



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 £120¹ 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 years².

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 statute³, 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 powers⁴ 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 report⁵ and the subsequent Committee of Public Accounts report⁶ 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 years⁷, 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 months⁸, 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 so⁹. 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.

⁸ 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.

⁹ 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 capacity¹⁰. 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.

PART ONE

Introduction



Some individuals lack the mental capacity to manage their own financial affairs and property

1.1 A person can lose their mental capacity at any stage in their life for a variety of reasons. Elderly people, for example, can be subject to some form of dementia, such as Alzheimer's disease. Anyone, including younger adults and children, may suffer brain damage, perhaps as a result of an accident, or may develop a mental illness such as schizophrenia. When mental capacity is lost, the ability of the individual to manage their own financial affairs is restricted and therefore they become reliant on others. The complexity of these financial affairs can vary significantly and, irrespective of the amounts involved, require careful management (**Figure 1**).

There are two forms of financial protection available

1.2 If an individual develops a mental incapacity, they can have their finances managed in the following ways.

- **By making appropriate arrangements before the onset of mental incapacity.** An individual can use an **Enduring Power of Attorney**, introduced in 1985, to plan ahead and stipulate who should manage their finances in the event of them losing mental capacity. A power of attorney is a legal mechanism where one person – known as the donor – gives another person – known as the attorney – the power to act on the donor's behalf in relation to their property and

1 The assets required to be managed can vary significantly

- T is a 43 year old male with Down syndrome. He has assets worth £4,000
- J is a 79 year old female with severe dementia. She has assets worth £16,000
- R is a 44 year old male who suffers from schizophrenia and has a psychopathic disorder. He has assets worth £83,000
- S is a 90 year old female with Alzheimer's disease. She has assets valued at £147,000
- P is a 20 year old male who suffered brain damage following a road traffic accident. He received a damages award of £979,000

Source: National Audit Office review of the Public Guardianship Office's case files

financial affairs only. The donor can choose whether the Enduring Power of Attorney becomes effective immediately or only in the event that the donor loses capacity to manage their financial affairs, in which case it must be registered with the Court of Protection.

- **If a person has lost mental capacity and has not made an Enduring Power of Attorney.** When a person loses mental capacity, a person – known as a **receiver** – can be appointed by applying to the Court of Protection for the authority to look after the person's financial affairs.

The Court of Protection and the Public Guardianship Office are responsible for the protection and promotion of the financial well being of people who lack the capacity to do so themselves

1.3 The role of the Court of Protection, an office of the Supreme Court, is to protect, facilitate access to and manage the property and financial affairs of people who lack the mental capacity to do so themselves. Amongst other things, it appoints receivers¹¹, registers Enduring Powers of Attorney, deals with contested applications, and approves out of court settlements in proceedings for damages for personal injury or clinical negligence. Its powers are set out in the Mental Health Act 1983 and the Enduring Powers of Attorney Act 1985, and the rules made under both Acts.

1.4 The Public Guardianship Office, established in April 2001, is responsible for implementing the Court of Protection's decisions and providing administrative support. This was previously the responsibility of the Public Trust Office. The Public Guardianship Office aims to promote the financial and social well being of people with mental incapacity and undertakes checks to establish that receivers carry out their duties in an appropriate manner. Its Chief Executive can act as the receiver of last resort for cases where the Court of Protection is unable to identify anyone suitable and willing to take on the role. The Public Guardianship Office provides administrative support to the Court of Protection when it registers an Enduring Power of Attorney and also reports to the Court on any concerns it may have about an Enduring Power of Attorney.

1.5 The Public Guardianship Office moved to its current location in Archway, north London during the period December 2001 to March 2002. The loss of experienced staff due to the Office relocation, the introduction of a new organisational structure and a new telephone system contributed to a backlog of 22,000 pieces of work and record levels of complaints. The Public Guardianship Office has, through a restructuring of its operations, removed this backlog.

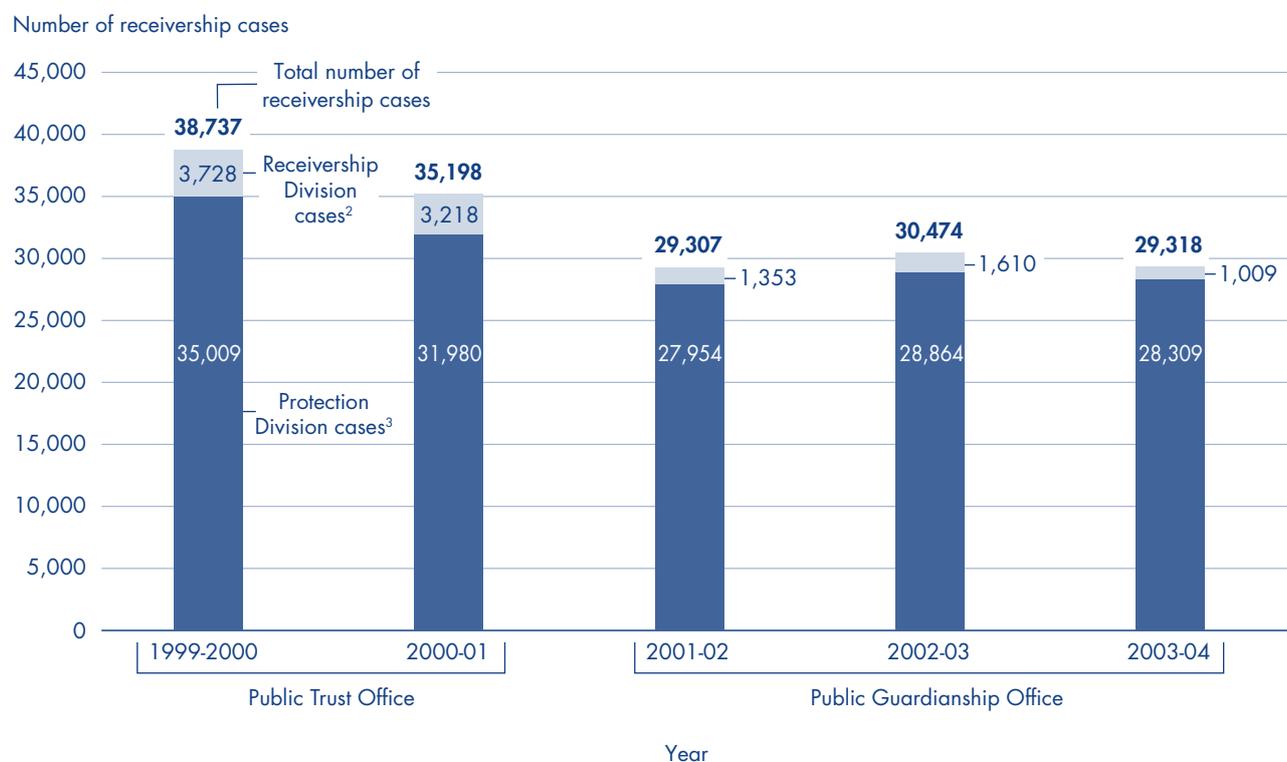
1.6 The Public Guardianship Office is an Executive Agency of the Department for Constitutional Affairs and is responsible only for people who are domiciled, or whose assets are held, in England and Wales. The structure of the Public Guardianship Office is explained at [Appendix 2](#). Similar roles are performed by the Office of the Public Guardian in Scotland and the Office of Care and Protection in Northern Ireland.

The number of people falling under the Court of Protection's jurisdiction and the Public Guardianship Office has remained broadly constant over the last three years

1.7 The number of receivership cases overseen by the Public Guardianship Office is shown in [Figure 2](#). Over each of the last five years, the number of applications to appoint a receiver has been roughly constant, although there has been a small increase in the last year. The number of applications to register an Enduring Power of Attorney ([Figure 3 on page 12](#)) has however increased year on year, bringing the number of applications to register an Enduring Power of Attorney in the calendar year 2004 to over 16,000 and the total number of registered Enduring Powers of Attorney in England and Wales to over 85,000 as at 31 December 2004. As at 31 March 2004, the Court of Protection, through the Public Guardianship Office, was responsible for 29,318 receivership cases. This is lower than the 39,000 cases in 1999-2000 due to the Public Guardianship Office reviewing and removing closed cases from the total in 2000 and 2001.

¹¹ In some circumstances, when the Court of Protection considers the receivership application, it may decide that it is not necessary to appoint a Receiver, but will instead make a Short Order which appoints a named individual to have oversight. This will usually apply where the capital value of the client's estate does not exceed £16,000 and there is no property to be sold. Under a Short Order there is normally no requirement to submit annual accounts.

2 The number of receivership cases remained broadly constant between 2001-02 and 2003-04¹

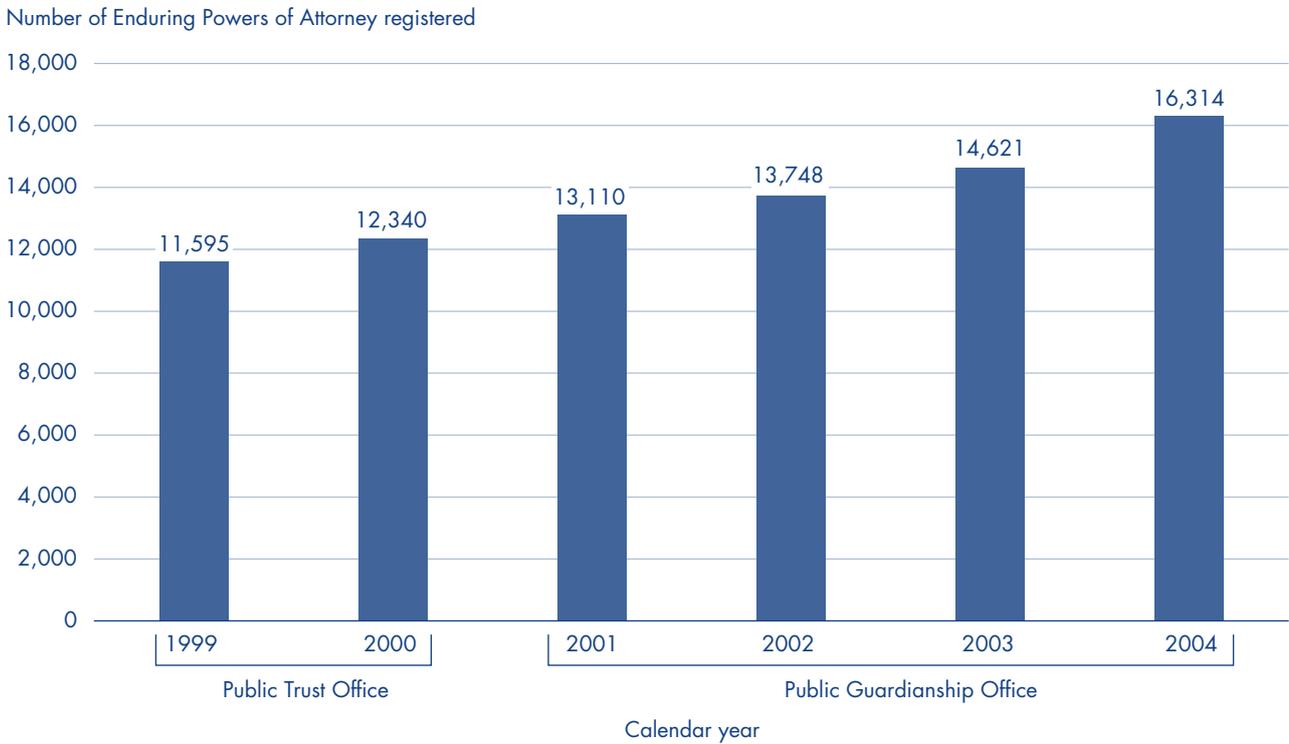


Source: National Audit Office analysis of the Public Trust Office's and the Public Guardianship Office's annual accounts supplemented by information supplied by the Public Guardianship Office

NOTES

- 1 Figures include cases where the client has died and the Public Trust Office/Public Guardianship Office is winding the case up.
- 2 The Public Guardianship Office aims to reduce the number of cases where it acts as the receiver of last resort (known as Receivership Division cases). The number had fallen to 244 by December 2004.
- 3 Protection Division cases are those where the client has a professional or lay receiver.

