

**PUBLIC GUARDIANSHIP OFFICE**

Protecting and promoting the financial  
affairs of people who lose mental capacity

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## EXECUTIVE SUMMARY



- 1 A person can lose their mental capacity at any stage in their life for a variety of reasons, for example following an accident or due to the onset of some form of dementia, such as Alzheimer's disease. When mental capacity is lost, the individual's ability to manage their own financial affairs can be restricted and therefore they may become reliant on others. The assets and income of such individuals can become vulnerable to misuse – whether through a deliberate fraud or imprudent use of the person's assets and income.
- 2 The role of the Court of Protection is to protect and to manage the financial affairs of people without the necessary mental capacity to do so themselves. The Public Guardianship Office is the administrative office of the Court of Protection and is responsible for implementing the Court's decisions. The Public Guardianship Office, an executive agency of the Department for Constitutional Affairs, was established in 2001 and took over some of the functions previously undertaken by the Public Trust Office. The Public Guardianship Office provides protection in two ways.
  - It registers **Enduring Powers of Attorney**, a legal device through which a person whilst mentally capable is able to specify how their financial affairs are managed, and by whom, should mental capacity be lost. At the end of December 2004 there were 87,653 registered Enduring Powers of Attorney. The Public Guardianship Office charges a fee of £120<sup>1</sup> to register an Enduring Power of Attorney.
  - It oversees the work of **Receivers**, appointed by the Court of Protection to look after the financial affairs of people once they have lost mental capacity. The appointed receivers are either lay people, for example a close relative, or a professional, usually a solicitor, or an officer from a local authority. In a small minority of cases, currently around 250, the Court of Protection will appoint the Public Guardianship Office's Chief Executive as receiver. At the end of March 2004, the Office was responsible for overseeing 29,318 cases in all. The Public Guardianship Office charges fees for the services it provides.
- 3 The Public Guardianship Office's focus is on overseeing the work of receivers. Under the terms of their appointment, the Court of Protection expects each receiver to submit an annual account to the Public Guardianship Office showing what has been received and spent on behalf of the client. It also expects each client to be visited by one of a team of appointed visitors, to check that the client's needs are being met, within the first six months of a receiver being appointed and after that as the Court directs, but at minimum again after five years<sup>2</sup>.

1 Fee rate payable from 1st April 2005.

2 The Public Guardianship Office plans to reduce this to three years in 2005-06.

4 The Court of Protection’s oversight, under statute<sup>3</sup>, of a person appointed under an Enduring Power of Attorney differs from that of a receiver in that the client’s choice of an attorney was made when the client had capacity. Once registered, an attorney does not have to submit accounts to the Public Guardianship Office unless required. Similarly, the client is not usually visited by one of the appointed visitors. The Court of Protection does, however, have powers<sup>4</sup> to cancel the registration of an Enduring Power of Attorney if it has evidence which suggests that the attorney is not acting in the donor’s best interests.

5 This report examines the Public Guardianship Office’s targeting of risk; the steps it is taking to improve service quality; and the steps it is taking to raise the public’s awareness of the Office’s role and the options available to them in the event of losing mental capacity.

6 We last reported on this issue in February 1999, when this work was the responsibility of the Public Trust Office. Our report<sup>5</sup> and the subsequent Committee of Public Accounts report<sup>6</sup> were highly critical of the Public Trust Office’s work. Our fieldwork for this report examined progress since 1999 (see Appendix 3).

## Our overall conclusion

7 Since its establishment in 2001, the Public Guardianship Office has improved the quality of information it receives on receivers’ management of the financial affairs of people with mental incapacity. The large proportion of accounts collected on time and increased numbers of visits undertaken to see clients have been essential steps in addressing the poor performance achieved by its predecessor, the Public Trust Office. This improvement was achieved during a period of disruption arising from the Public Guardianship Office’s relocation to north London in late 2001 and early 2002.

8 With over 29,000 receivership cases to supervise, however, the resources the Public Guardianship Office can devote to scrutinising each case are necessarily limited. Even with a three fold expansion in the number of visits since 1997-98, for example, each client is only likely to be visited on average once every five years<sup>7</sup>, unless more frequent visits are judged appropriate by the Court, visitor or caseworker. If it is to be effective in protecting the financial affairs of people who lose mental capacity, the Public Guardianship Office should do more to target its resources, focusing on those cases where the risks are greatest. In particular:

