

# Offices of the Supreme Court

### Key Findings for 2007

- There was a continuation of the upward trend seen in the number of new referrals to the Official Solicitor for child abduction and Court of Protection cases.
- The total number of executed warrants by the Tipstaff was 386, up 8% from the 358 for 2006.
- Due to the statutory change in the Court of Protection and Public Guardianship Office during 2007, the year was mainly one of transition, for which therefore statistics are only partially available.

## Chapter 8: Offices of the Supreme Court

During 2007, the Offices of the Supreme Court included:

1. **The Court Funds Office** and the **Office of the Official Solicitor and Public Trustee** came together as an arms length body of the Ministry of Justice on 1 April 2007. The Accountant General of the Supreme Court, Official Solicitor of the Supreme Court and Public Trustee have separate statutory and other functions but, for economies of scale, share some corporate services.
2. **The Tipstaff** – whose main responsibility is the enforcement of warrants and orders issued by Judges throughout all divisions of the High Court. Much of the Tipstaff's work relates to children who either, have been or are at risk of being, abducted.
3. **The Court of Protection** – which until the end of September 2007 carried out legal functions under the Mental Health Act 1983 and the Enduring Powers of Attorney Act 1985, concerning the property and affairs of people who lacked the mental capacity to perform these tasks for themselves.

From October 2007 a new Court of Protection was created by the Mental Capacity Act 2005, with the jurisdiction to deal with decision-making for adults who lack capacity. The new Court has responsibility for making decisions concerning the healthcare and welfare and financial well-being of persons who lack capacity, including the appointment of deputies. The Court has the power to make declarations as to whether or not a person has capacity to make a particular decision or in relation to a particular matter.

4. **The Public Guardianship Office (PGO)** was, until the end of September 2007, the administrative arm of the Court of Protection. On 1 October 2007, the Public Guardianship Office ceased to exist and, under the Mental Capacity Act 2005, the **Office of the Public Guardian** was created to supervise Court appointed Deputies, offering guidance and support on decision making as well as overseeing the registration of Lasting Powers of Attorney and Enduring Powers of Attorney.

## The Court Funds Office

The Court Funds Office supports the Accountant General and provides a banking service for the civil courts throughout England and Wales. It accounts for money being paid into and out of court, and where necessary administers any investments made with that money.

It administers approximately £4.7 billion of client assets. These assets can be broken down into a mixture of cash held on Special or Basic Interest bearing accounts or investments in the Equity Index Tracker Fund, an investment vehicle managed by Legal & General.

## The Office of the Official Solicitor and Public Trustee

The Office of the Official Solicitor and Public Trustee supports both the Official Solicitor and the Public Trustee.

The Official Solicitor is a statutory office holder appointed by the Lord Chancellor under section 90 of the Supreme Court Act 1981. He

- acts as last resort litigation friend, and in some cases solicitor, for adults who lack litigation capacity and children (other than those who are the subject of child welfare proceedings) in court proceedings because they lack decision making capacity in relation to the proceedings;
- acts as advocate to the court providing advice and assistance to the court;
- acts as last resort administrator of estates and trustee;
- acts as financial deputy of last resort in relation to Court of Protection clients;
- administers for the Lord Chancellor the International Child Abduction and Contact Unit in England and Wales (the Central Authority under the Hague and European Conventions on Child Abduction);
- administers for the Lord Chancellor the Reciprocal Enforcement Maintenance Orders Unit which acts as the Central Authority for England & Wales for international maintenance claims;
- is appointed, in place of a parent, to act as the registered contact in the administration of the Government's Child Trust Fund scheme for those children in care in England and Wales when there is no other suitable person to do so.

The Public Trustee (appointed under section 8 of the Public Trustee Act 1906) acts as executor or administrator of estates and as the appointed trustee of settlements. His aim is to provide an effective executor and trustee service of last resort on a non-profit-making basis; in so doing, his objective is to secure the best value for the beneficiaries.