3 Number of registrations of Enduring Powers of Attorney – 1999 to 2004



Source: National Audit Office analysis of the Public Trust Office’s and the Public Guardianship Office’s annual accounts and information supplied by the Public Guardianship Office

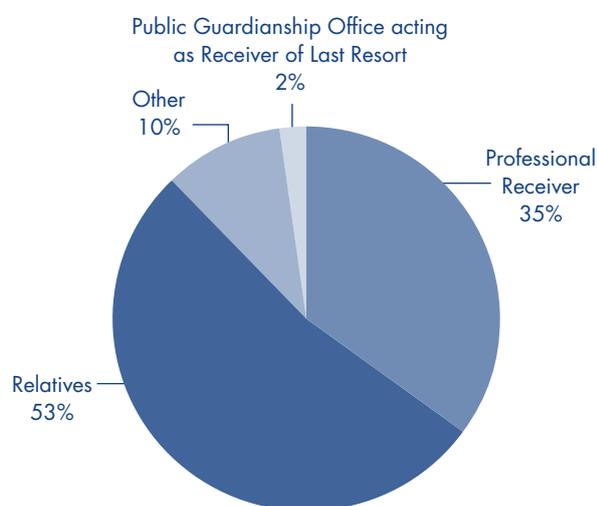
Once appointed, a receiver’s actions are subject to a number of checks by the Public Guardianship Office

1.8 The Court of Protection considers all applications from those who wish to act as a receiver or have a receiver appointed. After considering the evidence available to it – such as a medical certificate, the views of the client and his or her relations, the applicant’s declaration and details of the client’s assets and income – it issues a First General Order which appoints a receiver. This document sets out the receiver’s powers in relation to the client’s property and financial affairs, for example to receive income such as social security benefits, rents, dividends and interest; and, if appropriate at that stage, to sell the client’s property. The First General Order also sets out the receiver’s duties, such as submitting a receivership account to the Court of Protection annually. And the receiver needs the First General Order to open a receivership account with a bank or other financial institution.

1.9 Anyone over the age of 18 can apply to be a receiver or have a receiver appointed. The Public Guardianship Office splits receivers into three categories - professional receivers, lay receivers, and receivers of last resort. Professional receivers include local authorities, solicitors and accountants; a lay receiver will typically be a relative of the client. **Figure 4** shows that a lay receiver has been appointed in around two thirds of cases.

1.10 The Public Guardianship Office supervises receivers in a number of ways (**Figure 5**). It recovers 79 per cent of its costs through fees charged to its clients. Details of the fees charged are shown in **Appendix 6**. In Parts 2 and 3 of this report, we review these aspects of the Public Guardianship Office’s work.

4 Receivers have a variety of backgrounds (as at February 2005)



Source: Public Guardianship Office

NOTES

- 1 'Other' includes joint receivers, deceased receivers, clients without a receiver, and unknown types of receiver.
- 2 When a receiver dies the Public Guardianship Office looks to identify a suitable replacement as soon as possible. It normally writes to family members to ascertain whether anyone would be willing to act (subject to application). Otherwise, the Court of Protection will approach a professional or panel receiver to take on the work.

The Public Guardianship Office's oversight of Enduring Powers of Attorney differs from its oversight of receivers

1.11 When an attorney believes that the donor is losing mental capacity (see paragraph 1.2, first bullet), the attorney is under a legal duty to apply as soon as possible to register the Enduring Power of Attorney with the Court of Protection. A fee of £120¹³ is payable when an application is made to register an Enduring Power of Attorney. As part of the registration process, the Public

5 The Public Guardianship Office's oversight of receivers

The Public Guardianship Office:

- Monitors the receiver's dealings with client's money by collecting an annual account and supporting evidence showing what has been received and what has been spent on the client's behalf
- Commissions visits to the client by an independent specialist – known as a Lord Chancellor's visitor – to ensure that the receiver is meeting the client's needs and to provide information to the Court of Protection
- Arranges releases of the client's funds into the receivership account – for example, to cover the purchase of a high value item, such as a car or when maintenance exceeds income
- Manages the administrative aspects of authorising the sale of a property (where authorised by the Court of Protection) or the purchase of a property on the client's behalf
- Puts in place a security bond¹² to provide financial cover should a receiver's actions lead to financial loss for the client
- Provides information to receivers on issues relating to the investment of client funds (it does not provide investment advice)

Source: National Audit Office

Guardianship Office will check the application forms and the Enduring Power of Attorney form to ensure they comply with the Enduring Power of Attorney Act. Once registered, an attorney does not have to routinely submit accounts to the Public Guardianship Office. Similarly, the donor is not automatically visited by one of the Lord Chancellor's visitors.

1.12 The Court of Protection has powers to intervene in running registered Enduring Powers of Attorney if, for example, it has evidence which suggests the attorney is not acting in the donor's best financial interests. In such situations, it may ask for an explanation of the donor's dealings and the submission of relevant documents, including accounts. The Court of Protection has powers to suspend or terminate an attorney's duties.

¹² The bond is an insurance against the receiver losing the client's money, either through mismanagement or abuse. Bond premium payments must be made annually and come out of the client's funds, the bonded amount being equal to one and a half times the amount of money expected to come under the receiver's control.

¹³ Fee rate payable from 1st April 2005. The fee charged prior to April 2005 was £220.

The Public Guardianship Office charges fees for the service it provides to clients

1.13 Under the provisions of the Mental Health Act 1983, and Enduring Power of Attorney Act 1985, the Public Guardianship Office charges fees for the range of services that it provides to receivers (see Appendix 6). During 2003-04, the Public Guardianship Office's invoiced fee income was £12.3 million (62 per cent of its total costs for that year). Fee income is reduced by remissions, which for 2003-04 were £456,000. The Court of Protection can waive a fee if the client or their dependents would experience hardship by paying it, or if there are exceptional circumstances (see Appendix 6 – Fees charged by the Public Guardianship Office for its services – for details about fees and fee remission).

An ageing population and the Mental Capacity Act 2005 present the Public Guardianship Office with a number of challenges

If current trends continue, the number of people requiring oversight by the Public Guardianship Office will increase over time

1.14 Over the next 30 years, the population of England and Wales is projected to increase from 53 million in 2004 to 59.7 million in 2036. The population will also age. As a result, the Public Guardianship Office expects the number and proportion of the population at risk of losing mental capacity to increase¹⁴.

1.15 In addition, the number and value of personal injury awards has increased. These cases can be particularly complex, involving large sums of money which need to be managed over a life which may span many decades. This places greater demands on the skills of receivers and the ability of the Public Guardianship Office to oversee their work.

The Mental Capacity Act 2005 focuses on clients' health and welfare as well as their financial well being

1.16 In April 2005, the Mental Capacity Bill received Royal Assent. The Act aims to provide a framework for making decisions on behalf of people who lack the capacity to do so for themselves. The key features of the Act, as they relate to the work of the Public Guardianship Office, are shown in **Figure 6**. The Act's provisions are due to come into force from April 2007.

1.17 The Public Guardian and his/her staff will register Lasting Powers of Attorney and maintain a register of orders appointing deputies. The Public Guardian will also supervise deputies and carry out other functions attributed to it under the provisions of the Mental Capacity Act 2005.

6 Key features of the Mental Capacity Act 2005

The introduction of:

- A statutory assumption that a person has mental capacity until shown otherwise.
- A new single definition and a functional test (which focuses on whether an individual is able to make a particular decision themselves) for the lack of capacity.
- A new statutory requirement that all decisions taken on behalf of a person who lacks capacity are made in the person's best interests.
- Lasting Powers of Attorney, which extend the current system of delegated decision making (Enduring Power of Attorney) to a chosen person to include healthcare and welfare, not only financial and property issues.

The creation of:

- A new Court of Protection, which will be responsible for health and welfare as well as financial issues, and will have jurisdiction over the Act's provisions.
- Deputies (replacing receivers), and donees, who will have a role in relation to the healthcare and welfare, as well as the financial affairs, of a person with mental incapacity.
- A new Statutory Office, the Public Guardian, whose role will be to act as a registration body for Lasting Powers of Attorney, to act as a supervisory body for deputies, and to act as an investigative body dealing with concerns about donees or deputies.

Source: National Audit Office

¹⁴ Research shows that, with an ageing population, more people are likely to suffer some sort of mental illness during the later years of their lives. Dementia affects one person in 20 aged over 65 years and one person in five over 80 years of age.

The Committee of Public Accounts was critical of the Public Guardianship Office's predecessor, the Public Trust Office

1.18 The National Audit Office and Committee of Public Accounts were critical of the Public Guardianship Office's predecessor, the Public Trust Office. In 1994, we published a report, *Looking after the financial affairs of people with mental incapacity*¹⁵ which examined the work of the Public Trust Office. And in 1999, we followed this up with our report *Public Trust Office: Protecting the Financial Welfare of People with Mental Incapacity*¹⁶. Our 1999 report identified a number of continuing weaknesses in performance (Figure 7). In its report¹⁷, published in September 1999, the Committee of Public Accounts made a number of recommendations to improve protection (Appendix 3).

7 In 1999, the National Audit Office identified a number of weaknesses in the Public Trust Office's operations

- In 1996-97, 40 per cent of receivers did not submit an annual account showing how they had used patients' money
- The Public Trust Office collected insufficient information on the activities of receivers who failed to submit accounts to judge the level of undetected abuse
- Only two thirds of clients for whom the Chief Executive of the Public Trust Office acted as receiver of last resort were visited during 1996-97
- The information held by the Public Trust Office on patients visited did not allow it to inform the strategic direction of the visits
- While the Public Trust Office had improved customer care since we reported in 1994, it achieved only five out of its 22 standards in 1996-97

Source: National Audit Office summary of key findings from *Public Trust Office: Protecting the Financial Welfare of People with Mental Incapacity* (HC 206, Session 1998-99)

1.19 The then Lord Chancellor's Department¹⁸ responded by introducing a number of organisational changes. In April 2001, the Public Trust Office's mental health functions were transferred to the Public Guardianship Office – the latter was established for this purpose. The Public Trust Office's trust functions – where the Public Trustee acts as an executor or trustee when asked to do so – were transferred to the Official Solicitor's Office (now known as the Official Solicitor and Public Trustee) and the Court Funds Office was transferred to the Courts Service.