- **The Public Guardianship Office should make much better use of the information available to it to help direct its scrutiny.** It currently lacks, for example, an overall picture of the circumstances in which abuse or mismanagement most often occur, how instances of mismanagement or abuse have been detected, and whether its regulatory controls are effective in detecting and remedying these problems. It is not necessarily the receiver or attorney who is most likely to financially abuse a vulnerable client, and not every vulnerable person will have a receivership or enduring power of attorney in place. The source of exploitation may come from anyone in contact with the client.
- **The Public Guardianship Office should raise its profile and make it easier for people to report concerns.** Relatives, friends, social workers and other professionals are, in many instances, well placed to spot the first signs of potential mismanagement or financial abuse but may not be sufficiently aware of the Public Guardianship Office’s role to report concerns. The Public Guardianship Office developed and implemented a marketing strategy during 2004-05 and it has prepared a marketing strategy for 2005-06, designed to increase the public’s awareness of the services it provides. In January 2005, it began to roll-out a marketing programme, previously piloted in Dorset, across England and Wales.
- **Building on the recent establishment of an Investigations Unit, the Public Guardianship Office should improve procedures for receiving, evaluating and following up potential concerns that come to its attention.**

3 The Mental Health Act 1983; the Enduring Powers of Attorney Act 1985; the Court of Protection Rules 2001 (as amended); and the Court of Protection (Enduring Powers of Attorney) Rules 2001 (as amended).

4 Part VII of the Mental Health Act 1983; and section 8 of the Enduring Powers of Attorney Act 1985.

5 Public Trust Office: protecting the financial welfare of people with mental incapacity (HC 206, Session 1998-99).

6 Thirty fifth report 1998-99.

7 The Public Guardianship Office has set itself an internal target of increasing the average visit frequency from five to three years from 2005-06.

**9** For cases which are competently managed by receivers, both they and clients have a right to expect a quick and reliable service from the Public Guardianship Office that minimises regulatory burdens on the day-to-day administration of the client's assets. The Public Guardianship Office is able to report improvements in the quality of its service, particularly over the last two years – an improvement acknowledged by many of its stakeholders. Nevertheless, an inability to access case information quickly when receivers and others call with queries, and delays in dealing with some transactions, indicate that further improvements in quality of service are needed. The continuing lack of an electronic case management system – a planned system was cancelled in 2003 – is inhibiting improvement and efficiency. But our work suggests the Public Guardianship Office should also re-examine whether the current approach to organising its teams is best targeted at risk and meeting the needs of its customers.

**10** The Public Guardianship Office faces a number of new challenges, such as the implementation of the Mental Capacity Act 2005 and shifting demographics and the impact of its marketing initiatives, which could lead to an increase and change in its workload. The Department for Constitutional Affairs needs to continue to support the Public Guardianship Office to prepare itself – to ensure that it has the right skills, the right resources and the necessary infrastructure – to meet the demands that will be made of it.

## Our main findings

### On protecting clients' financial affairs:

**11** The Public Guardianship Office has improved its performance in collecting accounts from receivers promptly. In its 1999 report, the Committee of Public Accounts was critical of delays in the collection and review of accounts and concluded that the Public Trust Office was failing to ensure that the financial interests of patients were adequately protected. Our sample of case files indicated that in 2002-03 and 2003-04 the Public Guardianship Office had collected over 90 per cent of the accounts due within its target of six months<sup>8</sup>, compared to 80 per cent in 1998-99. Much of the improved performance was due to better arrangements for reminding receivers before an account is due and for chasing receivers when an account is late.

**12** The Public Guardianship Office has expanded the number of visits to clients. Each visit provides the Court of Protection and the Public Guardianship Office's case workers, who will not, as a general rule, have direct contact with the client, with valuable information on the client's welfare and the effectiveness of the receiver. The number of visits taking place increased from 1,680 in 1997-98 to over 6,675 in 2003-04, and is forecast to reach over 7,000 in 2004-05. In a significant majority of the sample of cases examined by us, the client was judged by the visitor to be properly cared for and their assets competently managed. The effectiveness of the visits programme has, however, been weakened in some cases because of poor follow up of recommendations made by the visitors. The Public Guardianship Office recognised this area of weakness in 2003, and has sought to strengthen its procedures.

**13** Our evidence suggests that the Public Guardianship Office needs to target its scrutiny more effectively at risk. The level of scrutiny applied to the accounts, for example, does not take into account the case history, the size of the assets involved, and the sustainability of spending decisions compared to the client's income and assets. The Public Guardianship Office has taken some steps to target its efforts. Since 2002, the Court of Protection and Public Guardianship Office have agreed that receivers should be given sufficient capital to allow them to meet the client's financial needs for 12 months without having to ask the Office's permission for further funds. In addition, in cases where assets fall below £16,000 the Office's practice is now to recommend to the Court that the receiver is discharged from the Court's supervision, unless there is good reason not to do so<sup>9</sup>. In 2002, the Public Guardianship Office also introduced an initiative to provide local authority receivers with a degree of autonomy – allowing the receiver access, for example, to client's funds held by the Court Funds Office without seeking the Public Guardianship Office's prior approval. It is now extending the project to other professional receivers, such as solicitors. There is scope for the Public Guardianship Office to take this thinking further by targeting the application of controls and scrutiny more effectively, for example by classifying existing cases according to risk and using this to guide the level of scrutiny applied. Until recently, the Public Guardianship Office's priority had been to bring its operational performance up to a reasonable standard. It reported that it recognised the need to target its scrutiny more effectively and is developing plans to improve its performance.

