial and management functions; works closely with the judiciary in developing and implementing changes that directly affect the way in which the Court of Protection works; consults the judiciary on all other matters in which the judiciary has a legitimate interest; and only implements any changes after that consultation has taken place.

The Chief Executive and his or her staff work with the Court of Protection judiciary to ensure all parties are enabled to carry out their respective responsibilities.

In determining priorities across the OPG, the Chief Executive allocates available resources effectively. The OPG's annual priorities are discussed with the senior judge, as are plans for dealing with any major in-year change in resource allocation, which may materially affect the performance of the Court.

Judicial Service and Corporate Diversity Directorate (JSD), part of Access to Justice Business Group as of 1 May 2008, is responsible for the MoJ's overall policies in respect of judicial office holders, including their terms and conditions. JSD will lead on the annual liaison with the Senior Salaries Review Board in setting judicial salaries. JSD will provide services related to appointments (renewals, retirements) consulting with the OPG as

necessary. The OPG will be responsible for the costs of the salaries and fees of the Court of Protection judiciary, and of their travel and subsistence, and will be consulted by JSD as appropriate.

Complaints

The Chief Executive is responsible for maintaining an open, fair and responsive complaints procedure in relation to the administrative work of OPG staff. The agency monitors all comments and complaints it receives and aims to respond constructively in line with the complaints procedure. Information on the OPG complaints procedure was published and made available to its clients on request and via the OPG website. It will be reviewed to ensure it is published in a manner that is clear and accessible to all users. An Independent Complaints Examiner (ICE) considers complaints that clients feel are not resolved after full investigation through the OPG's internal complaints procedure. The ICE reports regularly on its activities in relation to OPG complaints and, in the context of this work, provides considered advice to the OPG on improving customer service. Future reports will include detail on OPG relevant cases.

External auditor

The financial statements have been audited by the National Audit Office (NAO) on behalf of the Comptroller and Auditor General. No further audit services were received aside from that of Statutory Audit by the NAO. The cost of audit work was £52,000, which is solely related to audit services and is a notional cost (see note 5 of the financial statements). So far as the Accounting Officer is aware, there is no relevant audit information of which the OPG's auditors are unaware, and the Accounting Officer has taken all the steps that he ought to have taken to make himself aware of any relevant audit information and to establish that the OPG's auditors are aware of that information.

Internal audit

The Chief Executive has established and maintains arrangements for the provision of internal audit services within the agency in accordance with

the objectives and standards for internal audit set out in the Government Internal Audit Standards (published by HM Treasury) which include periodic peer reviews. The MoJ is provided with copies of the results of the peer reviews.

The MoJ Internal Assurance Division has a right of access to the OPG in support of the Permanent Secretary's responsibilities as principal accounting officer that includes access to all books, records, data, assets, personnel and premises of the OPG as may be considered desirable or necessary to discharge the department's responsibilities. The MoJ receives copies of the OPG's annual internal audit plans and annual report to the chief executive. The MoJ is notified of any fraud or irregularity within the definition set out in Managing Public Money.

Audit Committee

The OPG Audit Committee provides support to the Accounting Officer in the discharge of his responsibilities for governance, risk management, control and assurance. It is an advisory body and has no executive powers.

The members of the agency's Audit Committee during the period were:

- Bob Niven
Chairman (Non-executive director)
- Deep Sagar
(Non-executive director)
- Kate Ivers
(Finance Director, Office of Fair Trading)

The Chief Executive of the agency is an attendee. The Audit Committee met four times during the period; internal and external auditors attended all meetings.

Deep Sagar is a member of the Public Guardian Board. No other Audit Committee member had any other directorship or significant interest that conflicted with their responsibilities as a member of the OPG Audit Committee.

Statement of accounting officer's responsibilities

Under section 7(2) of the Government Resources and Accounts Act 2000 HM Treasury has directed the agency to prepare a statement of accounts for each financial year in the form and on the basis set out in their Accounts Direction.

The accounts are prepared on an accruals basis and must give a true and fair view of the agency's state of affairs at the year-end and of its income and expenditure, total recognised gains and losses and cash flows for the financial year.

The principal accounting officer for the MoJ has designated the Chief Executive of the OPG as the accounting officer for the agency, with responsibility for preparing the agency's accounts and for transmitting them to the Comptroller and Auditor General.

In preparing the accounts, the accounting officer is required to comply with the 2008/09 Government Financial Reporting Manual (FReM) issued by HM Treasury, and in particular to:

- Observe the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis;
- Make judgments and estimates on a reasonable basis;
- State whether applicable accounting standards, as set out in the FReM, have been followed, and disclose and explain any material departures in the accounts; and
- Prepare the accounts on a going-concern basis.

The responsibilities of an accounting officer, including responsibility for the propriety and regularity of the public finances for which an

accounting officer is answerable, for keeping proper records and for safeguarding the agency's assets, are set out in the Accounting Officers' Memorandum issued by HM Treasury and published in Managing Public Money.



Statement on internal control

Scope of responsibility

As Accounting Officer, I have responsibility for maintaining a sound system of internal control that supports the achievement of the Office of the Public Guardian (OPG) policies, aims and objectives, whilst safeguarding the public funds and Agency assets for which I am personally responsible, in accordance with the responsibilities assigned to me by the Principal Accounting Officer of the Ministry of Justice (MoJ) and in accordance with the principles set out in *Managing Public Money*.

The OPG acts in partnership with the Court of Protection (CoP) and is an Executive Agency of MoJ. The Secretary of State is the Minister accountable to Parliament for the activities and performance of the OPG. The Agency has both an Executive Board and sub-Board, which engage the non-executive and executive members, who serve to provide strategic oversight, guidance, scrutiny of and challenge to the work of OPG in support of the Chief Executive.

In addition a Public Guardian Board (PGB) exists, which has seven members independent of the OPG, including a judicial appointment made by the President of CoP. The Board's duty is set out in the Mental Capacity Act 2005 and in summary is to scrutinise and review the way in which the Public Guardian discharges his functions and to make recommendations to the Lord Chancellor as it thinks appropriate.

The purpose of the system of internal control

The system of internal control is designed to manage risk to a reasonable level rather than to eliminate all risk of failure to achieve policies, aims and objectives; it can therefore only provide reasonable and not absolute assurance of effectiveness. The system of internal control is

based on an ongoing process designed to identify and prioritise the risks to the achievement of the OPG's policies, aims and objectives, to evaluate the likelihood of those risks being realised and the impact should they be realised, and to manage them efficiently, effectively and economically. The system of internal control has been in place in the OPG for the year ended 31 March 2009 and up to the date of approval of the annual report and accounts, and accords with HM Treasury guidance.

Capacity to handle risk

I acknowledge my overall responsibility for the effective management of risk throughout my business area. I can confirm that registers that identify, assess and set out mitigating actions to significant risks are in place across my business area and are regularly reviewed at management boards. Risk management is incorporated into the planning and decision making processes, with assessment of risk to business objectives documented, along with mitigating actions and reported on through risk registers and other means which are (regularly) reviewed and updated:

- Risk addressed monthly at the Executive Board meetings and OPG Audit Committee meetings as an agenda item. Key Risks are elevated to the Access to Justice (AtoJ) business group and MoJ Corporate Risk Register as appropriate;
- The OPG Corporate Risk Register assessed and updated monthly by OPG Executive Board. The register includes details of risk, cause, effect and mitigating actions to manage risk with delivery dates, clear ownership and status of risk;
- Risk management used in business plans – The Register details risks associated with achievement of objectives in the OPG Business Plan. Business performance reviewed monthly by the OPG Executive Board and quarterly by AtoJ;

- Project risks and status are reviewed by the OPG Change Board as appropriate;
- A Risk Co-ordinator is responsible for maintenance of a Corporate Risk Register by calling for and collating updates from risk owners, liaising with AtoJ and MoJ Risk Management Branch, completing Statement of Assurance and Internal Control, and organising a Risk workshop; and
- The OPG provides information for the MoJ fraud risk assessment.

