



Official Solicitor



Public Trustee

Delivery Agreements and Business Priorities

The Official Solicitor to the Senior Courts  
And  
The Public Trustee

2017 - 2018

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## 1. Strategy

- 1.1. The Official Solicitor to the Senior Courts (the Official Solicitor) and the Public Trustee are separate independent statutory office holders. Their combined offices (OSPT) are treated as an arm's length body (ALB) of the Ministry of Justice (MoJ) and support their respective businesses. The relationship between OSPT and MoJ follows the 4 key principles of partnership, as set out by the Cabinet Office: Purpose; Assurance; Value; Engagement<sup>1</sup>.
- 1.2. They each have a number of separate functions, although their respective trusts and estates are managed by the same team.
- 1.3. The services they each provide can be best understood by reference to their respective functions.
- 1.4. Both independent statutory offices are currently vested in the same person; however the two statutory offices remain legally separate and distinct.
- 1.5. Implementation – strategic objectives.
  - 1.5.1. In support of the strategic objectives of the Secretary of State for Justice and Lord Chancellor, the Official Solicitor will aim to ensure that the vulnerable citizen<sup>2</sup> is placed at the centre of the justice system and the rights of his vulnerable clients are properly and effectively represented and protected through the civil justice system and thus placed on an equal footing with the rest of the population.
  - 1.5.2. The services provided by the Official Solicitor will be high quality but proportionate and client-focused. They will be delivered efficiently and effectively to provide value for money to his clients and the taxpayer.
  - 1.5.3. The Public Trustee will perform his statutory duties.
- 1.6. Working relationship between the Official Solicitor and the MoJ.
  - 1.6.1. The working relationship between the Official Solicitor and the MoJ is set out in a Memorandum of Understanding dated 5 May 2010.
- 1.7. Working relationship between the Public Trustee and the MoJ.
  - 1.7.1. The working relationship between the Public Trustee and the MoJ is set out in a Memorandum of Understanding dated 8 January 2010.
- 1.8. Appointment and the functions of the Official Solicitor.

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<sup>1</sup> Partnerships between departments and arm's length bodies: Code of Good Practice; February 2017.

<sup>2</sup> Those disabled through a lack of mental capacity and children.

- 1.8.1. The Official Solicitor is appointed by the Lord Chancellor under section 90 of the Senior Courts Act 1981.
- 1.8.2. He is an office holder of the Senior Courts and those courts' own solicitor.
- 1.8.3. His functions and duties are wide and various: some imposed by statute, others by rules of court, by direction of the Lord Chancellor, by the common law, or in accordance with established practice.
- 1.8.4. In essence, those functions and duties seek to prevent injustice to the disabled and vulnerable by the Official Solicitor:
  - 1.8.4.1. acting as last resort litigation friend, and in some cases solicitor, in court proceedings for (i) adults who lack the mental capacity to conduct their own proceedings<sup>3</sup>, and (ii) children (other than those who are the subject of child welfare proceedings), who have not been given the court's permission to conduct the proceedings themselves.
  - 1.8.4.2. acting as last resort administrator of estates and as trustee.
  - 1.8.4.3. accepting appointment to manage the Child Trust Funds of 'looked after' children in England and Wales who have no-one available with parental responsibility to act for them.
- 1.8.5. As an office holder of the Senior Courts he:
  - 1.8.5.1. acts as (or appoints an) advocate to the court<sup>4</sup> and provides advice and assistance to the court.
  - 1.8.5.2. makes enquiries on behalf of the court<sup>5</sup>.
- 1.8.6. He also has administrative responsibility for:
  - 1.8.6.1. the International Child Abduction and Contact Unit (ICACU) which carries out in England and Wales the operational functions of the Lord Chancellor, who is the Central Authority in England and Wales under:
    - 1.8.6.1.1. the 1980 Hague Convention on the Civil Aspects of International Child Abduction.
    - 1.8.6.1.2. the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children.