1.20 The Public Guardianship Office's role with respect to investment is different from that of its predecessor, the Public Trust Office. The Public Guardianship Office does not invest clients' funds on their behalf, nor does it provide receivers with investment advice. The Public Trust Office did invest on behalf of clients when the Public Trustee was receiver, however since the creation of the Public Guardianship Office this function has been undertaken by external fund managers appointed by the Court at the request of a receiver. There is also a panel of fund managers available, appointed by the Department for Constitutional Affairs, whom the receiver can choose if they do not have a fund manager of their own, to manage an individual client's affairs.

The study's scope and methods

1.21 This report considers whether the Public Guardianship Office:

- is guarding against the risk of mismanagement of clients' assets;
- is taking sufficient steps to improve service quality; and
- is doing enough to raise the public's awareness of the options available in the event of loss of mental capacity.

1.22 Our study methods are described in detail in **Appendix 1**. As part of our work, we also examined the progress achieved against the recommendations made by the Committee of Public Accounts in its 1999 report. Appendix 3 summarises the Public Guardianship Office's responses to the Committee of Public Accounts' recommendations.

15 HC 258, Session 1993-94.

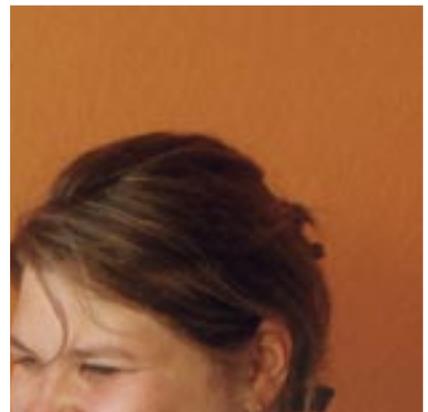
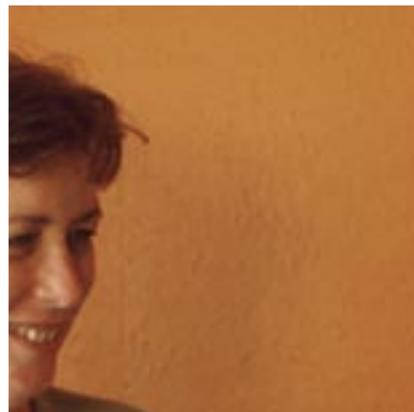
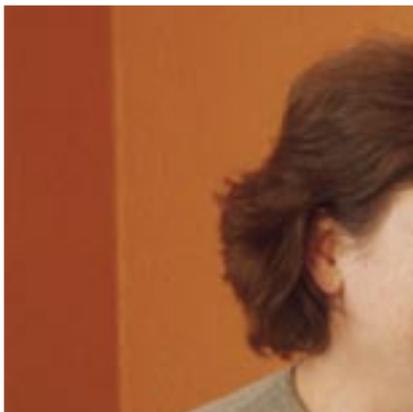
16 HC 206, Session 1998-99.

17 Committee of Public Accounts, Thirty-Fifth Report 1998-99.

18 The Lord Chancellor's Department was replaced by the Department for Constitutional Affairs on 12 June 2003.

PART TWO

Guarding against mismanagement



2.1 This part of the report examines:

- i** whether the Public Guardianship Office knows enough about the risks it is seeking to manage;
- ii** whether the Public Guardianship Office's efforts are sufficiently targeted at known risks; and
- iii** whether the Public Guardianship Office acts effectively to deal with allegations of financial abuse.

i Whether the Public Guardianship Office knows enough about the risks it is seeking to manage

The Public Guardianship Office has sought to improve its understanding of the risks faced by clients, but still lacks adequate aggregate information on the risks it is managing

2.2 The financial affairs of most of the clients falling within the remit of the Public Guardianship Office will be competently managed and the clients' needs will be adequately met by their receiver. The Public Guardianship Office seeks to prevent and detect instances where the clients' needs are not being best served. At its worst, a vulnerable client may be the subject of fraud or other criminal activity. It is not necessarily the receiver or attorney who is most likely to financially

abuse (**see definition below**) a vulnerable client. The source of exploitation may come from anyone in contact with clients, ranging from family members, carers, and acquaintances to advisers. Some may not have an official responsibility for the victims' funds, but nevertheless gain access to their assets using their power and influence over the victim. A client's assets and income can also be at risk because of a lack of knowledge on the part of, or poor management by, the receiver or an attorney acting under an Enduring Power of Attorney, even though they may not gain financially. Our examination of case files highlighted examples of the types of issues and problems that can occur with a receivership and which had been addressed by the Public Guardianship Office (**see Figure 8 overleaf for examples**).

Financial abuse: a working definition

Financial abuse is the intentional or opportunistic appropriation of the income, capital or property of a vulnerable person through theft, fraud, deception, undue influence or exploitation. This includes the hoarding of a vulnerable person's resources for future gain, which is also a form of exploitation and may be associated with culpable neglect.

Source: "The role of the Public Guardianship Office in safeguarding vulnerable adults against financial abuse", Salomons, Canterbury Christ Church University College

8

Examples of types of issues and problems that a person with mental incapacity may experience and with which the Public Guardianship Office may have to deal

- Ms F suffered a stroke and her financial affairs were being handled by a solicitor acting as a professional receiver. Ms F's daughter alleged unprofessional behaviour on the part of the receiver in that Ms F's debts continued to rise after the receiver was appointed; standing orders were not cancelled; and the issuing of a county court judgement due to an unpaid bill. Ms F's daughter applied to be the receiver. The application was subsequently rejected by the Court as it found that the receiver had acted properly.
- Ms E suffers from impairment of short term memory and her financial affairs are handled by a solicitor, acting as a professional receiver. Following a visit by a Lord Chancellor's visitor, recommendations were made for property refurbishment and purchase of clothing for Ms E. The visitor's report raised a number of concerns about the client's living conditions, her vulnerability, and the need for property refurbishment and safe heating. The receiver started tackling these issues following the visit.
- Ms B suffers from Alzheimer's disease and this is a case where the Chief Executive of the Public Guardianship Office acts as the receiver. Ms B's son misappropriated a large sum (£50,000) during October 2000. Due to failures by the Public Trust Office in responding to correspondence, the son's offer of repayment did not begin until February 2003. Payments are being made at a rate agreed by the Court of Protection and the other beneficiary of the client's estate, taking into account the fact that the client has sufficient funding to meet all her needs. Any repayments outstanding on her death will be a debt on the estate, that is, they will still need to be repaid by the son.

Source: National Audit Office review of the Public Guardianship Office's case files

2.3 The Public Guardianship Office has sought to improve its knowledge of the nature of the risks it is trying to regulate. In September 2001, the Public Guardianship Office commissioned the Centre for Applied Social and Psychological Development¹⁹ (known as Salomons) to help improve its understanding of the risk of financial abuse and mismanagement. Salomons reviewed the available research literature on financial abuse, both here and abroad, and interviewed Public Guardianship Office staff and stakeholders. The study included an examination of 48 case files where potential abuse had come to the attention of either the Court or the Public Guardianship Office. Of the latter, the alleged perpetrators were in 27 cases (56 per cent) attorneys appointed under an Enduring Power of Attorney, 12 per cent were receivers and in the remaining 32 per cent the person responsible for putting the client at risk did not have an official means of taking charge of the client's finances. In its report, completed in January 2003, Salomons made a number of recommendations for improving the Public Guardianship Office's assessment and management of risk, including improved systems for classifying risk.

2.4 Our work suggested, however, that the Public Guardianship Office currently lacks adequate aggregate information on the nature and scale of the risks it is managing, and hence information to enable it to review whether its resources are targeted appropriately. Whilst it collects a wealth of information in the course of managing individual cases, it does not have routine mechanisms for collating this information to provide an overall picture of the main types of mismanagement, the circumstances when this has occurred, how instances of mismanagement have been detected and whether its regulatory controls have operated as intended.

ii Whether the Public Guardianship Office's efforts are sufficiently targeted at known risks

2.5 Once a receiver is appointed by the Court of Protection, the Public Guardianship Office relies on evidence obtained from a number of sources to maintain oversight of the stewardship of each case. These sources include:

- a the receipt of accounts from receivers;
- b periodic visits to clients by visitors appointed by the Lord Chancellor; and
- c information from third parties.

¹⁹ An associate faculty of Canterbury Christ Church University College.

The Public Guardianship Office is meeting its targets for the collection and review of receivers' accounts but the accounts review process sometimes misses potential causes for concern

2.6 Our work suggests that the Public Guardianship Office has improved its performance in collecting accounts promptly, particularly when compared to the Public Trust Office's performance in 1998-99 (**Figure 9**) – the last time we reported on this subject. Much of the improved performance has been due to better arrangements for reminding receivers before an account is due and for chasing receivers when an account is late. In 2002-03 and 2003-04, the Office reported that it had collected all the accounts due within its target of six months of the due date, or had taken other action to obtain them. Our examination of a sample of cases (108 from Protection Division, which oversees professional and lay receivers) in 2002-03 and 2003-04 found that accounts had been submitted within six months in 92 per cent of cases. 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 that proper accounts are produced.

2.7 The Public Guardianship Office is reviewing accounts more promptly when they are submitted but the depth of review is limited and some instances of potential cause for concern are missed. The review of accounts focuses on, amongst other things, whether the account has been completed correctly, that it balances, and that the security bond is set at the appropriate level. The accounts are supported by bank statements. Our work suggested that the Public Guardianship Office had been active in chasing up outstanding issues - queries were raised with the receiver in around a third of the cases examined by us (**Figure 10 overleaf** summarises the reasons for requesting further information). The reviews focused on administrative issues. Our review highlighted examples where further questions might have been asked (**see Figure 11 overleaf**). The Public Guardianship Office reported that it requires case workers to consider the sustainability of expenditure when authorising the release of additional monies to receivers.