The risk and control framework

There is a formal system for identifying, evaluating, managing and reporting risks to objectives, their impact, and likelihood of occurrence and current and planned mitigating action along with assigned responsible risk owners:

- Use is made of the MoJ Risk Management Assessment Framework as a tool for the continued assessment of risk management in the OPG;
- The Risk Register and setting of top risks is reviewed monthly;
- Risk Register is reviewed by the OPG Executive Board monthly and OPG Audit Committee every quarter;
- A Risk Summary Matrix allowing risk to be prioritised and tracked throughout the period supplements the OPG Corporate Risk Register;
- The OPG corporate Risk Register is provided to AtoJ and MoJ quarterly to be considered in relation the Departmental Corporate Risk Register;
- The OPG has a Security of Information policy, asset register, information risk register and post-incident response plan;
- The OPG management control system has controls specifically covering security of information procedures and responsibilities;
- All OPG staff during the year received mandatory training in the security of information;
- Managers with specific security of information responsibilities have attained a CiISMP;
- The OPG intranet, available to all staff, provides an Information Assurance and Security section, which gives additional guidance on how to apply protective marking and a guide on how protective marking works;



- The OPG has completed a fraud risk assessment that in turn feeds into the MoJ fraud risk assessment;
- The OPG had the Audit Commission facilitate a series of workshops and staff survey of fraud and compliance awareness of all OPG staff; and
- A booklet, 'A Guide to OPG Corporate Governance Policies and Compliance', was issued to all staff as a consequence.

Risk management is embedded in the activities of the business area including: policy making, project and programme, operational and performance management; business and delivery planning and budgetary reviews.

Public stakeholders are involved in the management of risks, which impact on them. Key elements of this include:

- Partnership Forums exist for key groups of stakeholders, to maintain ongoing involvement of service users and stakeholder groups; and
- The OPG has a Business Continuity Policy, Business Continuity Plan and Incident Management Plans, which are to be reviewed in

the light of the requirements of BS25999 and the move to a multi-site organisation.

Other elements of an effective control system followed are: regular management information; financial and administrative procedures including segregation of duties; and a system of delegation and accountability.

The following aspects of these other arrangements are in place:

- Formal approval by the Executive Board of the business plans that are approved by the Minister and laid before Parliament;
- Comprehensive budgeting systems with an annual budget, which is reviewed and agreed by the OPG Executive Board and AO;
- Delegated budget from the Department's Principal Accounting Officer reviewed monthly by the OPG Executive Board and AtoJ; and
- Sub-delegation to Heads of Department agreed and reviewed monthly at Executive Board meetings.

The OPG is not a standalone organisation and the maintenance of internal controls is reliant on the MoJ, which provides a number of key services to the agency, including Human Resources, Payroll, Information Technology, Facilities and Estates Management, Internal Audit and Procurement.

The top risk priority for this period, which continues to be a prominent risk to focus on for 2009-10, is sustaining appropriate information technology to meet increasing demand for the services provided by the OPG.

Review of effectiveness

As Accounting Officer, I have responsibility for reviewing the effectiveness of the system of internal control. My review of the effectiveness of the system of internal control is informed by the work of the internal auditors and the executive and senior managers within the OPG and the CoP, who have responsibility for the development and maintenance of the internal control framework, and comments made by the external auditors in their management letter and other reports. I have been advised on the implications of the result of my review of the effectiveness of the system

of internal control by the Board and the Audit Committee, and a plan to address weaknesses and ensure continuous improvement of the system is in place.

I confirm that I have carried out the review of the effectiveness of the system of internal control and an assessment of my key business risks including the following key financial areas and that all necessary controls are in place and have been applied.

All expenditure and income has been recorded and properly spent and received with regard to propriety and regularity:

- I have reviewed the stewardship reporting process in which Executive Board members, senior managers and team leaders have completed a statement confirming compliance with prescribed internal controls throughout the period, including the reporting of exceptions and remedial actions;
- I have reviewed the period report from the Chairman of the Audit Committee; and
- I have reviewed the period report from the Head of Internal Audit, which states that: 'It is internal audit's opinion that the arrangements for governance, control and risk management in the OPG for the financial year 2008/2009 are established and are generally working effectively, with identified areas of weakness having been addressed by management throughout the year.'

There have been no instances of loss resulting from a weakness in internal financial control. No loss of personal data has been reported this financial year. Where such instances occur, these are reported and any necessary remedial action taken.

Significant internal control issues

There have been no significant internal control issues this financial year.



Martin John

Chief Executive and Public Guardian
9 July 2009

Auditor's report

Office of the
Public Guardian

2008–2009

The certificate and report of the Comptroller and Auditor General to the House of Commons

I certify that I have audited the financial statements of The Office of the Public Guardian for the year ended 31 March 2009 under the Government Resources and Accounts Act 2000. These comprise the Income and Expenditure Account and Statement of Total Recognised Gains and Losses, the Balance Sheet, the Cash Flow Statement and the related notes. These financial statements have been prepared under the accounting policies set out within them. I have also audited the information in the Remuneration Report that is described in that report as having been audited.

Respective responsibilities of the agency, the Chief Executive and auditor

The agency and Chief Executive, as Accounting Officer, are responsible for preparing the Annual Report, which includes the Remuneration Report, and the financial statements in accordance with the Government Resources and Accounts Act 2000 and HM Treasury directions made thereunder and for ensuring the regularity of financial transactions. These responsibilities are set out in the Statement of Accounting Officer's Responsibilities.

My responsibility is to audit the financial statements and the part of the Remuneration Report to be audited in accordance with relevant legal and regulatory requirements, and with International Standards on Auditing (UK and Ireland).

I report to you my opinion as to whether the financial statements give a true and fair view and whether the financial statements and the part of the Remuneration Report to be audited have been properly prepared in accordance with HM Treasury directions issued under the Government Resources and Accounts Act 2000. I report to you whether, in my opinion, the information, which comprises

the OPG Policies, Financial Activity and Corporate Governance sections included in the Annual Report, is consistent with the financial statements. I also report whether in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

In addition, I report to you if the agency has not kept proper accounting records, if I have not received all the information and explanations I require for my audit, or if information specified by HM Treasury regarding remuneration and other transactions is not disclosed.

I review whether the Statement on Internal Control reflects the agency's compliance with HM Treasury's guidance, and I report if it does not. I am not required to consider whether this statement covers all risks and controls, or to form an opinion on the effectiveness of the agency's corporate governance procedures or its risk and control procedures.

I read the other information contained in the Annual Report and consider whether it is consistent with the audited financial statements. This other information comprises the OPG Policies, Financial Activity and Corporate Governance sections of the Annual Report and the unaudited part of the Remuneration Report. I consider the implications for my report if I become aware of any apparent misstatements or material inconsistencies with the financial statements. My responsibilities do not extend to any other information.

Basis of audit opinions

I conducted my audit in accordance with International Standards on Auditing (UK and Ireland) issued by the Auditing Practices Board. My audit includes examination, on a test basis, of evidence relevant to the amounts, disclosures and regularity of financial transactions included in the financial statements and the part of the Remuneration Report to be audited. It also includes an assessment of the significant estimates and judgments made by the agency and Chief Executive in the preparation of the financial statements, and of whether the accounting policies are most appropriate to the agency's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements and the part of the Remuneration Report to be audited are free from material misstatement, whether caused by fraud or error, and that in all material respects the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements and the part of the Remuneration Report to be audited.