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<sup>3</sup> Known as a 'protected party' or in the Court of Protection as "P".

<sup>4</sup> Memorandum 'Requests for the Appointment of an Advocate to the Court' of 19 December 2001, agreed by the Attorney General and the Lord Chief Justice [2002] Fam Law 229

<sup>5</sup> *Harbin v Masterman* [1896] 1 Ch 351

1.8.6.1.3. Council Regulation (EC) No 2201/2003 concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and Matters of Parental Responsibility ('Brussels II').

1.8.6.1.4. in England only, the 1996 Hague Convention on Jurisdiction, Applicable law, Recognition; Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

1.8.6.2. the Reciprocal Enforcement of Maintenance Orders (REMO) Unit which carries out the operational functions of the Lord Chancellor who has responsibility in England and Wales for international maintenance claims including:

1.8.6.2.1. Council Regulation (EC) No4/2009 ('the Maintenance Regulation).

1.8.6.2.2. the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (2007 Hague).

## 1.9. Appointment and the functions of the Public Trustee.

1.9.1. The Public Trustee is appointed by the Lord Chancellor under section 8 of the Public Trustee Act 1906.

1.9.2. The Public Trustee:

1.9.2.1. acts as executor or administrator of estates and as trustee of settlements.

1.9.2.2. is the legal holder of land under Part IV of the First Schedule to the Law of Property Act 1925 (land held in undivided shares) and Part V of the First Schedule to the Law of Property Act 1925 (Common Land).

1.9.2.3. takes title on death under section 9 of the Administration of Estates Act 1925.

1.9.2.4. maintains a register of notices affecting and (Notices to Quit) under Section 18 of the Law of Property (Miscellaneous Provisions) Act 1994.

## **2. Governance**

### **2.1. Management Advisory Board:**

2.1.1. The Official Solicitor and the Public Trustee must manage his two offices, OSPT. He is advised in his running of OSPT by the non-executive Management Advisory Board, which he chairs and which meets monthly to advise him about performance, progress against annual plans and targets, budgetary matters and issues of concern.

2.1.2. He also chairs a monthly Finance Sub-committee which reviews budgetary issues in detail and reports back to the Management Advisory Board.

2.1.3. Membership of both the Management Advisory Board and the Finance Sub-Committee comprises senior staff from within OSPT.

### **2.2. Accountability meetings.**

2.2.1. The ALB Governance Division within the Ministry of Justice is the primary contact for OSPT.

2.2.2. The Division works in partnership with OSPT, to provide an assurance interface, undertaken on behalf of the Principal Accounting Officer (PAO), and to provide a 'critical friend' relationship in respect of governance, assurance, risk management, budget management and performance.

2.2.3. The division also provides an interface between the OSPT and policy areas within the MoJ.

2.2.4. The MoJ and OSPT hold Business and Accountability Meetings on a half-yearly basis, or more frequently as needed.

## **3. Business Priorities**

3.1. The Official Solicitor and the Public Trustee keeps his various business priorities under continuous review and, with the benefit of advice from his Management Advisory Board, will where necessary reprioritise deployment of his resources to meet the changing needs of his respective businesses.

3.2. Annually, this will also be done as part of the process for setting and agreeing the Annual Delivery Agreement with MoJ based on the financial allocations he receives as Official Solicitor and as Public Trustee.

## **4. Individual teams.**

4.1. The litigation teams support the Official Solicitor in fulfilling his duties as litigation friend and, in certain instances, as solicitor, in those cases that fulfil his acceptance criteria, and also as an office holder of the Court.

4.2. In cases where the Official Solicitor consents to act as litigation friend he will fairly and competently conduct the litigation in the best interests of the protected party, child or “P”.

4.3. In those cases where he conducts litigation (by virtue of Section 90 of the SCA 1981) he will do so to the professional standards of a solicitor.

4.4. In so far as his budget permits he will:

4.4.1. seek to consent to any requests by the court to act as, or instruct an, Advocate to the Court.