9 The Public Guardianship Office's performance in relation to the collection and receipt of accounts

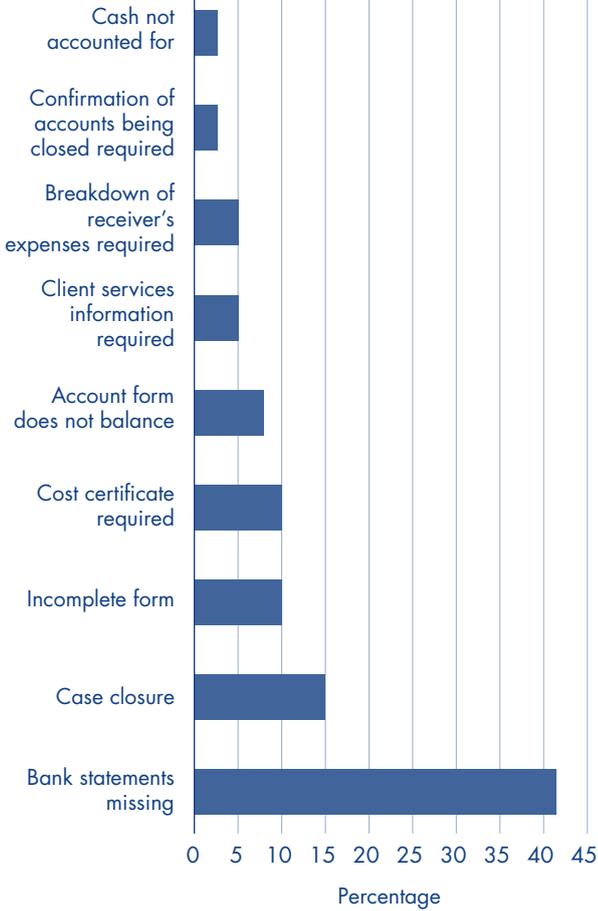
Target	Performance for 1998-99	Outturn for 2002-03	Outturn for 2003-04
100 per cent reviewed within four weeks of receipt	85 per cent	100 per cent ¹	100 per cent
Collect 60 per cent within two months of the due date	11 per cent of receivers' accounts were submitted on time, with almost 20 per cent more than six months late.	67 per cent	72 per cent
Collect 80 per cent within four months of the due date		89 per cent ²	91 per cent
Collect 100 per cent within six months of the due date, or have taken appropriate action		100 per cent	100 per cent

Source: Public Guardianship Office annual report and accounts for 2003-04 and report from the Comptroller and Auditor General Public Trust Office: Protecting the Financial Welfare of People with Mental Incapacity (HC 206, Session 1998-99)

NOTES

- 1 The target for 2002-03 was 100 per cent within five weeks.
- 2 The target for 2002-03 was 70 per cent within four weeks.
- 3 The Public Guardianship Office's performance information was validated by the Department for Constitutional Affairs' Internal Audit team in 2002-03 and 2003-04.

10 Queries raised by the Public Guardianship Office following its review of receivers' accounts



Source: National Audit Office review of a sample of case files

11 Example of issues not identified during the Public Guardianship Office's review of accounts

- The bank statements supporting one account showed 27 cash and cheque withdrawals totalling £18,408 during the period 8 June to 5 July 2002. The accounts review did not question the unusual amounts or pattern of these withdrawals.

Source: National Audit Office review of a sample of case files

2.8 The depth of the accounts review often reflects the little time staff have to complete their work. The Public Guardianship Office employs 27 staff (24 full time and three agency staff) to review accounts. The staff responsible are employed on a separate team specifically dedicated to this task to ensure they do not have any prior knowledge of the case before they undertake their review. Workloads can fluctuate significantly, reflecting the rate at which accounts come in. There is no mechanism currently for staff to identify those cases more likely to be at risk and therefore to target their time where it is most needed.

2.9 The information contained in the accounts is not always matched up with other information kept by the Public Guardianship Office on file. Our review of cases found that a number of files lacked a copy of the reviewed accounts. As a result, case workers who have responsibility for dealing with any queries arising on cases do not have crucial information to hand and therefore may not be able to check easily the consistency of other information they receive with accounts data.

The Public Guardianship Office has expanded the number of visits to clients but needs to improve its follow-up of visitor recommendations

2.10 Most of the Public Guardianship Office's dealings on individual cases will be with the receiver appointed in each case, mainly through correspondence and via telephone. Caseworkers, who are all based at the Public Guardianship Office's premises in Archway, north London, will rarely come into direct contact with clients. The Public Guardianship Office is therefore dependent mainly on visits to see the client, carried out by one of 15 Lord Chancellor's visitors (and 13 reserve visitors), to ensure that the receiver is meeting the client's needs and to provide information to the Court of Protection and, where appropriate, feedback to the receiver (**Figure 12**). The visitors are freelance and work under contract to the Public Guardianship Office. The Court of Protection expects that all clients where the Public Guardianship Office acts as the receiver should be visited by a Lord Chancellor's visitor annually and all other clients, at least once every five years²⁰. **Figure 13** illustrates the different types of visits by Lord Chancellor's visitors. Clients may be visited more frequently if the Court, visitor or case worker judge it appropriate.

20 For 2004-05, the Public Guardianship Office has established an internal target to visit each client every three years.

12 Example of a visitor providing advice on the management of a client's affairs

M, a young boy with cerebral palsy who is wheelchair dependent, has received a large compensation award. He is dependent on his family for all his needs and his mother has been appointed as his receiver. The receiver has not been able to open a receivership bank account and does not therefore have a cheque book or card facility. The receiver has not prepared a budget based on M's annual needs, and is nervous about investing in stocks and shares. M's funds are held in the Court Funds Office deposit account, where interest is paid to M rather than accumulated in the account, the receiver's preferred option. Following a recent visit, the Lord Chancellor's visitor was able to help the receiver in the following ways:

- Recommended that M's case worker ensure that the fund is altered to accumulate interest
- Made the receiver aware of the potential long term benefits of investments
- Discussed the possibility of the receiver receiving payment as M's carer
- Informed the receiver that she could include some household costs and an amount for herself acting as M's carer in the budget
- Informed the receiver that no tax is payable on care allowances
- Informed the receiver that, based on a budget, she could withdraw an agreed amount each month from the receiver's account on M's behalf
- In addition to providing advice the visitor was able to provide the receiver with some reassurance as to the receiver's role.

Source: National Audit Office visit with a Lord Chancellor's visitor

13 Lord Chancellor's visitors will visit a client for a number of reasons

- Visit within six months of the receiver being appointed
- Visit within 12 months of a previous visit where the visitor recommended there were reasons to revisit
- Annual visit to all clients where the Public Guardianship Office acts as the receiver
- Special visits where the Court of Protection commissions a visit to help inform a decision
- Needs assessment visits where a client advisor commissions a visit to inform a decision or to obtain background information
- Sample visits where the Court of Protection exercises its discretion to investigate certain categories of cases
- Ten per cent of Short Order cases are visited

Source: Public Guardianship Office

2.11 The Public Guardianship Office increased the number of visits carried out to 6,675 in 2003-04 compared to 1,200 in 1997-98 when we last looked at the role of the visitors. The Public Guardianship Office has achieved its target of visiting at least 6,000 clients in every year since its creation (6,227 in 2001-02 and 6,354 in 2002-03). The number of visits in 2003-04 represents 33 per cent of the total number of ongoing receivership cases overseen by the Public Guardianship Office. In 2003-04, the fee cost of the visits programme was £513,000 or £77 per client visited. In 2004-05, the Public Guardianship Office expects the number of visits to exceed 7,000.

2.12 In February 2004, the Public Guardianship Office completed a review of the visits programme – the review had been prompted by an examination by the Department for Constitutional Affairs' Internal Assurance Division a year earlier, following restructuring of the programme in 2000-01. The Internal Assurance team had identified a lack of clear definition of the programme's aims, and no process in place to monitor the effectiveness of visits or to ensure that visitors' recommendations were actioned.

2.13 Our work identified continuing weaknesses in the arrangements for visits and for following up the issues raised on visits:

- Visits did not always take place. Subject to the specific requirements noted in Figure 13, the Public Guardianship Office aims to visit at least 6,000 clients a year. Where the requirements in Figure 13 do not provide enough numbers to make up 6,000 visits, the Public Guardianship Office also visits a sample of people who have been clients for five years. When we looked at a sample of cases, we found that 28 per cent of the cases examined showed no evidence of a visit having taken place. The Public Guardianship Office reported that while the average case with the Court only lasted four years, there are about 5,000 cases where the client had been with the Court for more than six years. The Public Guardianship Office acknowledged that many of these clients have not been visited for many years and this is because they did not fall within the criteria set for a visit. The Public Guardianship Office reported that these criteria have since been revised and from 2005-06, it plans to start visiting every client every three years, and will seek to ensure that in the next three years all clients not previously visited will receive a visit.
- Where the Public Guardianship Office's Chief Executive acts as the receiver of last resort, the Public Guardianship Office is expected to visit all clients annually. We examined 42²¹ cases of which three had not had visits during the 12 month target period.
- Visit reports were not on case files in nine per cent of the files we reviewed.
- The action taken to follow-up recommendations was not always clearly recorded. Responsibility for deciding whether to follow up a visitor's recommendations and for initiating action rests with the relevant case worker. We found some examples where recommendations had not been implemented. It was not clear from the files whether the caseworker had decided not to implement the recommendation or whether the recommendation had been accepted but not actioned. There were no arrangements in place to enable managers to monitor progress in implementing recommendations.

2.14 The most recent campaign in 2004 to appoint three visitors, as well as establish a panel of reserve visitors, was advertised nationally. Applicants were required to demonstrate experience of dealing with people with mental capacity issues, and a knowledge of mental health legislation. Many of the visitors come to the role with considerable experience in the type of issues they are likely to encounter, for example as health professionals. But they will not necessarily have knowledge of all the main issues they are likely to encounter, at least initially. Apart from a one-day induction course, the visitors are not expected to attend any structured training programme, although the Public Guardianship Office has organised two conferences for visitors in recent years. A more structured programme of training would ensure that all visitors are given clear instructions about the purpose of the visits and a common grounding across the range of issues they are likely to encounter. In the Public Guardianship Office's view, because of the visitors' self-employed status, it is constrained in providing anything other than induction or familiarisation training.

The Public Guardianship Office's arrangements for receiving information from third parties are underdeveloped

2.15 The first signs of potential mismanagement may be spotted by professionals – such as doctors, social workers and welfare rights advisers – or friends of the client. If the Public Guardianship Office is to be made aware of potential concerns, third parties need to be aware of its role and know how to make contact with it. Our interviews with stakeholders suggested, however, that its links with the professions are underdeveloped. The Public Guardianship Office is seeking to increase its profile. During 2004, for example, it has featured in a Department for Work and Pensions publication sent to professionals to provide information on, amongst other things, benefits. From January 2005, the Public Guardianship Office is, for example, introducing a 15 month campaign to place leaflets and posters in 60 per cent of doctors' surgeries²² nationwide; and it is publicising its work through Vulnerable Adult Protection Committees which consist of the lead agencies most likely to come into contact with vulnerable people.²³ The Public Guardianship Office has also recently established an outreach team. Our work suggested that other options could include raising awareness of its role and powers by working with professional bodies on training programmes and through professional bulletins.

21 A visit to ten of the 52 cases we examined from Receivership Division was not appropriate or feasible during 2003-04.

22 9,264 is the total number of general practitioner practices in England (8,748) and Wales (516), as at 30 September 2002 (Office for National Statistics).