Opinions

In my opinion:

- The financial statements give a true and fair view, in accordance with the Government Resources and Accounts Act 2000 and directions made thereunder by HM Treasury, of the state of the agency's affairs as at 31 March 2009, and of the deficit for the period, total recognised gains and losses and cash flows for the period then ended;
- The financial statements and the part of the Remuneration Report to be audited have been properly prepared in accordance with HM Treasury directions issued under the Government Resources and Accounts Act 2000; and

- Information, which comprises the OPG Policies, Financial Activity and Corporate Governance sections included within the Annual Report, is consistent with the financial statements.

Opinion on regularity

In my opinion, in all material respects, the expenditure and income have been applied to the purposes intended by Parliament and the financial transactions conform to the authorities which govern them.

Report

I have no observations to make on these financial statements.

Amyas C E Morse

Comptroller and Auditor General
National Audit Office
151 Buckingham Palace Road
Victoria
London
SW1W 9SS
13 July 2009



Financial statements

Income and expenditure account for the period ended 31 March 2009					
		2008/09		6 month period 2007/08	
	Notes	£'000	£'000	£'000	£'000
Income					
Operating income					
Invoiced fees	2.1	23,221		9,230	
Fees remitted		(3,289)		(387)	
		19,932		8,843	
Other income	2.2	523		272	
Total income			20,455		9,115
Expenditure					
Staff costs	3.1	(15,315)		(6,071)	
Other operating costs	4	(4,705)		(2,064)	
Notional and other non-cash charges	5	(6,331)		(3,160)	
Total expenditure			(26,351)		(11,295)
Operating deficit before exceptional items			(5,896)		(2,180)
Exceptional items					
			-		(212)
Deficit for the year			(5,896)		(2,392)

All income and expenditure are derived from continuing operations.

Statement of total recognised gains and losses for the period ended 31 March 2009			
		2008/09	6 month period 2007/08
	Notes	£'000	£'000
Deficit for the period		(5,896)	(2,392)
Gain on revaluation of tangible fixed assets	14	39	212
Total recognised losses for the period		(5,857)	(2,180)

The notes on pages 56 to 69 form part of these accounts

Balance sheet as at 31 March 2009

		31 March 2009	31 March 2008
	Notes	£'000	£'000
Fixed assets			
Tangible fixed assets	8	3,930	4,946
Current assets			
Debtors	9	9,941	7,698
Cash at bank and in hand	10	668	563
		<u>10,609</u>	<u>8,261</u>
Creditors (amounts falling due within one year)	11	<u>(2,669)</u>	<u>(1,408)</u>
Net current assets		<u>7,940</u>	<u>6,853</u>
Total assets less current liabilities		<u>11,870</u>	<u>11,799</u>
Creditors (amounts falling due after more than one year)	11		(36)
Provisions for liabilities and charges	12	<u>(1,051)</u>	<u>(1,058)</u>
		<u>(1,051)</u>	<u>(1,094)</u>
		<u>10,819</u>	<u>10,705</u>
Taxpayers' equity			
General fund	13	10,619	10,365
Revaluation reserve	14	200	340
		<u>10,819</u>	<u>10,705</u>

The notes on pages 56 to 69 form part of these accounts.



Martin John

Chief Executive and Public Guardian

9 July 2009

Cash flow statement for the period ended 31 March 2009

		2008/09	6 month period 2007/08
	Notes	£'000	£'000
Net cash inflow (outflow) from operating activities	15	<u>(824)</u>	<u>(214)</u>
Capital expenditure and financial investment			
Tangible fixed assets additions	8/11	<u>(570)</u>	<u>(561)</u>
		<u>(570)</u>	<u>(561)</u>
Financing			
MoJ funding	13	<u>1,499</u>	<u>933</u>
		<u>1,499</u>	<u>933</u>
Increase in cash in the year	10	<u>105</u>	<u>158</u>

The notes on pages 56 to 69 form part of these accounts.

Notes to the accounts

1

Statement of Accounting Policies

1.1 Basis of preparation

These accounts have been prepared in accordance with the 2008/09 Financial Reporting Manual (FRoM) issued by HM Treasury.

The accounting policies contained in the FRoM follow UK generally accepted accounting practice for companies (UK GAAP) to the extent that it is meaningful and appropriate to the public sector. Where the FRoM permits a choice of accounting policy, the accounting policy that has been judged to be the most appropriate to the particular circumstances of the agency for the purpose of giving a true and fair view, has been selected. The agency's accounting policies have been applied consistently in dealing with items considered material in relation to the accounts.

Without limiting the information given, the accounts meet the accounting and disclosure requirements of the Companies Act and the accounting standards issued or adopted by the Accounting Standards Board and HM Treasury, so far as those requirements are appropriate.

The Agency is funded by the MoJ, from its Parliamentary Supply and by income derived from fees and charges from external customers. In common with other government agencies, future funding has to be approved by our sponsor department, the MoJ and by Parliament.

Such approval has already been given for 2009/10. The financial statements have therefore been prepared on a going-concern basis for financial reporting and asset valuation purposes.

1.2 Accounting convention

These accounts have been prepared under the historical cost convention modified to account for the revaluation of tangible fixed assets at their value to the business by reference to their current costs.

1.3 Income recognition

Operating income is income which relates directly to the operating activities of the agency. It principally comprises fees and charges for services provided on a full-cost basis to external customers, net of fees remitted (see note 1.4) and net of VAT. Operating income represents:

The Mental Capacity Act 2005 provides for fees to be charged in relation to proceedings brought before the by the Court of Protection; and in relation to the functions carried out by the Public Guardian. The levels of charges are contained in two statutory Instruments. The Court of Protection

Fees Order 2007 sets out the fees to be charged for matters coming to the new court and the Public Guardian (Fees, etc) Regulations 2007 sets out the fees to be charged for services provided by the Public Guardian.

Court of Protection fees

The Fees Order introduces a standard fee for all applications to Court, which replaces all existing court application fees. The fee is payable upon making an application to Court. It also introduces a new oral hearing fee, payable when the Court makes a final order or decision at an oral hearing.

Public Guardian fees

The Regulations replace the range of fees that were payable by receivers appointed by the Court with a single set up fee, payable when a new deputyship is initially assessed for supervision; and a single annual administration fee. Cases are placed into one of three categories of supervision and pay annual fees according to the level allocated. The majority of cases fall into the Type II supervision category.

EPA and LPA registration fees

The registration fee is payable when the application is made.

A separate registration fee is payable for Property and Affairs LPAs and Personal Welfare LPAs when each application is made.

1.4 Exemption and remission of fees

Both instruments provide for exemption and remission from fees. Exemptions apply to people in receipt of qualifying benefits who have not received a damages award in excess of £16,000, which has been disregarded for the purposes of eligibility for these benefits. The instruments also provide for fees to be waived or reduced, where, due to the exceptional circumstances of the case, payment would cause undue hardship.

The Office of Public Guardian Finance Branch is responsible for authorising exemption from payment of fees and for approving applications to waive fees on exceptional grounds.

1.5 Deferred Income

Deferred income is that proportion of payments received which relates to services to be provided after the balance sheet date. Where the payment represents contributions to the funding of tangible fixed assets, the income will be released to the Income and Expenditure account over the period of the underlying contracts determining these amounts.

1.6 Pensions

The provisions of the Principal Civil Service Pension Scheme (PCSPS) which is described in note 3.2 and the Remuneration Report, cover past and present employees. The defined benefit schemes are unfunded and non-contributory except in respect of dependants' benefits. The agency recognises the expected cost of these elements on a systematic and rational basis over the period during which it benefits from employees' services by payment to the PCSPS of amounts calculated on an accruing basis. Liability for payment of future benefits is a charge on the PCSPS. In respect of the defined contribution schemes, the agency recognises the contributions payable for the financial year.