4.4.2. seek to conduct any enquiries requested by the court under *Harbin v Masterman*, usually subject to his obtaining external funding for the purpose.

4.5. Quantitative performance measures (Litigation Services)

4.5.1. The Official Solicitor will allocate public law children cases to a case manager within 2 working days of his establishing that his acceptance criteria are met.

4.5.2. In all other litigation cases, the Official Solicitor will allocate cases to a case manager within 5 working days of his establishing that his acceptance criteria are met or are likely to be met.

4.5.3. In those litigation cases where the Official Solicitor charges for conducting litigation or exercising rights of audience (personally or through his staff), bills will be ready for agreement or assessment within 4 months of the date of the final order. Trust and Estates

4.6. Trusts and estates (including performance measures).

4.6.1. The Official Solicitor and the Public Trustee provides trusts and estates services through his Trust and Estates team, although the respective cases and functions are entirely separate.

4.6.2. There is a strict policy of accepting new cases only in the last resort.

4.6.3. The Official Solicitor and the Public Trustee is separately appointed as Accounting Officer in respect of the third party assets he holds respectively as Official Solicitor and as the Public Trustee.

4.6.4. As trustee, executor and administrator, as well as Accounting Officer, he is responsible for the stewardship of the third party assets held by him.

4.6.5. He is subject to the Accounts Directions given to him by the MoJ in respect of those third party assets.

4.6.6. In accordance with the Accounts Directions given to him by MoJ, the Official Solicitor and the Public Trustee will ensure the production of a set of

Stewardship Accounts of those assets, to be audited by the National Audit Office and approved by the MoJ Audit Committee.

4.6.7. The 3rd party monies and securities held by the Official Solicitor and by the Public Trustee are managed on a discretionary basis, and administered by an external service provider, Charles Stanley.

4.6.8. In addition to oversight by OSPT, assurance is given on a quarterly basis by two independent external experts in relation to the performance of the service provider.

4.6.9. The Official Solicitor and the Public Trustee will produce unqualified stewardship accounts for 2016/2017 by end August 2017.

4.6.10. To ensure that the Trusts and Estates Team acts promptly and effectively, it will carry out detailed case reviews of all ongoing cases in addition to the current activity. Specifically, it will:

4.6.10.1. ensure tax returns are completed and any necessary taxes paid by 31 January

4.6.10.2. undertake two 6-monthly reviews of investments (by end September and end March)

4.6.10.3. provide an annual account or statement.

4.6.10.4. calculate costs<sup>6</sup>/fees<sup>7</sup> annually.

4.6.10.5. take costs and fees annually where it is possible to do so.

4.6.10.6. review the position of each case annually.

4.6.11. When the MoJ produces subordinate legislation which permits him to do so, the Public Trustee will implement an electronic facility for filing Title on Death applications and searching the register.

#### 4.7. Child Trust Funds (including performance measures).

4.7.1. The Official Solicitor accepts appointment to manage the Child Trust Funds of 'looked after' children in England and Wales where there is no appropriate individual with parental responsibility to act for them.

4.7.2. The Official Solicitor will hand over accounts to adoptive parents within 20 days of receiving the requisite documentation.

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<sup>6</sup> In the case of the Official Solicitor.

<sup>7</sup> In the case of the Public Trustee.



4.7.3. The Official Solicitor will improve the quality of the data he holds through liaison with Local Authorities and will ensure all data he does hold is in electronic format only.

4.7.4. The Official Solicitor will work with DfE and HMRC to prepare for the transfer of all CTFs to the Share Foundation on 30 September 2017.

4.8. The ICACU (including performance measures).

4.8.1. The Official Solicitor will seek to ensure the ICACU works with MoJ Policy to carry out its existing responsibilities and any new responsibilities under the UK's International Obligations in England and Wales (save where they are the responsibility of a Welsh authority).