23 Local council and partner agencies (such as social services, police, primary care organisations, probation, district and borough councils) have established adult protection committees to cooperate in safeguarding vulnerable adults. Typically, they ensure that arrangements work effectively to identify abuse or inadequate care, help vulnerable people, and plan and implement joint preventative strategies.

2.16 The Public Guardianship Office should make it easier for members of the public and professionals to raise concerns. At present, concerns sent to the Public Guardianship Office in writing may be routed directly to caseworkers and may not be tracked to ensure they are evaluated and, if necessary, followed up. Stakeholders we consulted suggested that the Public Guardianship Office should establish a direct line so that the public and professionals could contact the Office if financial abuse of existing clients was suspected (if the allegation concerned an individual who was not a client of the Public Guardianship Office, it would redirect the allegation to the relevant authorities). The Public Guardianship Office reported in its evaluation of the Investigations Unit pilot in November 2004, that a ‘helpline’ should be set up and publicised as soon as staffing is in place. The Public Guardianship Office reported that it intended to implement this recommendation.

The Public Guardianship Office is seeking to reduce the regulatory demands placed on receivers, but needs to improve the targeting of its scrutiny

2.17 Our evidence suggests that the Public Guardianship Office needs to target its scrutiny more effectively at risk, whether it is the scrutiny of accounts, frequency of visits or the freedom given to receivers to apply clients’ assets without prior approval. Two thirds of the stakeholders we consulted believed that the Public Guardianship Office could target its efforts better.

2.18 The Public Guardianship Office is examining ways of reducing the regulatory demands made upon some receivers. In recent years the Court of Protection and Public Guardianship Office have taken a number of steps to reduce the demands made on receivers. Where assets fall below £16,000, for example, the Office’s practice is to recommend to the Court that the receiver is discharged, unless there are good reasons for not doing so.²⁴ Additionally, since 2002, the Public Guardianship Office and the Court have taken the view that receivers should have access to enough capital to meet a year’s requirements. This has reduced the need for a receiver to ask permission from the Court and the Public Guardianship Office before they spend money. In 2002, the Public Guardianship Office established a project, called Needs Assessment, to provide certain types of receiver with a

degree of autonomy from the Public Guardianship Office. As part of the project, local authorities (covering 400 cases) and professional receivers (accountants and solicitors) have been given a greater degree of discretion relating to clients’ financial decisions. Specifically:

- *Access to capital* – the empowered receiver has free access to cash, capital and funds held in the Court Funds Office;
- *Sale of property* – the empowered receiver no longer needs an Order to sell sole ownership property;
- *Provision to make gifts* – the empowered receiver can make gifts, up to a specified limit, on behalf of the client.

The Needs Assessment project also includes the implementation of the recommendations in the Salomons report; the introduction of Criminal Records Bureau checks for cases identified as high risk; and checks on bankruptcy, county court judgements and the address of new applicants.

iii Whether the Public Guardianship Office acts effectively to deal with proven cases of malpractice or fraud

The Public Guardianship Office has created an investigations team to deal with allegations of suspected fraud or malpractice but potential cases of professional misconduct are not always pursued

2.19 In January 2004, in response to the Salomons report, the Public Guardianship Office established a new Investigations Unit specifically to examine allegations of financial abuse, a task that was previously undertaken by caseworkers. By November 2004, the Unit was dealing with 112 cases of suspected financial abuse.

Figure 14 overleaf summarises the outcome of the investigations no longer ongoing. **Figure 15 overleaf** details two examples of the cases investigated. In the event of a receiver being involved in financial abuse, the receiver is usually removed by the Court from handling the financial affairs of the client involved and from other cases in which there is receivership responsibility.

²⁴ Once the receiver is discharged, the management of the remaining assets becomes the responsibility of a “nominated” person. The “nominated” person does not, for example, have to submit annual accounts unless the Court specifically requires them to do so.

14 Outcome of cases examined by the Investigations Unit

Number of cases	Results of fully investigated cases by the Investigations Unit
10	Proved misappropriation and/or mismanagement of clients' funds where former receivers were guilty of misappropriating clients' funds or mismanaging clients' financial affairs by failing to claim benefits on behalf of clients
6	Clients died before the Investigations Unit was able to complete the investigations
1	Impossible to prove misappropriation by a third party, but a new receiver was appointed to commence legal action for possession of a property
13	No evidence of either financial abuse or mismanagement
30	Total

Source: National Audit Office summary of Investigations Unit data

2.20 A minority of the stakeholders we consulted were critical of the speed with which allegations of abuse had been handled. These stakeholders will have been referring to the position before the new team was set up but prompt action will be crucial if clients' assets are to be safeguarded. This will depend on a quick and accurate assessment of the facts by staff. Cases involving potential financial abuse are referred to the Investigations Unit by casework teams. The Public Guardianship Office's own evaluation of the pilot Investigations Unit noted concerns that cases were not being referred to the Unit as quickly as possible, and that few of the referrals had come from the accounts review team.

2.21 The Public Guardianship Office is seeking to strengthen the skills of its investigation team and its approach. It recruited further staff, for example, in March 2005 to the team, bringing the complement up to six full-time staff. And it has recently approached the Office of the Public Guardian in Scotland to help arrange joint training for its investigation staff on how to conduct investigations.

15 Examples of cases examined by the Public Guardianship Office's Investigation Unit

■ Mr G has a severe learning disability and lives in a local authority nursing home. His sister was appointed as his receiver by the Court of Protection in April 1996. She failed to render any annual accounts and was discharged as receiver in November 2001. During her time as receiver she collected almost £18,500 in severe disability allowance for her brother but only paid some of the money to the local authority to pay for her brother's accommodation. By July 2001, arrears of accommodation charges amounted to almost £4,000. The receiver had also made unauthorised withdrawals amounting to some £7,300 from the client's building society account which the Public Guardianship Office is currently trying to recover from the building society. The total amount of money misappropriated by the receiver was some £19,500. The Public Guardianship Office called in the receiver's insurance bond of £7,500 which was insufficient to cover the loss and left her brother's funds reduced by some £12,000. Should the Office be successful in recovering the unauthorised amounts paid by the building society, the loss to the client would

be reduced to around £4,850. If the Public Guardianship Office's predecessor, the Public Trust Office, had been more vigilant and obtained annual accounts from the receiver, the client would probably not have lost his money.

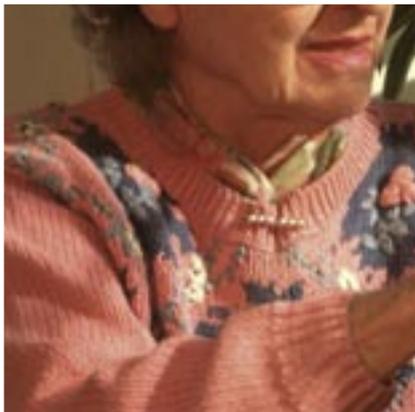
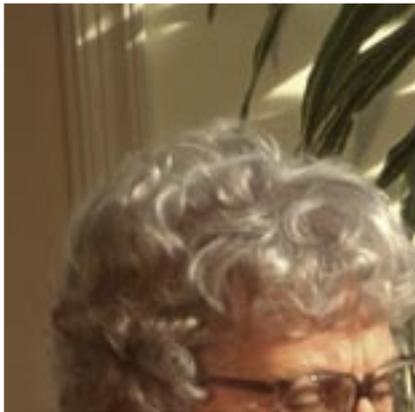
■ Ms D is a 94 year old lady whose nephew was appointed as receiver. The nephew was discharged as receiver in November 2002 for failing to render receivership accounts. Subsequent examination of Ms D's bank accounts by the Public Guardianship Office showed that during the time the nephew had been receiver, he had withdrawn some £14,600 for his benefit rather than his aunt's. The receiver's bond was for £17,500; the Court directed the bond be forfeited to the sum of £15,000 representing the missing £14,600 plus interest. The Court has since directed that the solicitor's bill for investigating the abuse be met from the bond cover, so the bond has been forfeited in total. As a result, the client has not lost out financially. The insurers will pursue the defaulter for recovery of this amount plus their costs of recovery.

Source: National Audit Office summary of the Public Guardianship Office's case files



PART THREE

Improving quality of service



3.1 This part of the report examines:

- i** whether the Public Guardianship Office has improved the quality of its service; and
- ii** whether the Public Guardianship Office is currently organised in the best way to respond to queries from receivers and clients.

i Whether the Public Guardianship Office has improved the quality of its service

The Public Guardianship Office's indicators show an improved level of performance on aspects of the service it provides

3.2 Receivers look to the Public Guardianship Office to provide a service that is timely, efficient, and accurate. To help improve its performance, the Public Guardianship Office works towards targets set by the Lord Chancellor. For 2003-04, the Secretary of State set the Public Guardianship Office five key performance indicators, supported by 16 targets, covering for example the speed with which annual receivership accounts are received and reviewed and the number of visits by Lord Chancellor's visitors each year (**Appendix 4**). For that year, the Public Guardianship Office reported that it had met or exceeded 13 of its 16 targets. And our analysis suggested that it had met or exceeded the performance achieved in 2002-03 for 13 of the 16 targets where comparable data existed.

3.3 The Public Guardianship Office has, for the last three years, commissioned a survey of receivers to gauge their views on its quality of service, covering issues such as making a new application, accessing clients' funds, and the complaints process. Over 1,300 receivers (of all types) responded to the second survey in 2003. Survey results suggest an overall improvement in receivers' satisfaction with the Public Guardianship Office (**Figure 16**).

16 The Public Guardianship Office's customer satisfaction survey for 2003

- In 2003, 55 per cent of receivers were satisfied with the overall level of service provided by the Public Guardianship Office, compared to 40 per cent in 2002
- All types of receiver thought that the service provided by the Public Guardianship Office had improved compared with the previous year
- The percentage of receivers that were dissatisfied with the service decreased – from 38 per cent in 2002 to 20 per cent in 2003.

Source: National Audit Office summary of the response to the Public Guardianship Office's stakeholder survey for 2003

3.4 The Public Guardianship Office has also established three groups through which it works with a variety of stakeholders in contact with clients: the Professional Receivers Forum, the Consultative Forum, and the Local Authority Partnership Group²⁵. The groups meet quarterly and offer a means of discussing proposals for developing services and obtaining feedback on current service issues. The membership of the groups is detailed at **Appendix 5**. The Public Guardianship Office has also held, since 2003, ten open days around the country for lay receivers. At these events, receivers had the opportunity to discuss with case workers specific issues relating to their receivership and more general matters.

Administrative delays and errors, particularly when processing new applications for appointment as a receiver, have inhibited the quality of service provided to some clients

3.5 Whilst improvements have been made to the quality of service provided overall, there remain important service issues to be tackled. Our review of client case files 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. More respondents to the Public Guardianship Office's survey, carried out in November 2003, were dissatisfied (47 per cent) with the applications process than were satisfied (29 per cent). In particular, they were dissatisfied (65 per cent) with the length of time it took to receive the papers confirming their appointment as receiver.