1.7 Consumables

Consumables purchases (stationery and office supplies) are not considered material and are written off in the Income and Expenditure account as they are purchased.

1.8 Leases

Where substantially all risks and rewards of ownership of a leased asset are borne by the agency, the asset is recorded as a tangible fixed asset and a debt is recorded to the lessor of the minimum lease payments, discounted by the interest rate implicit in the lease. The interest element of the finance lease payment is charged to the Income and Expenditure account over the period of the lease, at a constant rate in relation to the balance outstanding.

Other leases are regarded as operating leases and the rentals are charged to the Income and Expenditure account on a straight-line basis over the term of the lease.

1.9 Notional and other non-cash charges

Notional and other non-cash charges are included in the Income and Expenditure account to reflect the full cost of the agency's services, in line with the FReM and HM Treasury's Fees and Charges Guide. These charges include:

Cost of capital charge

The cost of capital charge is a notional charge, which reflects the cost of capital utilised by the agency. The charge is calculated at the real rate set by HM Treasury (currently 3.5%) on the average carrying amount of all assets less liabilities, except for amounts due to be surrendered to the Consolidated Fund (CFERs) and cash balances held at the Office of HM Paymaster General, where the charge is nil;

MoJ headquarters' support charges

The notional overhead charges for certain support functions provided by the MoJ; and

External auditor's remuneration

The notional charge for the statutory audit of the accounts carried out by the National Audit Office (NAO).

1.10 Bad debts

Bad debts are written off when identified or after a period of three years has elapsed from the date of becoming doubtful, whichever is the earlier. A general provision for doubtful debts is made based on the age of trade debtors as at the end of the financial year.

1.11 Tangible fixed assets

Tangible fixed assets are stated at cost, including any costs such as installation directly attributable to bringing the asset into working condition. Expenditure on tangible fixed assets over £1,000 is capitalised. Where an item costs less than the prescribed limit, but forms an integral part of a package whose total value is greater than the capitalisation level, then the item is treated as a tangible fixed asset.

Tangible fixed assets have been stated at current cost using appropriate indices published by the Office for National Statistics (Business Monitor MM22). This is based on the modified historical cost accounting convention, which requires the revaluation of certain fixed assets in line with HM Treasury's FReM.

Revaluations above the depreciated historic cost of a tangible fixed asset are credited to a revaluation reserve. Amounts equivalent to the depreciation charge on the revaluation element are then credited to the Income and Expenditure account to offset the total depreciation charge on that tangible fixed asset based on the revalued amount. Any downward revaluation of tangible fixed assets below the depreciated historic cost is charged directly to the Income and Expenditure

account. Otherwise, it is offset against any balance in the revaluation reserve relating to that particular asset.

1.12 Depreciation

Tangible fixed assets are depreciated at rates calculated to write them down to their estimated residual value on a straight-line basis over their estimated useful lives.

Assets under construction are not depreciated until the asset is brought into use or reverts to the agency respectively.

Estimated useful lives are as follows:

- **Leasehold Improvements** Remaining lease period
- **Furniture** 10 years
- **Equipment** 5 to 7 years.
- **Computers** 5 to 7 years.

1.13 Value Added Tax (VAT)

The agency does not have an individual VAT registration with HM Revenue and Customs, but falls under the MoJ's registration, which advises the agency of any recoverable input VAT.

Irrecoverable VAT is charged to the relevant expenditure category or included in the capitalised purchase cost of tangible fixed assets. Where output VAT is charged or input VAT is recoverable, the amounts are stated net of VAT.

1.14 Provisions

The agency provides for legal or constructive obligations, which are of uncertain timing or amount at the balance sheet date on the basis of the best estimate of the expenditure required to settle the obligation. Where the effect of the time value of money is significant the estimated risk-adjusted cash flows are discounted using the real rate set by HM Treasury (currently 2.2%).

1.15 Prior Year Comparatives

The OPG was created on 1 October 2007 under the Mental Capacity Act 2005 (MCA).

The comparative figures are therefore for the OPG's first 6 month period of operation.

2

Income		
	2008/09	6 months 2007/08
	£'000	£'000
2.1 Operating income		
OPG fee income	(17,115)	(7,192)
Remissions	1,853	307
Net OPG fee income	(15,262)	(6,885)
Court of Protection fee income	(6,106)	(2,038)
Remissions	1,436	80
Net Court of Protection fee income	(4,670)	(1,958)
Net fee income	(19,932)	(8,843)

Fee income is shown net of fees remitted under the Public Guardian (Fees, etc.) Regulations 2007 No. 2051 and the Court of Protection fees Order 2007 No. 1745 (L.13)

2.2 Other income		
Charges for services provided		
CAFCASS	(204)	(124)
CAFCASS deferred income release	(49)	(24)
Miscellaneous	(100)	-
Recoveries in respect of outward secondments (see Note 3.1)	(47)	(63)
Rental income	(123)	(61)
	(523)	(272)

Income: The significant increase in the annual rate of income reflects the extreme levels of activity experienced by the OPG. Extrapolation of the 6 months 2007/08 income to a full year shows an overall increase of 26% with increases of 50% and 112% in the Court and Applications respectively. Remission has shown a substantial increase in the year. This has emanated from the agency's efforts to create a greater awareness in the clients of the policy, accentuated by the increase in volume.

Other income: £100,000 of miscellaneous income is contribution from Department of Health (DOH) towards the implementation and start up costs for the Mental Capacity Act Deprivation of Liberty Safeguards (MCADOLS). There is mutual responsibility between the DOH and the Court of Protection in respect of the delivery of the MCADOLS.

3

Staff Numbers and Costs						
	OPG	Court of Protection	2008/09	OPG	Court of Protection	6 months 2007/08
	£'000	£'000	£'000	£'000	£'000	£'000
3.1 Staff costs consists of:						
Salaries and wages	6,584	2,820	9,404	3,161	1,012	4,173
Social security costs	471	216	687	233	79	312
Superannuation	1,152	384	1,536	605	135	740
Agency/Temporary staff	2,793	398	3,191	702	151	853
Contract staff	497	-	497	78	-	78
Total Gross Costs	11,497	3,818	15,315	4,779	1,377	6,156
Less MCA implementation costs	-	-	-	(85)	-	(85)
	11,497	3,818	15,315	4,694	1,377	6,071
Less recoveries in respect of outward secondments (see note 2.2)	(47)	-	(47)	(63)	-	(63)
Total Net Costs	11,450	3,818	15,268	4,631	1,377	6,008

The growth required increase in staff resources; the major impact has been the recruitment of agency staff. Contract staff cost has shown a significant increase reflecting work on OPG service development projects. Recoveries in respect of outward secondments shows a reduction, a partial year effect, consequent to the transfer of the staff to a third party employer during the year.

3.2 The Principal Civil Service Pension Scheme (PCSPS) is an unfunded multi-employer defined benefit scheme but the OPG is unable to identify its share of the underlying assets and liabilities. The scheme actuary valued the scheme as at 31 March 2007. You can find details in the resource accounts of the Cabinet Office: Civil Superannuation (www.civilservice-pensions.gov.uk).

For 2008/09, employers' contributions of £1,536,000 (2007/08: £740,000) were payable to the PCSPS at one of four rates in the range 17.1 per cent to 25.5 per cent of pensionable pay, based on salary bands. The scheme's Actuary reviews employer contributions every four years following a full scheme valuation. From 2009/10, the rates will be in the range 16.7% to 24.3%.

The contribution rates are set to meet the cost of the benefits accruing during 2008/09 to be paid when the member retires, and not the benefits paid during this period to existing pensioners.