4.8.2. All complete outgoing Hague return applications will be forwarded to Central Authorities within 7 working days.

4.8.3. All complete incoming Hague return applications will be forwarded to solicitors within 3 working days.

4.8.4. All complete applications and requests for Hague access, under the European Convention, Brussels II Revised and under the 1996 Hague Convention will be actioned within 15 working days.

4.9. The REMO Unit (including performance measures).

4.9.1. The Official Solicitor will seek to ensure the REMO unit works with MoJ Policy to carry out its existing responsibilities and any new responsibilities under the UK's International Obligations in England and Wales (save where they are the responsibility of a Welsh authority).

4.9.2. All complete applications and Maintenance Regulation requests for special measures will be acknowledged or processed within 30 calendar days of receipt.

4.9.3. Within 60 calendar days from the date of acknowledgment, the requested central authority shall inform the requesting Central Authority of the status of the application. Where no status update is available an urgent request will be made to the Court and the requesting Central Authority informed.

4.9.4. The REMO unit will review its internal processes to align with the digital/electronic systems implemented by the courts.

4.9.5. The REMO unit will take forward its case closure project.

## 5. Corporate Activity (including performance measures).

### 5.1. People:

5.1.1. The Official Solicitor and the Public Trustee will continue to engage and develop his staff, and to ensure that they are fully equipped to meet performance requirements and business needs.

5.1.2. He will take practicable action on the results of the OSPT People Survey.

5.1.3. He will:

5.1.3.1. aim to ensure that the number of days' sick absence per head per year (AWDL) does not exceed 8 days.

5.1.3.2. maintain or increase the Staff Engagement Index score.

5.1.3.3. focus on three priority areas for improvement from the 2016 People Survey.

### 5.2. Work environment: the Official Solicitor and the Public Trustee will:

5.2.1. work with MoJ Estates to provide a safe and modern work environment for his staff. MoJ Estates will attend monthly accommodation meetings and help to resolve the existing accommodation issues wherever possible.

5.2.2. work with MoJ Technology to implement the upgraded IT hardware and software in line with the timetable and resources provided through the MoJ EUCS project.

5.2.3. work with MoJ Estate to agree plans for the office location following expiry of the Victory House lease.

5.2.4. be proactive in managing Health and Safety.

### 5.3. Managing information and managing risk (including performance measures).

5.3.1. The Official Solicitor and the Public Trustee takes seriously his responsibilities for managing information and managing risk. To ensure he meets his responsibilities he will:

5.3.1.1. continue to develop his MI system to ensure that it provides proportionate, useful, accurate and timely data that inform resource deployment.

5.3.1.2. streamline the way in which data is collated and reported against across the office

- 5.3.1.3. provide protection to information by managing risks to its availability, integrity and confidentiality so that his businesses always function effectively.
- 5.3.1.4. ensure that OSPT staff are regularly reminded about their responsibilities in respect of fraud and risk awareness procedures, and of their responsibilities in relation to data protection review.
- 5.3.1.5. test OSPT business continuity plans.
- 5.3.1.6. provide up to date information on his services via his pages on .Gov.uk
- 5.3.1.7. monitor and analyse complaints to ensure he is providing a high but proportionate level of client service within the constraints of his budget and making the best use of his resources.
- 5.3.1.8. support MoJ's commitment to sustainable development and improving his environmental performance.
- 5.3.1.9. respond fully to complaints within 20 working days of receipt.
- 5.3.1.10. monitor the number of justified complaints for all teams and, where appropriate, ensure that lessons are learnt.
- 5.3.1.11. respond fully to Ministerial Correspondence within 10 working days of receipt.
- 5.3.1.12. process written requests under the Freedom of Information Act 2000 (where it applies) within 20 working days.
- 5.3.1.13. process written subject access requests under the Data Protection Act will be processed within 40 calendar days.
- 5.3.1.14. throughout 2017/2018, ensure that all teams maximise their use of electronic ways of working to reduce reliance on paper files.
- 5.3.1.15. monitor the number and nature of data breaches.
- 5.3.1.16. plan for the implementation in his offices of the General Data Protection Regulations.