3.6 A person wishing to take responsibility as receiver for a named individual requires a First General Order to be issued by the Court of Protection confirming their appointment (paragraph 1.7). The Court relies on the Public Guardianship Office to prepare the relevant documents for its consideration. The first stage usually involves, for example, checking the application and the accompanying medical certificates. Criminal Records Bureau checks are commissioned following a request by the Court. Four Criminal Records Bureau checks were undertaken for the Public Guardianship Office during 2004. The Court considers the application and, if content, asks for the Order to be prepared and sent out. If there is a delay in the issue of the First General Order the receiver's ability to act in the client's best interests can be undermined. A delay can also have a negative impact on the client's financial position.

Delays in processing applications for new receivers can have an impact on the service received by the client

"...you can't deal with the patient's bank accounts, you can't deal with the payment of his nursing home fees or whatever it happens to be. I mean I've had cases where people have been forking out personally to pay someone else's nursing fees or, worse still, the nursing home sitting there with vast amounts of arrears building up because they're allowing effectively the patient credit until he can actually pay for it".

Public Guardianship Office caseworker

3.7 We found that, based on our representative review of 104 cases, the First General Order was issued on average over five months (147 days) after the initial application was made. A First General Order can be delayed for a variety of reasons. For example, the conditions for an insurance bond may not be met and objections to the applications may be made (for example, by relatives of the applicant). Applications from lay receivers can be incomplete or inaccurate – for example, failing to include a certificate of the client's medical condition – and are more likely to be subject to an objection. Our work suggested that delays could also be attributed to applications not being processed promptly within the Public Guardianship Office.

3.8 The Public Guardianship Office has recognised the need to improve performance in this area. It has transferred experienced staff to the branches dealing with new applications and has introduced training courses to help improve performance. And it has identified aspects of its service that can be streamlined; and the team has been reorganised. The Public Guardianship Office has also introduced new performance indicators for the process, with the intention of providing better control. The Public Guardianship Office reported that it will review the application process in preparation for the implementation of the provisions of the Mental Capacity Act 2005.

25 The Public Guardianship Office supported the Local Authority Partnership Group in setting up the Association of Public Authority Receivers.

ii Whether the Public Guardianship Office is currently organised in the best way to respond to queries from receivers and clients

Case workers can take time to understand a client's case history and respond to a receiver's query, because they deal with a large number of cases and share responsibility for cases with others

3.9 Delays and errors have also affected other aspects of the service provided by the Public Guardianship Office. Based on our sample of 108 files from the Protection Division and 52 files from the Receivership Division (where the Public Guardianship Office Chief Executive acts as the receiver of last resort), 82 per cent of case files had some type of issue that had potentially undermined the quality of service (**Figure 17**). Issues included delays in responding to correspondence, administrative errors, weaknesses in the review of accounts, and information missing from the file. But our work also suggested that the service provided had improved year-on-year since 2001.

3.10 The lay and professional receivers we consulted were critical of the inability of staff to access relevant information, and the lack of personal knowledge of their case and specialist expertise demonstrated by some caseworkers when dealing with their case. Receivers cited that they often had to deal with a series of caseworkers in the course of a single transaction, causing delay and increasing the risk of error.

17 Examples of the issues arising from our review of case files

- The first letter from the Public Guardianship Office to a receiver regarding the non-payment for a bond was sent out eight months after the payment was due
- The Public Guardianship Office reacted slowly when dealing with the sale of the client's property. As a result, the client was awarded £541 compensation for lost interest.

Source: National Audit Office

"Our experience of dealing with the casework teams is mixed at best."

"....It would be nice to be able to deal with one person but I've never yet had that happen. And you may get.... somebody's name in the bottom of the letter and you'll try and contact that person and they'll be sorry he's not available but such and such is, who clearly is not up to speed to the same extent as the first person would be."

Quotes from professional receivers

3.11 For caseworkers not familiar with the client, the Public Guardianship Office's paper-based case files mean that getting up to speed on a new case poses some significant challenges. The cases managed by the Public Guardianship Office show a range of complexity and some have been open for many years and may consist of several files. Our work suggested that files were sometimes poorly organised and difficult to navigate. In addition, caseworkers have to deal with a large number of cases. At the end of 2004 there were approximately 28,000 receivership cases which, we estimate, would equate to around 164 cases per caseworker with each devoting around nine hours per year per case in supporting receivers to do their work.

3.12 Caseworkers' ability to provide a "personalised" service is inhibited by the Public Guardianship Office's lack of a suitable electronic case management system – which we discuss in the next section. Although the Public Guardianship Office has separate teams for dealing with professional, lay, local authority and panel receivers, the delivery of the service is not assisted by the current practice of allocating cases in the protection division to teams of four caseworkers according to the surname of the client, not on the basis of, say, the type of risks involved. Caseworkers therefore have little opportunity to build up more specialist knowledge to help manage some of these risks. The management of some of the risks, for example concerns about the management of clients' affairs if resident in a home, may benefit from allowing caseworkers to forge closer contacts with local agencies with knowledge of broader issues that may be relevant to the case. The Public Guardianship Office's efforts to target risk were covered at paragraphs 2.17 and 2.18. The Public Guardianship Office could usefully consider whether the staffing structure and allocation of work could be changed to complement this alternative approach to oversight.

The Public Guardianship Office has recently cancelled its case management system, at a cost of £3.8 million

3.13 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 MERIS²⁶, the project had three phases - Phase One was an automated case management system for 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 MERIS project. The total cost of the MERIS project was £5.3 million. Phases One and Three were successfully delivered in April and June 2004 respectively. Phase Two of the project was intended to phase out some of the paper involved in the oversight of receivers and clients, and would have given caseworkers' access to electronic records on each client, including correspondence. And staff in different parts of the Public Guardianship Office would have been able to work on a case simultaneously – something that is not possible with the paper-based system and sometimes results in paper records not being available when receivers telephone with a query.

3.14 In October 2003, the Department for Constitutional Affairs decided to stop development of those elements relating to case management for external receiverships, mainly Phase Two, based on an examination of the project's costs and benefits and the likely timetable. The examination had been conducted as part of its routine review of progress on all IT projects within its responsibility. Delays in the delivery of the first phase of the project and some concerns about initial quality gave the Department reason to believe that LogicaCMG would be unable to deliver the rest of the project within the tight timescale the Department had allowed, especially against a background of high demand on the Public Guardianship Office's services and the anticipation of changing requirements from expected legislation on Mental Capacity. The Public Guardianship Office's annual accounts for 2003-04 included £3.8 million written off in respect of the cancellation of the case management system²⁷. The Public Guardianship Office is currently working to improve the robustness of its existing IT systems to manage current and projected case workloads.

3.15 In developing its case management systems, the Public Guardianship Office should consider the lessons to be learned from similar organisations elsewhere in the private and public sectors, for example in the insurance industry. The Office of the Public Guardian in Scotland, for example, adapted and enlarged an existing Court Service IT system, at a cost of £200,000. During the planning phase, the Office in Scotland visited an insurance company to view its system and inform development. The Office of the Public Guardian reported that while the system requires considerable front-loading of staff time to scan all requisite documentation, staff can easily access a client's details and history when dealing with a query. The system allocates work to individuals and across teams, and staff performance is monitored through various risk approaches - for example, through an in-built audit system. The Public Guardianship Office reported that it had looked at the system in use in Scotland to identify issues to be considered. In its view, the arrangements relating to the oversight of cases in Scotland were different to those in England, for example with the Office of the Public Guardian generally having less case contact with the client and their guardian (receiver) compared to cases in England, because of a lighter regulatory regime, and therefore much reduced case documentation.

The Public Guardianship Office has recently introduced measures to improve the skills and knowledge of staff

3.16 The Public Guardianship Office is reducing its reliance on temporary staff. During 2003-04, the Public Guardianship Office employed 429 staff, 116 (27 per cent) of whom were from agencies. While the number of agency staff employed by the Public Guardianship Office, as a percentage of its staff complement, was high, it was lower than 2002-03 and 2001-02 (65 per cent in 2001-02). The Public Guardianship Office set a target of filling 95 per cent of permanent posts with permanent staff by January 2005 and reached 94 per cent by that date, an increase of 21 percentage points from January 2003.

²⁶ MERIS stands for Mental Health Renaissance Information System.

²⁷ The £3.8 million is derived as follows: total cost of the MERIS programme £5.3 million less the replacement value of Phase One (£1 million) and Phase Three (£0.5 million) of £1.5 million.

3.17 Our work suggested that caseworkers needed greater first-hand experience of the day-to-day needs of clients and how their work as caseworkers had an impact. Since early 2004, the Public Guardianship Office has employed 16 job skills trainers and 12 desk trainers, whose role is to provide, respectively, one-to-one training for client services staff and specific technical training to groups of case workers. It is also looking at how it can utilise its external stakeholders' expertise as part of its training to raise awareness amongst staff of the issues faced by clients and receivers. For instance, the Alzheimer's Society provides the Public Guardianship Office's staff with awareness training. The Public Guardianship Office also reported that exchange visits with care home staff have been arranged.

The Public Guardianship Office has introduced procedures for dealing with complaints, and offers the option of an appeal to an independent adjudicator

3.18 Public bodies should establish robust procedures for dealing with any complaints their customers may have about poor service quality. Where a receiver or client is not content with the service received from the Public Guardianship Office, they can make a complaint, in the first instance, to the Public Guardianship Office. Over the last two years the Public Guardianship Office has sought to strengthen its complaints procedures following previous dissatisfaction with the procedures amongst some clients. During 2003-04, its complaints handling unit received 577 complaints. In the previous year, 2002-03, it had received 1,806 complaints, the largest number since it was created, following a decline in service quality resulting from the move to Archway and the introduction of working practices that proved ineffective.

3.19 If a customer of the Public Guardianship Office is not satisfied with the response from the specialist complaint handling team, then he or she can refer it to the Adjudicator's Office²⁸. In 2003-04, The Adjudicator's Office investigated 17 complaints (nine in 2002-03) of which eight (six in 2002-03) were upheld. Many of these cases will have related to service provided in previous years. Complainants also have recourse, via their Member of Parliament, to the Parliamentary Ombudsman. During 2003-04, 13 cases were referred to the Parliamentary Ombudsman. Of these, one case was upheld; eight cases were not upheld; three were discontinued (because an informal resolution to the issues was found); and the remaining case was withdrawn by the complainant.

3.20 Whilst a robust complaints procedure can never make up for a poor service, it can help mitigate some of the distress or inconvenience caused. In March 2005, we reported on redress procedures across government departments²⁹. As part of this examination, we assessed 90 features of the complaints and redress procedures of government departments and agencies (such as details on how to complain, contact information, and how long the process should take). The Public Guardianship Office, one of the organisations assessed, achieved one of the highest scores against those features that were assessed.