Summary caseload statistics on the work of the Office of the Official Solicitor and Public Trustee are shown in [Table 8.1](#)

### Tipstaff

The duties of the Tipstaff are many and varied but, in broad practical terms, the Tipstaff is the enforcement officer for the High Court. The principal areas of specific duties emanate from the Queen's Bench, Chancery and Family Divisions and involve issues of bankruptcy, insolvency, wardship, child abduction, contempt of court and many other miscellaneous orders which involve taking action to enforce, or prevent breach of, orders of the court. At present there is one Tipstaff and two Assistant Tipstaff to cover England & Wales, and they are based at the Royal Courts of Justice in London.

The single biggest area of work for the Tipstaff relates to Family Division cases involving missing or abducted children. The Tipstaff is responsible for executing warrants on a range of possible Orders in these circumstances, including a Collection Order (for the return of a child), a Location Order (for the whereabouts of a child to be discovered), a Passport Order (for the seizure of passports or other travel documents) and Port Alerts (to prevent a child being wrongfully removed from the UK). Orders of these types accounted for 89% of all warrants executed by the Tipstaff in 2007.

In 2007, the Tipstaff carried forward a total of 250 cases from the previous year, and a total of 553 new orders / warrants were issued, giving a total of 803 cases which were 'live' at some point in the year.

During the course of 2007, 386 warrants were executed (358 in 2006), and 179 were discharged or suspended (152 in 2006). The remaining 235 outstanding cases have been carried forward into 2008.

In the course of their duties, the Tipstaff and his assistants conveyed 15 persons to prison (29 in 2006).

Summary caseload statistics on the work of the Tipstaff are shown in [Table 8.2](#).

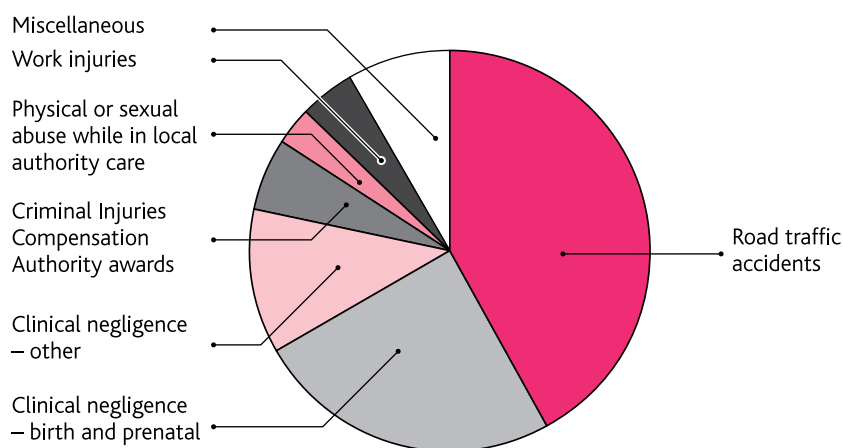
## Court of Protection

Up until the end of September 2007 the Court's powers were exercisable by nominated judges (the judges of the Chancery Division and the Family Division of the High Court), the Master, Assistant Masters and other nominated officers of the Court of Protection. Certain orders could only be made by a nominated judge but, subject to these rare exceptions, the jurisdiction was in practice exercised by the other people mentioned.

The Mental Capacity Act 2005, implemented in full on 1st October 2007, has provided a new statutory framework for the Court's work; significantly all decisions are now made by a nominated judge. The range and number of judges has increased significantly and cases can be heard by nominated High Court, Circuit and District Judges. The central registry of the new Court is based in Archway, London but the court also has regional hearing venues in various locations including Preston, Birmingham and Cardiff.

In each of the last 3 years, the number of damages awards approved by Court of Protection has remained broadly stable at around 400. The annual totals were 415, 384 and 408 in the years 2004, 2005 and 2006 respectively, records for 2007 are only available up to the end of September but these show a slight decline to 181 for that 6 month period to September 2007. The breakdown of approved damages awards by cause during the period 2004 to September 2007 is shown in the chart below.