## **6. Income and Expenditure: 2016/17 – Funding, Allocation, Budget**

- 6.1. The Official Solicitor and the Public Trustee each has a delegated budget from the MoJ. These are combined.
- 6.2. Resources will be allocated according to priorities to be determined by him, from time to time, in consultation with his Management Advisory Board.
- 6.3. He will consider any views expressed by his key stakeholders, including the MoJ and the President of the Family Division and of the Court of Protection.
- 6.4. The Finance sub-committee of the non-executive Management Advisory Board has reviewed the funding allocation for 2017/18 and has developed plans to assist the Official Solicitor and the Public Trustee to manage his priorities within that allocation.
- 6.5. The Official Solicitor's and the Public Trustee's combined budget for 2017/18:
  - 6.5.1. is £8,069m gross
    - 6.5.1.1. with a fee income recovery target of £2,517m and
    - 6.5.1.2. a net allocation of £5,672.
  - 6.5.2. Income (including performance measures).
    - 6.5.2.1. The Official Solicitor and the Public Trustee each provides a number of different services, for some of which there is and can be no charging regime.
    - 6.5.2.2. Where either has a charging regime, different costing or charging regimes apply.
    - 6.5.2.3. In cases where the Official Solicitor recovers costs, as set out in Annex A, his costs are charged on a time-recorded basis in accordance with the guidance rates issued by the Senior Courts Costing Office.
    - 6.5.2.4. He will recover any external expenditure where that is practicable.
    - 6.5.2.5. The work of the ICACU and the REMO Unit is funded out of the Official Solicitor's delegated budget.
    - 6.5.2.6. The Official Solicitor's work under the Child Trust Funds legislation is funded by HMRC.
    - 6.5.2.7. The Public Trustee's executorship and trustee work is charged for by the application of scale fees under secondary legislation made pursuant to the Public Trustee Act 1906.

- 6.5.2.8. His other work is charged under the respective charging regimes applicable to the various activities.
- 6.5.2.9. A more detailed description of the various charging regimes can be found at Annex A.
- 6.5.2.10. He will generate at least £2,517m of income.
- 6.5.3. Expenditure (including performance measures).
  - 6.5.3.1. OSPT's required headcount and forecast expenditure for 2017-2018 are:
    - 6.5.3.1.1. headcount 139.
    - 6.5.3.1.2. total Annual Expenditure: £8,069m.
    - 6.5.3.1.3. The major area of expenditure is staff costs, which accounts for approximately £6m.
    - 6.5.3.1.4. A chart showing OSPT's organisational structure can be found at Annex B.
    - 6.5.3.1.5. He will manage service delivery within budget allocation.
    - 6.5.3.1.6. He will aim to reduce agency workers to 4 by March 2018.

## **7. Transparency**

- 7.1. The Official Solicitor and the Public Trustee aims to operate as transparently as possible subject to the confidentiality of, and Data protection of, his clients' confidential and private information, and personal data.
- 7.2. He will therefore publish the following information on .GOV.uk:
  - 7.2.1. the Annual Delivery Agreement of the Official Solicitor and the Public Trustee.
  - 7.2.2. the Annual Stewardship Accounts of the Official Solicitor and the Public Trustee.
  - 7.2.3. his complaints and feedback processes.
  - 7.2.4. the Official Solicitor's various Standard Instructions to Solicitors.
  - 7.2.5. selected responses by the Official Solicitor or the Public Trustee to consultations which impact on his work.

7.2.6. any other relevant guidance concerning the specialisms entailed in his work which he considers will be of assistance to those who would benefit from such publication.

7.3. The following information will be published by the Ministry of Justice:

7.3.1 information on spend over £25,000.