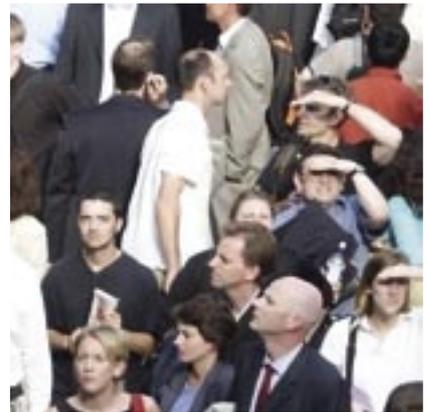
3.21 Where it accepts that the quality of its service has fallen below an acceptable standard, the Public Guardianship Office reported that it makes good any financial loss to the client arising from that poor service. In 2003-04, the Public Guardianship Office made up for losses of £350,000, including some consolatory payments and unnecessary legal costs, covering 163 cases (for 2002-03, the similar figures were £344,000 and 154).

28 The Adjudicator's Office investigates complaints from the public about the following organisations, where they have been unable to resolve matters themselves: Inland Revenue, Customs and Excise, Public Guardianship Office, The Insolvency Service, and the Valuation Office Agency.

29 C&AG's Report *Citizen Redress: What citizens can do if things go wrong with public services*, (HC21, Session 2004-05).

PART FOUR

Raising awareness



4.1 This part of the report examines:

- i** whether the Public Guardianship Office is taking steps to raise the public's awareness of the options available in the event of mental incapacity; and
- ii** whether the Public Guardianship Office has improved the written advice and guidance available to the users of its services.

i Whether the Public Guardianship Office is taking steps to raise the public's awareness of the options available in the event of mental incapacity

Awareness of the Public Guardianship Office and its services is limited

4.2 Public awareness of the Public Guardianship Office and the services it provides is generally limited. In addition to providing services to those already in contact with the Court of Protection and the Public Guardianship Office, the Office plays a part in raising awareness amongst members of the public more generally about the options available in the event of themselves, or those they know, becoming mentally incapacitated. 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 group) were able to provide a reasonably accurate description of what it did. Stakeholder groups we consulted, where an opinion was expressed, echoed this finding.

4.3 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. But Enduring Powers of Attorney are only registered with the Public Guardianship Office when mental capacity is lost. This number, therefore, does not indicate whether people are making adequate arrangements whilst they still have mental capacity. Recent trends in the number of new registrations suggest that the number has risen gradually over recent years (Figure 3).

4.4 The Public Guardianship Office has recognised that public awareness of the options available in the event of losing mental capacity is limited. Its own surveys of customers in 2002 and 2004 have highlighted the need to raise awareness of itself and its services. The Office has, however, until recently taken as its priority corrective action to get services to its existing customers up to an acceptable standard.

The Public Guardianship Office has initiated action to raise its profile

4.5 In April 2004, the Public Guardianship Office drew up a marketing strategy to raise its profile with other organisations and the public. The Office decided to target specific groups within the Public Guardianship Office’s client base (both with and without mental capacity). The strategy includes a range of initiatives to raise awareness, such as writing articles for literature distributed by the Department for Work and Pensions; distributing leaflets to care homes; attending conferences; and liaising with groups representing minority ethnic communities. The strategy could be expanded to include other public and voluntary sector organisations whose work brings them into contact with different age groups within society.

4.6 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 (**Figure 18**). In January 2005, the Public Guardianship Office decided to roll the Dorset project out nationally, working with the Pension Service and Vulnerable Adult Protection Committees, as well as delivering information leaflets to General Practitioner surgeries.

18 The Public Guardianship Office’s pilot project in Dorset

The pilot was carried out in the Dorset area and used the experience of local providers – such as local authorities, care homes, and doctors’ surgeries. Leaflets and posters were placed in 61 doctors’ surgeries (and were made available to district and practice nurses). Leaflets were also given to nine Citizens Advice Bureaux. A partnership was developed with Pension Service’s visiting officers, who distributed information to people they felt would benefit from the Public Guardianship Office’s services. The Public Guardianship Office also liaised with the local Vulnerable Adult Protection Committee which consists of representatives from those agencies most frequently in contact with local people.

Source: National Audit Office summary of the Public Guardianship Office’s documents

4.7 As part of our work we examined approaches used by other organisations, including counterparts overseas, to raise awareness. Some of the approaches adopted are outlined below. Some of these initiatives are similar to those already undertaken by the Public Guardianship Office. **Appendix 7** expands on the examples overseas.

- The Office of the Public Guardian in Scotland has visited all NHS trusts and has conducted seminars for small groups of frontline carers.
- The Elder Financial Protection Network in California has facilitated partnerships with over 80 financial institutions, adult social services, and law enforcement and regulatory agencies.
- The Office of the Public Guardian and Trustee in British Columbia speaks at conferences and attends meetings to help local stakeholders and the public more generally understand its role.

4.8 The Public Guardianship Office has not, to date, carried out research into the ethnicity of its client base. It does, however, recognise the need to appeal to a diverse population, in terms of ethnicity and religion, as well as age and type of mental incapacity. For example, it publishes its literature in the six main minority languages³⁰. In 2003, it conducted research into how mental health and finance issues were addressed in minority ethnic groups. Following this work it has recently approached organisations representing such communities. And its marketing strategy was informed by available research, for example, ethnic minority communities may not respond to ‘blanket’ awareness campaigns; and for some families the loss of mental capacity by a loved one may still have a stigma attached which may inhibit their willingness to use the services of the Public Guardianship Office and other organisations. The Public Guardianship Office reported that from February 2005 it had introduced ethnic monitoring of new receivership clients and had plans to introduce this to cover new registrations for Enduring Powers of Attorney later in 2005.

30 Bengali, Chinese, Gujarati, Hindi, Punjabi, and Urdu.

ii Whether the Public Guardianship Office has improved the written advice and guidance available to the users of its services

The Public Guardianship Office has produced written advice and guidance available in a variety of formats and has made these more widely available

4.9 The Public Guardianship Office has improved the quality of written advice and guidance available through its website and publications on various aspects of its work. Its main booklets and literature are available in the six main non-English languages and Welsh, through its website and as hard copies. It has also made some of its literature available on audiotape. Professional and lay receivers and groups representing client groups were generally positive about the quality of the written advice available (**Figure 19**).

4.10 For many potential clients and receivers, their first point of contact with the Public Guardianship Office will increasingly take place via its website. We reviewed the accessibility of the Public Guardianship Office's website and concluded that it met the level of accessibility set by the Cabinet Office's e-Government Unit³¹. Our review identified that the site had good navigation, but improvements to accessibility could be made, for example, having just one version of the site (rather than a text and graphical version) which is accessible to all users.

4.11 Stakeholders with whom we consulted were positive about the Public Guardianship Office's website. One said that it had improved access to guidance and forms; another found it easy to navigate. And one body commented that it was 'impressed' by the website which was 'very valuable and user friendly'.

19 Comments from stakeholders on the Public Guardianship Office's advice and guidance

Areas where the Public Guardianship Office does well

- "The Public Guardianship Office is good at explaining the procedure for common applications such as receivership and the registration of Enduring Powers of Attorney"
- "Information produced [by the Public Guardianship Office] has improved"
- "The booklets are good – [the] carers report that they are very clear"
- "Excellent leaflets"
- "The new booklets are on the whole well presented. The new website is easy to navigate"
- "The information contained on the [Public Guardianship Office's] website has given improved access to guidance and forms"
- "In broad terms, the published (and website) information...is very reliable and user friendly. Clients and families have recently reported... on the speed with which information and forms have been sent to them"

Source: National Audit Office

31 The e-Government Unit replaced the Office of the e-Envoy in June 2004.

APPENDIX 1

Our approach to the study

1 We used a variety of methods during the course of our examination of the Public Guardianship Office.

Review of the Public Guardianship Office's case files

2 We reviewed 160 client case files from the Protection and Receivership divisions. The number reviewed was based on a statistically valid sample of the 29,318 receivership cases as at 31 March 2004. Our review of Protection Division cases included both lay and professional receivers. The files contained detailed histories of the Public Guardianship Office's and receiver's relationship with the client. The analysis in this report is based on the 160 files examined.

Interviews with staff at the Public Guardianship Office and at the Department for Constitutional Affairs

3 We interviewed members of the Public Guardianship Office's senior management. We also interviewed staff with responsibilities for the:

- Processing of applications for First General Orders
- Day-to-day operations of the Protection and Receivership Divisions
- Collection and review of annual receivers' accounts
- Organisation of visits by Lord Chancellor's visitors
- Investigation of allegations of financial abuse.

4 We interviewed staff at the Department for Constitutional Affairs with responsibilities for the oversight of the Public Guardianship Office's performance and for the implementation of the Mental Capacity Bill (now the Mental Capacity Act 2005). And we interviewed the Department for Constitutional Affairs' head of Investment and Banking (a member of its Strategic Investment Board).

Focus groups of the Public Guardianship Office's staff, professional receivers and Lord Chancellor's visitors

5 We undertook two focus groups with Public Guardianship Office staff from the Protection and Receivership divisions respectively; a focus group of the Lord Chancellor's visitors; and a focus group of professional receivers at the Law Society. We used structured topic guides during the four focus groups. The aim of the focus groups was to explore and understand the effectiveness of the service provided by the Public Guardianship Office.

6 The four focus groups were audio-taped and transcribed. The transcriptions were analysed with the assistance of Atlas.ti (a qualitative data analysis software package).

Consultation with the Public Guardianship Office's stakeholders

7 We consulted with a selection of local authority receivers, professional receivers, and organisations from the non-governmental and voluntary sectors involved in mental health issues. The organisations with which we consulted are listed in the table below.

Organisations and individuals we consulted as part of the study

Professional organisations

British Bankers' Association
Financial Services Authority
The Law Society

Private organisations

BUPA Care Services
Carr Sheppards Crossthwaite
Gerrard
St George's BUPA Nursing Home

Solicitors

Bromley Hyde and Robinson
Hugh James
Irwin Mitchell
Pannone and Partners
Rix and Kay
Russell-Cooke

Individuals

Master Denzil Lush (Court of Protection)
Professor Hilary Brown (Salomons)

Government organisations

Department for Constitutional Affairs

Voluntary organisations and other non-governmental organisations

Age Concern
Alzheimer's Disease Society
British Association of Brain Injury Managers
Citizens Advice Bureau
Help the Aged
Mind (National Association for Mental Health)
Rehab Without Walls
RESCARE (National Society for Children and Adults with Learning Disabilities and their Families)
Royal College of Psychiatrists
Scope
Solicitors for the Elderly
The Family Welfare Association

Local authority receivers

City of Bradford Metropolitan District Council
Brent Council
Essex County Council
Greenwich Council
Hampshire County Council
Swansea Council
Waltham Forest Council
West Berkshire Council
Wiltshire County Council
Wolverhampton City Council

We sought their views on:

- The service provided by the Public Guardianship Office
- The oversight of a client's well-being through the Lord Chancellor's visitors programme and engagement with stakeholders
- The Public Guardianship Office's approach to raising awareness

8 We also met with the author of the report commissioned by the Public Guardianship Office from the Centre for Applied Social and Psychological Development, Salomons, *'The role of the Public Guardianship Office in safeguarding vulnerable adults against abuse.'*

A survey of members of the public

9 We commissioned Ipsos UK to undertake a Capibus survey to ascertain levels of general public awareness of the Public Guardianship Office, throughout England and Wales. Ipsos asked 1,977 people (aged 18 plus) throughout the United Kingdom a series of nine questions during July 2004. The results were adjusted to reflect England and Wales only. The questions focused on the following areas:

- Whether people had made a will
- Whether people have made adequate arrangements for the care of their finances in the event of losing mental capacity
- Awareness of and making an Enduring Power of Attorney
- Awareness of the Public Guardianship Office and receivers

Website health

10 We tested the accessibility of the Public Guardianship Office's website using an automated tool which checks websites' conformity against the World Wide Web Consortium's Web Content Accessibility Guidelines (WCAG) 1.0, which are used by the Cabinet Office's e-Government Unit.