### Breakdown of damages awards approved by the Court of Protection, by cause 2004/05-2007-08\*



\* Up to September 2007 only

There has been a significant decrease in the number of Orders made under the Mental Health Act 1983, down to 201 for the 6 month period to September 2007, after having previously been on a strong upward trend, peaking in 2005/06 at 7,444. However, the number of Orders made on applications relating the Enduring Powers of Attorney has actually risen – 257 for the same 6 month period, against an annual figure of 412 for the whole of 2006. Also in the 6 months up to September 2007 the Court of Protection made 9,136 transition orders to allow existing receivers to continue to undertake their duties as deputies under the MCA without repeated referrals to the Court.

A number of the figures included in this report in previous years were collected by teams of nominated officers that, from the late spring of 2007 were re-organised to focus on the transitional work for implementation of the Mental Capacity Act 2005. This has meant that over this period it became increasingly difficult to maintain accurate statistics for these functions, and therefore, regrettably, the figures reflected in Table 8.3 are incomplete. Available statistics on the work of the Court of Protection are shown in [Table 8.3](#) and [Table 8.4](#).

## Public Guardianship Office

*The following section reflects the position that existed during 2007, prior to the implementation of the Mental Capacity Act in October 2007.*

The Public Guardianship Office (PGO) was the administrative arm of the Court of Protection. Its major function was to protect and promote the interest of its clients – people who lack mental capability – by overseeing and supporting the activities of Receivers appointed by the Court of Protection to manage their financial affairs. Where the Court of Protection adjudged a person mentally incapable of managing their own financial affairs, and there was no one else willing or suitable to act as Receiver, the PGO appointed one of the professionals from the panel of Receivers to act on behalf of that person. The PGO was responsible for approximately £2.5 billion held in clients' funds (excluding securities).

In addition, the PGO carried out the administrative functions arising from the Court of Protection's jurisdiction under the Enduring Powers of Attorney Act 1985. Through the creation of an Enduring Power of Attorney (EPA), a person can nominate someone they trust (often a spouse or close family member) to manage their finances, should they themselves lose the mental capacity to do so in the future.

During 2007 the number of new EPA applications made to the Public Guardianship Office continued to increase. There were over 20,000 such applications made in the 9 month period to September 2007, double the equivalent figure for 2002. More than 15,000 EPAs were registered in the same period, contributing to a total of over 123,000 EPAs that remained registered at the end of September 2007, prior to the implementation of the Mental Capacity Act.

Much of the PGO's work in 2007 was in preparation for the new statutory framework provided by the Mental Capacity Act 2005, which came fully into force on 1 October 2007. One consequence of this has been the transfer of the final cases where the PGO was acting as Receiver of Last Resort. The reason for this is that the 2005 Act makes no provision for the Public Guardian to be the Receiver of Last Resort.

As mentioned above regarding the Court of Protection statistics, some of the figures previously reflected here are unavailable due to the re-organisation, and shadow-running undertaken prior to implementation of the MCA and therefore the figures reflected in Table 8.5 are incomplete. Available statistics on the work of the Public Guardianship Office up to the end of September 2007 are shown in [Table 8.5](#).

**Table 8.1**  
**Office of the Official Solicitor and Public Trustee**  
 Summary casework statistics, 2002-2007

Case type	Number of cases					
	2002	2003	2004	2005	2006	2007
<u>New referrals</u>						
Family Litigation, Medical, Welfare and Divorce	829	949	973	1,087	1,235	1,163
Child Abduction	329	376	404	402	432	461
Reciprocal Enforcement Maintenance Orders (REMO) <sup>1</sup>	-	-	-	777	922	704
Civil Litigation (including Contempts)	905	987	956	999	955	988
Court of Protection	427	537	511	618	580	646
Child Trust Funds <sup>2</sup>	-	-	-	341	4,128	1,508
Estates, Trusts, Executorships, Pension & Institutional Funds	96	89	42	13	37	17
<b>Total (excluding REMOs and Child Trust Funds)</b>	<b>2,586</b>	<b>2,938</b>	<b>2,886</b>	<b>3,119</b>	<b>3,239</b>	<b>3,275</b>
<b>Total</b>	<b>2,586</b>	<b>2,938</b>	<b>2,886</b>	<b>4,237</b>	<b>8,289</b>	<b>5,487</b>
<u>Average number of active cases<sup>3</sup></u>						
Family Litigation, Medical, Welfare and Divorce	995	1,109	1,258	1,359	1,494	1,499
Child Abduction	320	268	330	311	332	311
Reciprocal Enforcement Maintenance Orders (REMO) <sup>1</sup>	-	-	-	n/a	n/a	n/a
Civil Litigation (including Contempts)	1,201	1,099	1,154	1,183	1,294	1,266
Court of Protection	486	489	459	565	760	692
Child Trust Funds <sup>2</sup>	-	-	-	n/a	1,202	3,714
Estates, Trusts, Executorships, Pension & Institutional Funds	2,670	2,544	2,133	2,004	1,759	1,058
<b>Total (excluding REMOs and Child Trust Funds)</b>	<b>5,672</b>	<b>5,509</b>	<b>5,334</b>	<b>5,422</b>	<b>5,639</b>	<b>4,826</b>
<b>Total</b>	<b>5,672</b>	<b>5,509</b>	<b>5,334</b>	<b>5,422</b>	<b>6,841</b>	<b>8,540</b>