3.3 The average number of whole-time equivalent staff employed (including senior management, Judiciary, staff on inward secondments, agency/temporary staff and contract staff; but excluding staff on outward secondments) during the financial year was as follows:

By Business Segment:		
	2008/09	6 month period 2007/08 number
OPG	376	311
Court	103	76
Judiciary	5	5
Total	484	392

Total Staff (including outward secondments)		
	2008/09 number	6 month period 2007/08 number
Civil Servants	331	303
Agency/temporary staff	148	81
Contract staff	5	3
Judiciary	5	5
	489	392
Civil servants on outward secondments to Liberata UK Ltd	-	3
Total	489	395

3.4 Staff costs (see note 3.1) include the Judicial Costs of the Court of Protection as follows:

	2008/09	6 month period 2007/08
	£'000	£'000
Salaries and wages	515	223
Social security costs	54	25
	569	248

4

Other operating costs		
	2008/09	6 month period 2007/08
	£'000	£'000
Cash losses and ex-gratia payments	145	19
Consumables	267	292
Maintenance	363	378
Other running costs	1,348	279
Postage	501	133
Rates	238	151
Rental of accommodation	913	457
Utilities	332	133
Visitor services	598	222
	4,705	2,064

Cash losses show a major increase reflecting unprecedented demand which coupled with limited capacity resulted in low levels of customer satisfaction and associated special payments. Postage costs show a significant increase in line with the current business needs. A substantial element of the increase in other running costs is comprised of expenditure on IT Service improvement project. The other major area of expenditure in other running costs is HMCS service charges for the resources used in conducting Regional Hearings which has only had a financial impact this year.

5

Notional and other non cash charges		
	2008/09	6 month period 2007/08
	£'000	£'000
Bad debts	64	10
Cost of capital charge	231	123
MoJ Headquarters' support charges:		
E Delivery Group	2,414	1,300
Facilities Management Group	878	382
Human Resources	339	182
Other	310	312
Depreciation	1,615	795
Diminution in value of tangible fixed assets	260	-
Loss on disposal of fixed assets	54	1
External auditor's remuneration	52	45
Increase/(decrease) in provision for doubtful debts	53	-
Provision for liabilities:		
Provided in the year	69	10
(over)/under provided	(8)	-
	6,331	3,160

There is no external auditor's remuneration for non-audit work. The 2008/09 external audit fees include £5,000 for work undertaken to meet the transition to the International Financial Reporting Standards (IFRS) in 2009/10.

Fees and Charges

The Agency is required, in accordance with HM Treasury's Fees and Charges Guide, to disclose results for the areas of its activities undertaken throughout the financial year, where fees and charges were made.

Ministers and HM Treasury agreed a fees strategy for the CoP and OPG involving 63% cost recovery for the CoP and 100% cost recovery for the OPG. This strategy was reflected in both Statutory Instruments and was implemented from 1 October 2007.

A subsidy is provided as planned to ensure clients are not denied access to services through the inability to afford the requisite fees. The calculation of cost recovery includes expenditure for claims and losses charged to the income and expenditure account.

(by business segment)	Court	OPG	Total
	£'000	£'000	£'000
Operating income	4,665	15,267	19,932
Fees remitted	1,436	1,853	3,289
Total Income	6,101	17,120	23,221
Total Expenditure	9,181	16,935	26,116
(Deficit) / surplus	(3,080)	185	(2,895)
Cost recovery (%)	66%	101%	89%

Reconciliation	£'000
Fees and charges – (deficit)	(2,895)
Fees remitted	(3,289)
Financial losses	(145)
Other Programme income	523
Marketing & Research	(82)
Bad Debts	(110)
Financial loss Notional Premium	45
Marketing and Research Notional Costs	57
Reported Income & Expenditure Account (deficit)	(5,896)

Analysis by administration and programme

For public expenditure control purposes, the income and expenditure of the agency is classified between administration and programme. Whilst this classification is reflected in the Operating Cost Statement of the Resource Accounts prepared by the MoJ, the agency considers it to be inappropriate for its executive agency accounts. For this reason the agency has taken advantage of the dispensation offered by the FRoM for supply financed agencies, which are not whole departments, to adopt a Companies Act format for their Income and Expenditure account.

OPG income and expenditure is classified as 100 per cent Programme, based on an assessment of the work carried out by the OPG, which is mainly a front-line service; this classification now been agreed with HM Treasury.

6

7

8

Tangible fixed assets						
	Leasehold Improvements	Furniture	Equipment	Computers	Assets Under Construction	Total
	£'000	£'000	£'000	£'000	£'000	£'000
Cost or valuation						
At 1 April 2008	4,790	798	698	4,265	316	10,867
Additions/ (reclassification)	-	72	80	4	470	626
Disposals	-	(224)	(109)	(2)	-	(335)
Revaluation	110	11	10	(296)	-	(165)
Transfers	-	-	-	916	-	916
At 31 March 2009	4,900	657	679	4,887	786	11,909
Depreciation						
At 1 April 2008	3,725	614	493	1,089	-	5,921
Provided in year	615	37	80	883	-	1,615
Disposals	-	(175)	(106)	-	-	(281)
Revaluation	85	5	2	-	-	92
Transfers	-	-	-	632	-	632
At 31 March 2009	4,425	481	469	2,604	-	7,979
Net book value						
At 31 Mar 2009	475	176	210	2,283	786	3,930
At 1 April 2008	1,065	184	205	3,176	316	4,946

Leasehold Improvements represents the refurbishment of the agency's headquarters at Archway. The Archway Tower Relocation Project was completed on 1 April 2002 and depreciation is being charged on Leasehold Improvements from this date over the remaining lease term. The transferred balances of £916,000 and £632,000 relate to assets under DISC managed services agreement.

9

Debtors		
	31 March 2009	31 March 2008
	£'000	£'000
Amounts falling due within one year		
Balances with other central Government bodies		
Amount due from MOJ	4,890	3,655
Input VAT recoverable	48	34
Balances with bodies external to Government		
Prepayments	54	42
Staff debtors	67	60
Trade debtors	4,851	3,752
Accrued income	31	155
	9,941	7,698

Trade debtors are shown net of a provision for doubtful debts of £191,000.

10

Cash at bank and in hand		
	31 March 2009	31 March 2008
	£'000	£'000
Balance at 1 April	563	405
Net cash inflow	105	158
Balance at 31 March	668	563
Of this amount the following balances at 31 March are held at:		
Office of HM Paymaster General (OPG)	668	563

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Creditors		
	31 March 2009	31 March 2008
	£'000	£'000
Amounts falling due within one year		
Accruals	677	696
Trade creditors	170	373
Amount due to MoJ	1,440	-
Deferred income	36	49
Tangible fixed asset creditors	346	290
	2,669	1,408
Amounts falling due after more than one year		
Deferred income	-	36
	2,669	1,444

Deferred income relates to the capital contributions received from the sub-under lessee (CAFCASS) towards its share of the Leasehold Improvements. This is being released to the Income and Expenditure account over the agency's lease term (see note 2.2).

12

Provisions for liabilities and charges			
	Early departure costs	Other	Total
	£'000	£'000	£'000
Balance at 1 April 2008	112	946	1,058
Provided in the period	-	69	69
Provisions not required written back	-	(8)	(8)
Provisions utilised in the period	(50)	(18)	(68)
Balance at 31 March 2009	62	989	1,051

Early departure costs

The agency meets the additional costs of benefits beyond the normal PCSPS benefits in respect of employees who retire early by paying the required amounts annually to the PCSPS over the period between early departure and normal retirement date. The agency provides for this in full when the early retirement programme becomes binding on the agency by establishing a provision for estimated payments discounted by the real rate set by HM Treasury (currently 2.2%).