## **Costs and charges**

The Official Solicitor and the Public Trustee each provides a number of different services for which differing, or in some cases no, costing or charging regimes apply. In cases where the Official Solicitor recovers costs, his costs are charged on a time-recorded basis in accordance with the guidance rates issued by the Senior Courts Costs Office. The Public Trustee's work is charged for by the application of scale fees under secondary legislation made pursuant to the Public Trustee Act. A more detailed description follows.

They will inform all those with a legitimate interest about the charging regime that applies to the matter when their involvement begins.

## **The Official Solicitor**

Litigation friend services of the Official Solicitor:

- the Official Solicitor is the litigation friend of last resort. His services as litigation friend have never been charged for by him, and it is difficult to see how consistently with his purpose, or as a matter of practicability, realistically he could do so
- the Official Solicitor may, however, and usually does, make his involvement in proceedings conditional on his ability to secure funding for externally provided reserved legal activities. This can be by
  - an undertaking to meet his litigation costs by another party with an interest in obtaining the decision of the court, or
  - where the protected party, child or "P" is entitled to legal aid by that means of funding, or
  - through the external solicitors entering into a conditional fee arrangement,
  - or in appropriate cases from the estate of the protected party, child or "P",
- where the person for whom he will be appointed as litigation friend has the means to pay his costs in retaining an external solicitor to act for that person (as opposed to his costs as litigation friend), and depending on the class of litigation or the facts of the individual case, he will, if the person has capacity in respect of their property and affairs, seek that person's agreement to pay those costs. If that person also lacks financial capacity, he will seek agreement from any property and affairs deputy or attorney, or authority from the Court of Protection to recover those costs from that person's estate
- where successful, there is nothing to prevent the Official Solicitor seeking his costs in obtaining the external provision of, or himself providing, the reserved legal activities for the person for whom he is acting or has acted as litigation friend, on behalf of that person, in the same way as any other successful litigant
- in Court of Protection property and affairs cases, the Official Solicitor is invited to act as "P's" litigation friend, and provides litigation services as "P's" solicitor, for which he is able to charge, and so recovers the vast majority of his costs (incidentally as litigation friend and of the litigation services he provides as solicitor) in respect of those cases

in serious medical treatment cases, the Official Solicitor has always been expected to act as solicitor as well as litigation friend. In those cases he has never been expected to recover litigation services costs from the patient's (now 'P's') funds, and his budget takes account of that expectation. In those cases, where the applicant is a statutory body such as an NHS trust or local authority, the Official Solicitor will usually ask for one half of his litigation services costs from the applicant: *A Hospital v SW and A PCT* [2007] EWHC 425 (Fam), Sir Mark Potter P and NHS Trust v D (by his litigation friend, the Official Solicitor)[2012] EWHC 886 (COP), Jackson J.

- where the Official Solicitor acts as, or instructs, an advocate to the court he is unable to recover his costs from any person or party
- where the Official Solicitor is asked to make *Harbin v Masterman* enquiries he will usually require his costs of so doing to be funded

In the Official Solicitor's trusts and estates cases, he will seek to recover costs out of the trust's or estate's funds based on time spent on the case and the level of technical and legal knowledge required, and any external costs incurred.

The Official Solicitor receives as part of his overall budget through the Ministry of Justice's vote, payment in respect of the provision of services provided by the ICACU and REMO. With the potential expansion of the work of the two teams under additional international obligations, work will be required to identify the full contribution to the units out of the overall budget. It is not possible for either unit to charge for its services.

In respect of the administration of the Child Trust Funds under the Child Trust Funds legislation, the Official Solicitor is reimbursed by HMRC for all costs incurred on a prospective and actual annual basis.

### **The Public Trustee**

The Public Trustee charges scale fees for his trusts and estates work under the 2008 Fees Order<sup>8</sup> made under the 1906 Act. The Public Trustee also charges a fixed fee for Title on Death applications.

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<sup>8</sup> Public Trustee (Fees) Order 2008



**OSPT Senior Structure**