<sup>8</sup> Where accounts had not been submitted, the Public Guardianship Office had taken action, for example, referring cases to the Court of Protection or taking other steps to ensure proper accounts are produced.

<sup>9</sup> Where the receiver is discharged, the management of the remaining funds continues to be the responsibility of the receiver but the Court of Protection does not require accounts on an annual basis.



**14** Currently, however, the Public Guardianship Office lacks full information on the nature and extent of the risks it is managing. The Public Guardianship Office does not, for example, have routine mechanisms for collating aggregate information on the main types of financial mismanagement or abuse occurring, the circumstances when these have occurred, how instances of mismanagement or abuse have been detected and whether its regulatory controls have operated as intended.

**15** The Public Guardianship Office created an investigations team comprising three staff in January 2004 to deal with allegations of suspected fraud or malpractice, but further efforts are needed to pursue potential cases of professional misconduct. By November 2004 the Investigations Unit was dealing with 112 cases of suspected financial abuse. By March 2005, the Unit had been established on a permanent basis comprising six full-time members of staff.

### On improving the quality of service:

**16** Feedback from stakeholders and outturn against its own performance indicators demonstrate that the Public Guardianship Office has improved the quality of the service it provides, particularly when compared to the low level achieved previously by the Public Trust Office. The Public Guardianship Office's 2003-04 annual report stated that it had met or exceeded 13 of its 16 targets and, where comparable data existed, had improved upon the performance achieved in 2002-03.

**17** The Public Guardianship Office still needs to tackle some important service issues. Our work suggested that administrative delays had sometimes led to clients receiving a poor service, particularly when a new receiver is appointed or when a major transaction requires approval. Amongst the 104 cases examined by us, the Order appointing a new receiver was issued on average over five months (147 days) after the initial application was made. Some of the delays were attributable, for example, to errors made by the applicants and objections to applications by third parties, but delays were also due to applications not being processed promptly. The Public Guardianship Office has now transferred experienced staff to tackle new applications, and reported that it had provided further training and was tightening its management procedures.

**18** The Public Guardianship Office may not be organised in the best way to meet the needs of all its customers. Some of the lay and professional receivers we consulted were critical of the inability of staff to access relevant information and the lack of specialist expertise demonstrated by some caseworkers. Receivers cited that they often had to deal with a series of caseworkers in the course of a single transaction, for example selling a client's house, sometimes causing delay and increasing the risk of error. Caseworkers usually work in teams of up to four people and staff are moved between teams for developmental purposes and to provide cover, for example when others are on leave. It is therefore not always possible for individual caseworkers to maintain continuity with individual receivers. In addition, the paper-based case files were not always available when callers rang. Caseworkers also have a large number of cases to deal with and therefore their time needs to be carefully targeted. At the end of 2004 there were approximately 164 cases per caseworker. Allocating cases to established teams based on, say, type or level of risk might help teams build up relevant knowledge and improve the service provided to receivers.

**19** Caseworkers' ability to provide a "personalised" service is inhibited by the Public Guardianship Office's lack of a suitable electronic case management system. In 2001-02, the Public Guardianship Office set itself a target to introduce a fully operational electronic case management system by 31 March 2003. Known as MERIS, the programme had three phases – Phase One was a case management system for managing Enduring Powers of Attorney; Phase Two was an electronic case management system for receiverships; and Phase Three was an integrated financial and management accounting system. The Public Guardianship Office contracted with LogicaCMG to deliver the project. As part of its routine responsibility for oversight, the Department for Constitutional Affairs reviews all of its IT projects to ensure that projects continue to be aligned with its priorities and continue to be affordable. Delays in the delivery of the first phase of the project and some concerns about the initial quality of the work gave the Department reason to believe that LogicaCMG would be unable to deliver the rest of the project within the timescale allowed, especially against a background of high demand for the Public Guardianship Office's services and its anticipation of changing requirements arising from expected legislation

on mental capacity<sup>10</sup>. The Department and Public Guardianship Office agreed that the best course of action was to reduce the scope of the project to exclude the element relating to the case management system for external receiverships, mainly Phase Two. In the Department's view, this allowed Phases One and Three of the project to be delivered successfully in 2004. The Public Guardianship Office reported that work is underway to secure and update its existing system to meet its other projected needs.