Other

The above provision represents potential liabilities that the agency, in accordance with FRS 12, considers should be recognised at the balance sheet date, which includes financial losses (see Statement on Internal Control).

13

Reconciliation of deficit for the year to changes in the General Fund			
	Notes	2008/09	6 month period 2007/08
		£'000	£'000
Deficit for the year		(5,896)	(2,392)
Notional charges			
Cost of capital charge	5	231	123
External auditor's remuneration	5	52	45
MoJ headquarters' support charges:			
E Delivery Group	5	2,414	1,300
Facilities Management Group	5	878	382
Human Resources	5	339	182
Other	5	310	312
MoJ Funding		1,499	933
MoJ Asset Transfer	8	284	-
Transfer to general fund of realised element of revaluation reserve	14	143	44
Net increase in general fund		254	929
General Fund at 1 April		10,365	9,436
General Fund at 31 March		10,619	10,365

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Revaluation Reserve			
	Notes	31 March 2009	31 March 2008
		£'000	£'000
Balance at 1 April		340	172
Arising on revaluation during the year	8/5	95	344
Backlog Depreciation	8	(92)	(132)
Transfer to general fund of realised element of revaluation reserve	13	(143)	(44)
Balance at 31 March		200	340

The revaluation reserve reflects the unrealised element of the cumulative balance of indexation and revaluation adjustments.

15

Reconciliation of deficit for the year to net cash outflow from operating activities			
	Notes	2008/09	6 month period 2007/08
		£'000	£'000
Deficit for the year		(5,896)	(2,392)
Adjustments for notional and other non-cash charges:			
Deferred income	2.2	(49)	(24)
Cost of capital charge	5	231	123
MoJ headquarters' support charges:			
E Delivery Group	5	2,414	1,300
Facilities Management Group	5	878	382
Human Resources	5	339	182
Other	5	310	312
Depreciation	5	1,615	795
Diminution in value of tangible fixed assets	5	260	-
Loss on disposal	8	54	1
External auditor's remuneration	5	52	45
Provision for liabilities:			
Provided in the year	5	69	10
Provision (over)/under provided	5	(8)	-
Adjustments for movements in working capital other than cash:			
(Increase)/Decrease in debtors	9	(2,243)	(1,259)
(Decrease)/increase in creditors falling due within one year	11	1,218	336
Use of provisions	12	(68)	(25)
Net cash (outflow) inflow from operating activities		(824)	(214)

Capital commitments

Capital commitments at 31 March 2009 for which no provision has been made were £1,500,000 (2007/08: £500,000).

Upgrade of areas of the IT platform planned to improve the resilience and capacity of applications.

16

Commitments Under Operating Leases

Commitments under operating leases to pay future rentals during the financial year following the year of these accounts are given in the table below analysed according to the period in which the lease expires:

	31 March 2009	31 March 2008	31 March 2009	31 March 2008
	Land & Buildings £'000	Land & Buildings £'000	Other £'000	Other £'000
Expiry within one year	685	-	-	-
Expiry within two to five years	-	913	-	-
Expiry thereafter	-	-	-	-
Total	685	913	-	-

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Contingent liabilities

The agency does not recognise any further liabilities over and above those provided for in the accounts, (see note 12); however, there remains a risk that further liabilities may be identified.

19

Related Party Transactions

The agency is an executive agency of the MoJ. The Department is regarded as a related party. During the period the agency had various material transactions with the Department. In particular the agency's payroll cash flow (and accounting for advances and recoveries of salaries) was managed by the Department. In addition, the Department also provides internal audit services to the agency.

The agency works for the Court of Protection by implementing its orders and decisions. The Court is regarded as a related party. The Court's budget is also managed by the Chief Executive of the agency, in consultation with the Master of the Court of Protection.

The agency funds the Public Guardian Board (PGB), which has seven members independent of the OPG. There is no significant influence relating to financial or operating decisions. Costs are recorded in the financial statements and are included in the Remuneration Report where appropriate.

The agency also had transactions with other government departments and entities. Most of these transactions have been with CAFCASS, which is the sub-under lessee of the agency's rented accommodation at Archway Tower. Income received from CAFCASS in the period amounted to £376,000.

None of the members of the Board of the agency, key managerial staff or other related parties has undertaken any material transactions with the agency during the financial year.

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Post-balance sheet events

On 1 April 2009 the Court of Protection was transferred to HM Courts Service.

In accordance with the requirements of FRS 21, post-balance sheet events are considered up to the date on which the accounts are authorised for issue. This is interpreted as the date of the Certificate and Report of the Comptroller and Auditor General.

Financial instruments

FRS 25, 26 and 29, Derivatives and Other Financial Instruments, require disclosure of the role that financial instruments have had during the financial year in creating or changing the risks an entity faces in undertaking its activities. Because of the largely non-trading nature of its activities and the way in which government departments are financed, the agency is not exposed to the degree of financial risk faced by business entities.

Moreover, financial instruments play a much more limited role in creating or changing risk than would be typical of the listed companies to which FRS 25, 26 and 29 mainly applies. The agency has very limited powers to borrow or invest surplus funds. Financial assets and liabilities are generated by day-to-day operational activities and are not held to change the risks facing the agency in undertaking its activities.

As permitted by FRS 25, 26 and 29, debtors and creditors which mature or become payable within 12 months from the balance sheet date have been omitted from the currency profile.

Liquidity risk

The agency's net revenue resource requirement is financed by resources voted annually by Parliament to the MoJ, just as its capital expenditure largely is. It is not therefore exposed to significant liquidity risks. However, within the normal Parliamentary supply procedure, the agency has to budget for resources (both revenue and capital) in the nine-month period preceding the financial year in which it will be granted.

Interest-rate risk

100% of the agency's financial assets and 100% of its financial liabilities carry nil or fixed rates of interest, and it is not therefore exposed to significant interest rate risk.

Foreign currency risk

The agency's exposure to foreign currency risk is not significant.

Accountability

Fees remitted

There were 18,292 cases where fees were remitted. The total value was £3,289,000.

Cash losses

There were 36 cases involving cash losses totalling £29,000.

Special payments

There were 658 special payments totalling £140,000.

Payments exceeding £250,000

There were no payments exceeding £250,000.

Measuring

KPI 1: Powers of Attorney. EPAs must be registered when the Donor loses capacity; LPAs, although similar in principle, require the Public Guardian to have a more active role in the notification process. There is a 42-day statutory waiting period for the registration of an LPA once the OPG sends out notification to the party or parties who did not make the application.

KPI Purpose	Calculation Method	Data Source	Target 08/09	Achieved to 31st March 2009
To inform an applicant of details of errors in applications for registration, as early as possible.	Sampling exercises approved by Ministry of Justice internal audit.	Organisation's internal data originating from the 'Meris' database.	On receipt of an invalid or incomplete LPA or EPA, we will notify 80% of applicants within 10 working days.	Unable to report , but target certainly missed –however, sampling exercises give 95% confidence that these targets were met for 88-91% of cases in January to March 2009.
Notify the party or parties who did not make the application, of the application as soon as possible.	Sampling exercises approved by Ministry of Justice internal audit.	Organisation's internal data originating from the 'Meris' database.	On receipt of a valid LPA, in 80% of cases we will notify the party or parties not making the application within 10 working days.	