**Source:**

Office of the Official Solicitor and Public Trustee

**Notes:**

- 1 Applies from 1 April 2005 only. Relates to international maintenance claims, where one of the parties lives outside the UK in a country or territory with which the UK has reciprocal arrangements for the enforcement of maintenance
- 2 Applies from 1 April 2005 only. The Official Solicitor can be appointed to act as the registered contact in the administration of the Child Trust Fund scheme for children in care in England and Wales, where there is no parent able to do so
- 3 Based on the average number of active cases month-by-month within each year shown

**Table 8.2**  
**Tipstaff**  
 Summary casework statistics, 2002-2007

Type of warrant	Number of warrants					
	2002	2003	2004	2005	2006	2007
<u>Executed</u>						
Bankruptcy	8	3	5	5	21	11
Insolvency	4	8	0	0	8	12
Chancery Division	3	10	6	6	6	6
Queen's Bench Division	8	3	10	8	12	8
Family Division						
Child Abduction cases <sup>1</sup>	182	278	298	333	291	343
Other cases	53	54	15	28	20	6
<b>Total</b>	<b>258</b>	<b>356</b>	<b>334</b>	<b>380</b>	<b>358</b>	<b>386</b>
<u>Discharged or suspended</u>						
Bankruptcy	17	9	10	10	13	17
Insolvency	12	12	19	11	4	15
Chancery Division	0	0	0	0	26	-
Queen's Bench Division	2	1	2	1	26	-
Family Division						
Child Abduction cases <sup>1</sup>	1	9	2	19	65	133
Other cases	33	44	9	5	18	14
<b>Total</b>	<b>65</b>	<b>75</b>	<b>42</b>	<b>46</b>	<b>152</b>	<b>179</b>

Source:

Tipstaff

Notes:

1 Child Abduction work includes Collection Orders, Location Orders, Passport Orders and Port Alert Orders. These are all normally associated with cases where a child either has been, or is at risk of being, abducted and taken outside the UK

**Table 8.3**  
**Court of Protection**  
 Summary casework statistics, 2002/03 – 2007/08 (financial years)

Type of proceedings	Number of cases					
	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08 <sup>3</sup>
Orders made under the Mental Health Act 1983	4,760	5,264	6,194	7,444	5,762	201
of which, number made by a nominated judge <sup>1</sup>	2	3	4	1	1	0
Orders for sale and purchase of property	946	833	2,493	1,934	2,019	-
Wills executed for clients and orders for settlement and gifts, excluding those made on applications relating to Enduring Powers of Attorney	259	284	341	329	238	189
Orders made on applications relating to Enduring Powers of Attorney dealt with by the Judicial Support Unit department	286	322	358	394	412	257
Applications for orders appointing new trustees <sup>2</sup>	475	546	473	523	625	-
Orders determining proceedings on a patient's recovery	11	47	114	68	91	-
Visits carried out by the Lord Chancellor's medical visitors	86	104	84	105	153	-
Transition Orders	-	-	-	-	-	9,136