### On raising awareness of the Public Guardianship Office and its work:

**20** The public's awareness of the Public Guardianship Office and the services it provides is limited. Members of the public will often be in frequent contact with people subject to the Office's oversight and may be amongst the first to spot concerns. They may not, however, be aware of the Office's role and therefore may not contact it. In addition, the Office plays a part in raising awareness about the options available to all in the event of mental incapacity. Questions commissioned by us as part of a broader survey of members of the public suggested that 12 per cent of people had heard of the Public Guardianship Office; however, when questioned further only eight per cent of this group (around one per cent of the original sample) were able to provide a reasonably accurate description of what it did.

**21** Forty two per cent of respondents to the survey questions believed that they had adequate financial arrangements in place to take care of their finances should they suffer from some form of mental incapacity. It is not, however, possible to determine how many people in the population have made provision for an Enduring Power of Attorney in the event of losing mental capacity. The number of people with a registered Enduring Power of Attorney was 87,653 by the end of 2004 and has risen gradually over recent years. But Enduring Powers of Attorney are only registered when mental capacity is lost and therefore this number does not indicate whether people are currently making adequate arrangements.

**22** The Public Guardianship Office has recognised the need to raise public awareness of its work. The Office, however, reported that until recently its priority had been to take action to ensure the services provided to existing clients met an acceptable standard. In April 2004, the Public Guardianship Office drew up a marketing strategy to raise its profile with other organisations and the public. To ensure that it has the capacity to respond to the demands placed upon it, the Public Guardianship Office reported that it has decided to adopt a step-by-step approach. The strategy includes initiatives such as writing articles for literature distributed by the Department for Work and Pensions; distributing leaflets to a chain of care homes; attending conferences; and liaising with groups representing minority ethnic communities. In June 2004, the Public Guardianship Office piloted an initiative in Dorset to trial ways of raising awareness of the protection available in the event of mental incapacity, including working with local authorities and other groups to help distribute literature to those who might benefit. The activities piloted in Dorset are currently being rolled out nationally as part of the 2005-06 marketing strategy designed to increase public awareness of the services the Public Guardianship Office provides.

10 The Mental Capacity Act 2005.



## RECOMMENDATIONS

Overall, we estimate that implementation of the following recommendations will be broadly cost neutral. The cost of implementation will be met from the resources released, for example, from the better targeting of regulatory effort. We make the following recommendations:

- i** The Public Guardianship Office should collate aggregate information on the extent and nature of mismanagement and financial abuse that come to its attention; how the mismanagement was detected and whether its oversight procedures worked effectively. The information should be used to help target its resources on those controls that prove most effective and, where appropriate, help improve the advice and guidance given to receivers.
- ii** The Public Guardianship Office should target its efforts on those cases most likely to present the greatest risks. To do this more effectively, it should examine the scope for classifying existing cases according to risk and using this to guide, for example, the depth of review required on the accounts, the frequency of visits, and scrutiny required on the draw down of funds. Receivers with a proven track record of good performance should benefit from a lighter regulatory burden.
- iii** The Public Guardianship Office should provide the public and professionals, such as social workers and health staff, with a single contact point for reporting concerns they might have about potential financial mismanagement or abuse relating to the Office's clients. The Public Guardianship Office should introduce robust procedures for evaluating, investigating and, if necessary, taking prompt action to ensure concerns are remedied. Action may include alerting other relevant authorities, such as social services, to address concerns falling within their remit. The Public Guardianship Office should implement quickly the proposed "helpline" to enable third parties to report any concerns.
- iv** The Public Guardianship Office should raise awareness of its role amongst those professionals most likely to be in regular contact with the clients, including social workers, general practitioners, nurses and other health workers. Building on its marketing plan and its recent leafleting of general practitioner surgeries, the Public Guardianship Office should, for example, contribute to relevant professional training programmes, bulletins and other events. And it should further develop its contacts with other public and voluntary sector bodies whose work brings them into contact with its clients.





- v** The Public Guardianship Office should put in place arrangements to test whether the recommendations made by the Lord Chancellor's visitors have been acted upon where they have been accepted.
- vi** Building upon the improvements made in the last two years, the Public Guardianship Office should review whether its current organisational structure is best suited to delivering the further quality of service improvements that are needed. The Public Guardianship Office should consider whether teams might be better organised to target key risks, for example by the type of receiver, the type of asset, the type of client or region of origin.
- vii** Building on work currently underway, the Public Guardianship Office should put in place an adequate case management system to handle cases managed by external receivers. The system should be based on a sound assessment of current and future business needs; enable relevant staff to have access to key case documents; and, enable caseworkers to answer telephone queries from clients and receivers quickly and accurately.
- viii** The Public Guardianship Office should have adequate procedures in place to measure any changes in the public's knowledge of its work. It should also monitor the impact of its marketing initiatives on the take-up of its services.
- ix** As part of its evolving strategy, the Public Guardianship Office should examine the success of marketing initiatives implemented by similar organisations in the United Kingdom and overseas and use this to inform the development of its own strategy.