KPI Purpose	Calculation Method	Data Source	Target 08/09	Achieved to 31st March 2009
Register LPA applications as early as possible after the end of the statutory waiting period.	Percentage performance against target is calculated by determining the number of applications due for registration within a specified period, and how many of those were successfully registered within 5 days of the end of the statutory waiting period.	Organisation's internal data from the 'Meris' database.	We will register 98% of LPA applications within 5 working days of the end of the statutory waiting period.	51%
Register EPA applications as early as possible after the end of the statutory waiting period.	Unable to report.	Organisation's internal data from the 'Meris' database.	Where an attorney makes an EPA application within 10 days of notifying relatives, we will register 98% within 5 working days of the end of the statutory waiting period.	Unable to report , but target certainly missed – sampling exercises give 95% confidence that these targets were met for 56-62% of cases in January to March 2009.
Register those EPA applications where an attorney makes the application more than 10 days after notifying relatives, as soon as possible after the end of the statutory waiting time.	Unable to report.	Organisation's internal data from the 'Meris' database.	Where an Attorney makes an EPA application more than 10 days after notifying relatives, we will register 98% within 15 working days of receipt, or within 5 working days of the end of the statutory waiting period, whichever is the later.	

our performance

KPI 2: Supervision. All Deputyship cases require a supervision regime based on a risk assessment. Risk criteria include: whether a Deputy has been refused credit or is an un-discharged bankrupt; whether the Deputy has any financial interests which conflict with those of the client; the value of the client's estate; the relationship of the Deputy to the client and any objections which were made to the appointment of the Deputy.

KPI Purpose	Calculation Method	Data Source	Target 08/09	Achieved to 31st March 09
To ensure the appropriate monitoring of the Deputy in his duties. To ensure Deputies are notified of their responsibilities within a specified timescale, and to ensure that the clients' interests are being protected as soon as possible.	Percentage performance is calculated against target by dividing the number of cases where a supervision level was set within the specified period, by the number of cases due to be given a supervision level, and multiplying the quotient by 100.	Case Data held on internal data management system – 'CASREC'.	90% of new Deputyship cases will be assessed and a supervision level set within 30 days of the Court order being served on the Public Guardian.	92%
To re-assess the close supervision (type1) Deputyships within 13 months of the previous assessment.	Percentage performance is calculated against target by dividing the number of cases where type1 Deputyships were re-assessed, within the specified period by the number due for re-assessment, and multiplying the quotient by 100.	Case data held on internal data management system – 'CASREC'.	100 per cent of ongoing Deputyships with close supervision (type I) will have a formal reassessment of the supervision level within 13 months of the previous assessment.	96%
To review lighter touch (type II) Deputyship cases and ensure any potential problems are resolved; to provide a deterrent against financial abuse, and recommend to the Court of Protection, any action that may be required.	Percentage performance is calculated against target by dividing the number of type II cases re-assessed within the specified period by 4000, and multiplying the quotient by 100.	Case Data held on internal data management system – 'CASREC'.	We will carry out a case review on no less than 4,000 type II cases during the year.	147%

KPI 3: Customer Contact Centre. The Contact Centre will be the point of contact for anybody requiring information about the OPG, the Court of Protection and other MCA-related issues. It will also act as the first point of contact for most Deputies needing information about their powers and duties.

KPI Purpose	Calculation Method	Data Source	Target 08/09	Achieved to 31st March 09
To ensure customers are satisfied with the service provided by the OPG; to meet our service delivery standards.	Percentage performance is calculated against target by dividing the number of items dealt with within a specified period by the total number of items due to be dealt with and multiplying the quotient by 100.	Internal organisation data taken from the KPI CODES ACCESS Database held on 'P' drive.	We will respond to 95 per cent of correspondence (including letters, faxes and emails) within 15 working days of receipt.	83%
To ensure all customers are able to access advice and OPG services by telephone within a reasonable timeframe.	Percentage performance is calculated against target by dividing the number of calls answered within the specific target period within a specified timeframe by the total number of calls received and multiplying the quotient by 100.	Internal organisation data taken from the telephone system.	85 per cent of telephone calls to the Customer Contact Centre will be answered within 60 seconds.	80%

KPI 4: Investigations. We will carry out investigations where required.

KPI Purpose	Calculation Method	Data Source	Target 08/09	Achieved to 31st March 09
To ensure we act quickly and appropriately whenever concerns about a client's welfare are raised.	Percentage performance is calculated against target by dividing the number of action plans put in place within a specified period by the total number of action plans due and multiplying the quotient by 100.	Internal organisation data collated on and sourced from Excel spreadsheet database.	We will put in place an approved action plan in 100 per cent of investigation cases, within 14 days of receipt.	94%
To ensure investigations are carried out thoroughly, and completed within a reasonable timeframe, and that appropriate action has been taken.	Percentage performance is calculated against target by dividing the number of investigations completed within three months by the total number of investigations and multiplying the quotient by 100.	Internal organisation data collated on and sourced from Excel spreadsheet database.	75 per cent of investigations will be completed within three months.	60%

KPI 5: Quality of service. We will formulate a set of performance measures and targeted surveys to assess customer experience of OPG services.

KPI Purpose	Calculation Method	Data Source	Target 08/09	Achieved to 31st March 09
To ensure customers are satisfied with the services offered by the OPG and with the standard of service delivery. To provide customer feedback to inform strategy and to ensure stakeholder participation.	Work and hold meetings with stakeholders, including deputies, local authority protection officers, solicitors, and voluntary sector groups. Carry out a survey to assess customer satisfaction with our services.	Communications data, customer survey responses.	To measure the quality of service people are experiencing in different areas of the organisation we will carry out targeted surveys throughout the year and report the findings in the OPG 2008-09 Annual Report. A baseline figure will be agreed with Ministers following receipt of the 2007-08 results and will be published in the Public Guardian Section 60 report. We will also devise measures concentrating on the quality of service delivered through the Contact Centre. The results will be published in the 2008-2009 Annual Report.	Customer feedback process agreed and in place. Customer survey conducted.

KPI 6: Cost recovery. Based on the statutory instrument for fees approved by Parliament, we aim to achieve the following targets for full cost recovery.

KPI Purpose	Calculation Method	Data Source	Target 08/09	Achieved to 31st March 09
To ensure we work towards recovering the full costs of the OPG's services.	The cost recovery outturn is calculated using a full cost model to compare the income and expenditure streams of the OPG and Court of Protection. The cost estimates used in the model are based upon the full year forecast outturn for the OPG and the Court of Protection as taken from the Management Accounts each period. This represents the full resource based cost of the organisation including non-cash items and HQ recharges.	Full forecast outturn from monthly Management Accounts. Staff Numbers from the monthly staffing Returns from Heads of Division. HQ Recharges.	OPG - 100 per cent full cost recovery.	100%
	As above	As above	Court of Protection - 63 per cent full cost recovery.	66%

Customer service standards

Here we outline the commitments made by the Office of the Public Guardian to those who use our services. We call these commitments our 'service standards'.

We measure our performance against these commitments and conduct surveys to make sure our commitments meet your needs and those of our clients.

Our service standards support our Key Performance Indicators (KPIs). We report our achievement against our KPIs in our Annual Report and Accounts, as well as to Ministers and the Government.