**Source:**

Court of Protection

**Notes:**

- 1 In practice, jurisdiction is exercised by the Master, Assistant Masters and other nominated officers of the Court of Protection. However, certain orders can only be made by the Lord Chancellor or a nominated judge (a judge of the Chancery or Family Divisions of the High Court)
- 2 Applications made under sections 36(9), 54 and 96(1)(k) of the Trustee Act 1925, and section 20(2)(c) of the Trusts of Land and Appointment of Trustees Act 1996
- 3 2007/08 figures only cover the period from April 2007 to September 2007 preceeding the implementation of the Mental Capacity Act 2005. Statistics covering this period are only partially available

**Table 8.4**  
**Court of Protection**  
 Damages awards approved, by type, 2004/05 – 2007/08 (financial years)

Type of award	Number of awards							
	2004/05		2005/06		2006/07		2007/08 <sup>1</sup>	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Road traffic accidents	174	42%	162	42%	171	42%	85	47%
Clinical negligence								
Birth or prenatal injuries	101	24%	93	24%	107	26%	36	20%
Other	52	13%	47	12%	39	10%	23	13%
Criminal Injuries Compensation Authority awards	27	7%	16	4%	27	7%	16	9%
Physical or sexual abuse while in local authority care	20	5%	9	2%	11	3%	4	2%
Work injuries	16	4%	15	4%	20	5%	5	3%
Miscellaneous	25	6%	42	11%	33	8%	12	7%
<b>Total</b>	<b>415</b>		<b>384</b>		<b>408</b>		<b>181</b>	

**Source:**

Court of Protection

**Notes:**

- 1 2007/08 figures only cover the period from April 2007 to September 2007, preceeding the implementation of the Mental Capacity Act 2005. Statistics covering this period are only partially available

**Table 8.5**  
**Public Guardianship Office (PGO)**  
 Summary casework statistics, 2002-2007

Nature of work	Number of cases					
	2002	2003	2004	2005	2006	2007 <sup>6</sup>
<u>Protection Work</u>						
Applications brought in during year	7,542	8,117	9,529	9,242	10,060	-
Number of estates under administration at year end	24,007	28,309	30,471	31,140	26,709	30,604
Annual accounts and enquiries passed <sup>1</sup>	14,213	15,240	12,875	13,664	19,259	13,234
Short Orders issued <sup>2</sup>	1,509	1,080	1,596	2,044	2,828	-
Schedules (other than orders) for dealing with funds <sup>3</sup>	13,384	20,898	29,210	26,746	30,331	-
Lodgement schedules (other than orders) for payment into Court	8,276	3,100	4,307	4,750	6,322	-
<u>Enduring Powers of Attorney<sup>4</sup></u>						
EPA applications received during year	13,748	14,621	16,314	19,776	21,751	20,030
Number registered during year	11,965	11,393	14,340	20,003	19,368	15,969
Total remaining registered during year	70,181	82,115	87,653	100,221	114,130	123,034
<u>Receivership Work<sup>5</sup></u>						
Number of estates under administration at year end	632	521	239	145	2	0

**Source:**

Public Guardianship Office (PGO)

**Notes:**

- 1 Relates to the PGO's work in monitoring Receivers, through a review of annual accounts and other enquiries, to ensure that they have been operating the finances in the client's best interest
- 2 Short Orders give an appointed person access to a client's finances in cases where there are not sufficient assets to warrant the appointment of a Receiver. Currently, this applies to estates with a capital value of less than £16,000 and where there is no property to be sold
- 3 Such schedules provide for the non-urgent release of a client's funds to the appointed Receiver for use in the client's best interests
- 4 An Enduring Power of Attorney allows the person creating it to nominate someone they trust (often a spouse or close family member) to manage their finances, should they themselves lose the mental capacity to do so in the future
- 5 In exceptional cases, where no Receiver can be appointed to manage a client's finances, the PGO can act as the Receiver itself. The sharp decline in casework is in preparation for the coming-into-force of the Mental Capacity Act 2005 in October 2007, from which point this power will no longer apply
- 6 2007 figures cover the period from January 2007 to September 2007, preceding the implementation of the Mental Capacity Act 2005. Statistics covering this period are only partially available