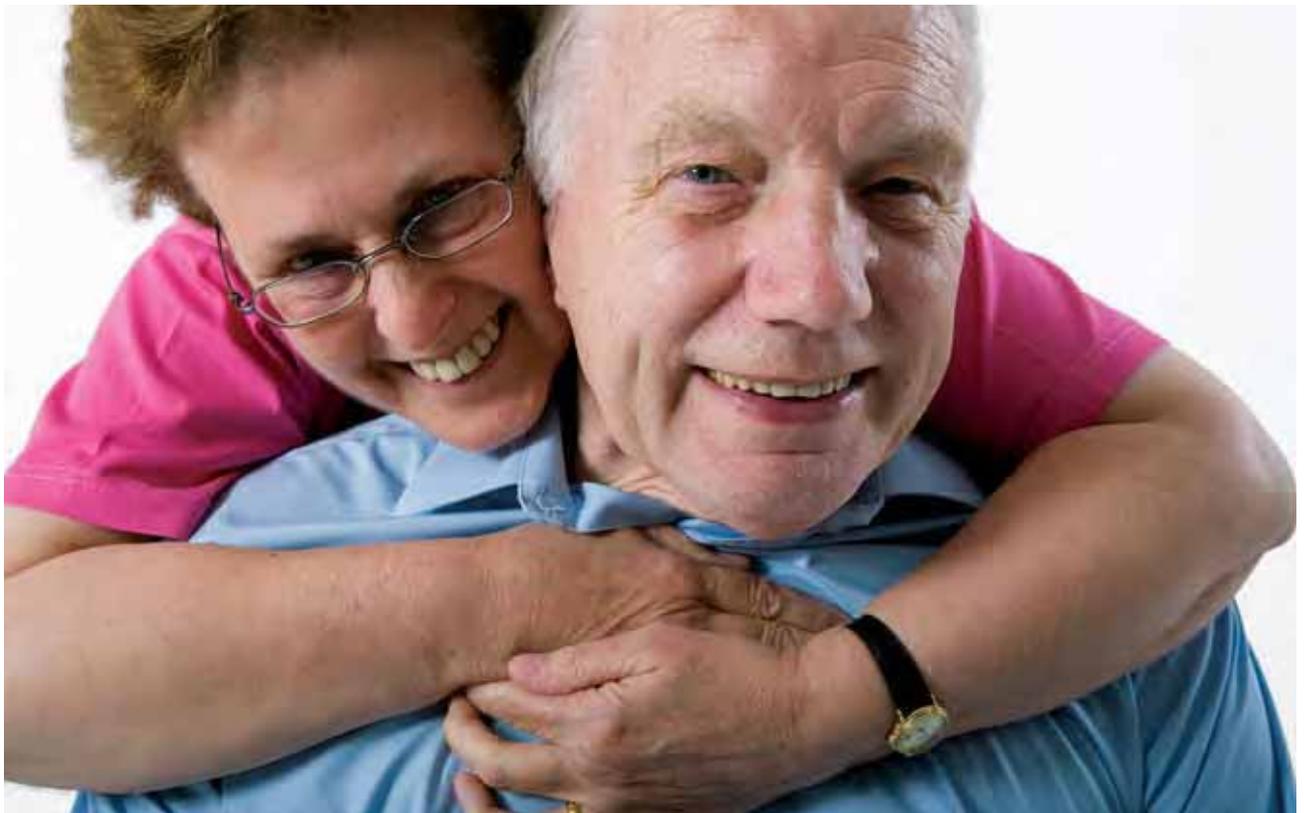
- 95 per cent of general correspondence (including letters, faxes and emails) will be answered within 10 working days of receipt.
- 90 per cent of administrative complaints, including claims for compensation, will be answered within 10 working days of receipt.
- Written requests under the Freedom of Information Act 2000 will be dealt with within 20 working days.
- Written subject access requests under the Data Protection Act will be dealt with within 40 working days.

- 85 per cent of telephone calls to the Contact Centre will be answered within 60 seconds.
- Where a concern raised with the Public Guardian falls outside his statutory powers of investigation, we will provide advice or assist the complainant to progress their concerns in 90 per cent of cases, within 5 working days.
- To measure the quality of service we provide, we will conduct surveys of our users during the year. The results of the 2008/09 survey were made available from May 2009.

Acknowledging receipt

Since the OPG came into being, its policy has been not to acknowledge routinely the receipt of paper-based correspondence, other than complaints to the Chief Executive. This policy extended to reports submitted by Deputies.

We will be reviewing this policy with a view to, from 1 October 2009, routinely acknowledging receipt within 10 working days where our operational procedures would not otherwise require customer contact.



Glossary of terms

Accounting end date (or accounting due date)

The last day of the accounting period, which will either be the day before the anniversary of the last appointment, or 5 April.

Attorney Person appointed by the donor to manage their financial and/or health and welfare affairs.

Care Quality Commission The independent regulator of health and social care in England.

Case The name used to describe proceedings, whether to appoint a Deputy, register an Enduring or Lasting Power of Attorney or any other legal remedy, instituted by someone seeking the Court of Protection to exercise its jurisdiction under the Mental Capacity Act.

Client A person whose affairs are the subject of the proceedings before the Court of Protection.

Court of Protection A superior court of record, whose function it is to protect the administration of property and health and welfare affairs of persons who lack mental capacity to make particular decisions.

Donor The person who makes the Enduring or Lasting Power of Attorney, assigning responsibility for their financial and/or health and welfare affairs to an Attorney.

Deputy The person appointed by the Court of Protection to manage the financial and/or health and welfare affairs of someone who is mentally incapacitated.

Deputyship An appointment by the Court of Protection that authorises a person (the Deputy) to manage the financial and/or health and welfare affairs of a person who is, on medical evidence, incapable of doing so for themselves.

Enduring Power of Attorney (EPA) Document whereby a donor appoints an Attorney to manage his or her financial affairs. (Note: EPAs have now been replaced by Lasting Powers of Attorney. It is no longer possible to make a new EPA, but they may still be registered.)

Executive agency Part of a Government department set up as a discrete operational unit to concentrate on providing a service to members of the public.

Fees Amounts charged to clients for services provided by the Office of the Public Guardian and Court of Protection.

Key Performance Indicator (KPI) A measure of performance in key areas of our business.

Lasting Power of Attorney (LPA) Replaces Enduring Powers of Attorney and includes provision for a donor to appoint someone to make decisions on their behalf in relation to finance and property and/or health and welfare matters, should they lose the mental capacity to do so.

Mental Capacity Act, 2005 (MCA) Implemented on the 1st October 2007, the Act makes provisions for the protection of people who lack capacity to make their own decisions. It provides clear guidelines for people who make decisions on behalf of others, and emphasises the rights of people to make their own decisions for as long as they are capable of doing so.

Ministry of Justice (MoJ) Formed on 9 May 2007, the Ministry of Justice combines the functions of the Department for Constitutional Affairs (including Her Majesty's Courts Service, the Tribunals Service and the Public Guardianship Office – now the Office of the Public Guardian) with those of the National Offender Management Service (including Her Majesty's Prison Service and National Probation Service). The MoJ also hosts the tri-lateral Office for Criminal Justice Reform.

Office of the Public Guardian (OPG) An executive agency of the Ministry of Justice, responsible for the administration and supervision of Enduring or Lasting Powers of Attorney and court-appointed Deputyships.

Panel Deputy A person who has demonstrated they have the skills and experience to act as a Deputy in cases where there is nobody willing and suitable to do so.

Protection of vulnerable adults (POVA) Public body initiative set up to specifically address the abuse of vulnerable adults. The POVA list is a register of individuals who have abused, neglected or otherwise harmed vulnerable adults in their care.

Review of the Mental Capacity Act

Implementation (RMIP) This review started in October 2008 with the aim of identifying and simplifying any unnecessarily complex processes and assessing how the MCA has impacted on society.

Safeguarding Vulnerable Adults policy This sets out how the OPG will work with local authorities in safe-guarding vulnerable adults who lack mental capacity.

Stakeholder Any person, or group of people who have an interest in the work of the OPG or the Court of Protection. This includes decision-makers (Deputies and Attorneys), local authorities, legal professionals and the general public.

Visit A visit to the client made by a court-appointed visitor to ensure their needs are being adequately met by their deputy.

Visitor An experienced person, often with a health or social care background, responsible for visiting clients on the instruction of the Court of Protection or the OPG.

Vulnerable adult The definition that applies to Adult Care Social Services is 'a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or maybe unable to take care of him or her self, or unable to protect him or her self against significant harm or exploitation.'



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