International Research

11 We conducted a brief website review of international approaches to guardianship and we visited the Office of the Public Guardian in Scotland. Details are contained in Appendix 7.

APPENDIX 2

The Public Guardianship Office’s structure explained

The Public Guardianship Office is an Executive Agency of the Department for Constitutional Affairs based in Archway, north London (the Public Trust Office and the Public Guardianship Office were, until 2002, based in Covent Garden, central London. In October 2001, a regional Court of Protection was opened in Preston, presided over by the Deputy Master of the Court of Protection). It is responsible only for people who are living, or whose assets are, in England and/or Wales.

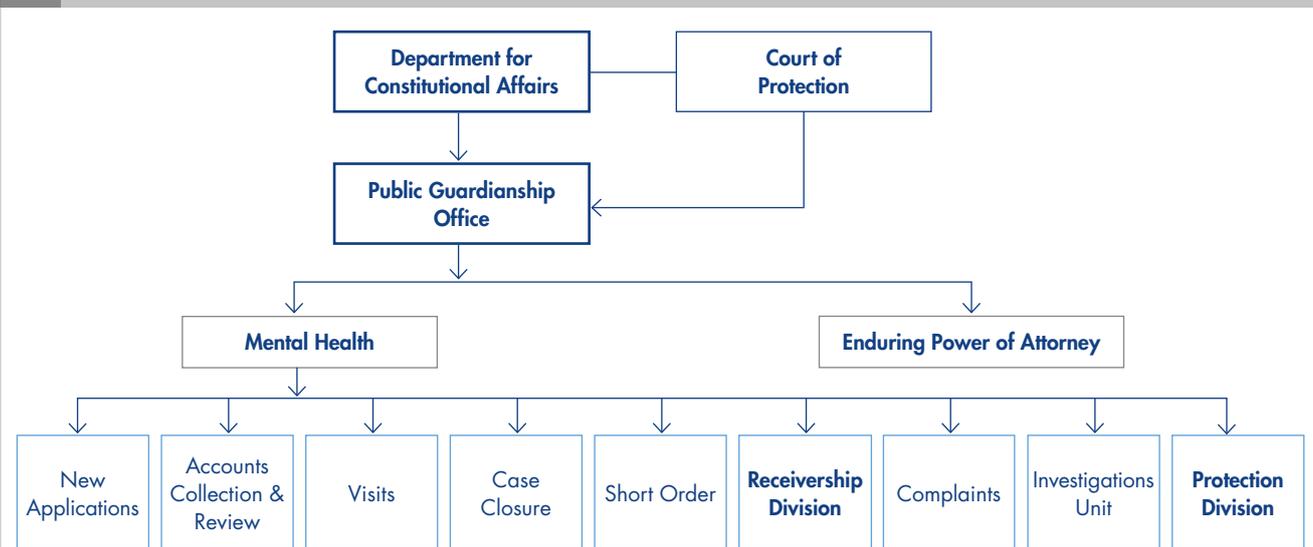
The Public Guardianship Office’s current organisational structure (Figure 20) reflects the legislation which governs its work – a mental health branch (for work under the Mental Health Act 1983) and an Enduring Power of Attorney branch (for work under the Enduring Power of Attorney Act 1985). The Public Guardianship Office’s day-to-day receivership work is dealt with by two separate divisions.

- **Protection Division** helps and advises families of, and advisors to, people with a mental incapacity on how best to protect the incapacitated person’s finances. It provides support to those applying to take on the role of receiver, and supports receivers in their role once appointed. In 2003-04, it employed 323 staff out of a total of 429.

- **Receivership Division** acts as a receiver in cases where the Court of Protection is unable to fulfil the role. It provides the same receivership services as other receivers and its work is monitored in the same way as other receivers. In 2003-04, it employed 25 staff.

In addition, for its receivership work the Public Guardianship Office has other staff allocated to specialist areas dealing with, for example, accounts collection and review, new applications, and the visits programme.

20 The Public Guardianship Office’s organisational structure



Source: National Audit Office

APPENDIX 3

Response to the Committee of Public Accounts' report *Public Trust Office: Protecting the Financial Affairs of People with Mental Incapacity*

PAC conclusion

On protecting patients' income and assets

i: We are astonished that the Public Trust Office has not yet implemented a procedure it agreed with the Court in 1995 for ensuring that overdue accounts are followed up. The procedure should be introduced urgently and reviewed in the light of experience. The Public Trust Office should give high priority to completing its discussions with the Court of Protection about the sanctions that could be imposed to ensure that receivers submit accounts on time. Where accounts are more than six months late, the Public Trust Office and the Court of Protection should consider whether the receiver should be required to take out insurance to protect the patient against fraud or misuse of their funds.

ii: It is unsatisfactory that in 1997-98 the Public Trust Office managed to review at most only 30 per cent of private receivers' accounts within its timetable of four weeks of receipt. This performance was not only well short of the Public Trust Office's target of 80 per cent, but represents a substantial deterioration compared with the 85 per cent achieved in 1992-93. We look to the Public Trust Office to make urgent and determined efforts to improve this unacceptable performance.

iii: In 1996-97 the Public Trust Office reviewed only around a third of Public Trustee receivership accounts within its timetable of eight weeks of receipt compared with a target of 80 per cent. Again, this represents a substantial deterioration compared with the position in 1992-93 when 53 per cent were reviewed on time.

iv: The Public Trust Office has set a Charter Standard for the timely review of receivers' accounts. We expect achievement against the Standard to be monitored closely and to be reported in the Public Trust Office's annual report.

v: We are surprised that it is for receivers to decide whether they wish to complete accounts for the period prior to the death of the patient. We recommend that the Public Trust Office and the Court of Protection consider whether receivers should be required to account for how they have used the patient's income in these circumstances.

vi: We are not convinced that the Public Trust Office is making the most effective use of its staff. For example, it has not made comprehensive use of risk assessment in deploying staff, and recommendations of consultants employed by the Public Trust Office in 1994 have still not been fully implemented. We expect the Public Trust Office to examine urgently how far the recommendations on risk assessment can usefully be applied.

Current position

The Public Guardianship Office has implemented more effective systems to chase up receivers who are late in submitting their accounts. Accounts collection and review are now subject to the following key Public Guardianship Office Key Performance Measures (KPMs):

- To collect 60 per cent of accounts within two calendar months of the accounting end date, 85 per cent within four calendar months of the accounting end date, and 100 per cent within six calendar months of the accounting end date, referring cases to the Court of Protection where necessary or taking other steps to ensure proper accounts are produced on behalf of clients (applies to Protection clients only, i.e. those clients who have an external receiver).
- To complete the review of, or to have requested further information for, 100 per cent of accounts within 20 working days of receipt (to apply to both Receivership and Protection clients).

Performance against KPMs is closely monitored by the Public Guardianship Office and reported on a monthly basis to the Public Guardianship Office Management Board and on a quarterly basis to the Ministerial Advisory Board. Performance against KPMs is published in the Public Guardianship Office's annual report.

The Public Guardianship Office uses panel receivers where no suitable family member wishes to act; as a last resort the Chief Executive of the Public Guardianship Office may be appointed.

Accounts from the date of death have been required from 1 May 2000 with a limited number of exceptions.

Where receivers fail to account upon death, the Court of Protection may apply sanctions to forfeit the receiver's bond where a bond is in place.

The Public Guardianship Office gave an undertaking to ministers to reduce the caseload handled by its receivership division to 250 by the end of December 2004.

The Public Guardianship Office established a needs assessment project in October 2002 which includes Criminal Records Bureau checks and capability assessments of receivers. Receivers now have to complete a declaration which provides the Court of Protection with more information about the receiver.

From 1 April 2004, the Court of Protection can call for Criminal Records Bureau checks for new receivers whenever it deems necessary.

The Public Guardianship Office established a pilot Investigations Unit on 1 January 2004 to investigate cases of suspected fraud or mismanagement of clients' accounts.

PAC conclusion

On visiting patients

vii: The efficiency savings of £140 a visit which arose from the changes in arrangements for visiting private receivership patients are welcome. However, we deplore the absence of public advertising for the new visitors, who earn an average of £21,700 a year, especially as four of the six ultimately appointed were former employees of the Public Trust Office or Lord Chancellor's Department. We expect the Public Trust Office to adopt open recruitment procedures in future.

viii: The number of visits to private receivership patients has increased, but at 1,700 in 1997-98 visits were only 10 per cent greater than the number the Committee considered unacceptably low in 1994. Visits should play an important part in protecting patients' interests. We look to the Public Trust Office to review the level of visits and to act on the proposal that all new receivers should be visited within six months of being appointed.

ix: The Public Trust Office aims to visit all Public Trustee receivership patients every year, but there were visits to only two-thirds of these patients in 1996-97, falling considerably short of the 86 per cent achieved in 1992-93. We are not satisfied with the Public Trust Office's explanation that the 1996-97 figure was affected by one of the six visitors' long-term sickness absence, since it could have made alternative provision for the visits. We expect the Public Trust Office to ensure that in future its objective of an annual visit to each Public Trustee patient is met.

x: Private receivership patients in the North region are six times more likely to receive a visit than patients in the London region. We are not persuaded by the Public Trust Office's explanation of this variation. While the Public Trust Office believes that the variation is largely due to demographic factors, it does not have the management information to confirm this. Such information as does exist suggests that other factors, such as the failure to carry out the number of visits commissioned, are responsible for some of the variation. Funds are being made available to enable the Public Trust Office to improve its information. We urge the Public Trust Office to give due priority to producing the information required to manage the visits programme, so that it can be targeted and monitored effectively.

xi: We are concerned at the length of time it took to extract information on these matters from the Accounting Officer of the Public Trust Office, and emphasise the need for witnesses to be well prepared and careful in their evidence to the Committee. We consider that the Public Trust Office's inability to provide us with prompt and accurate information illustrates the inadequacy of its management information.

Current position

The Public Guardianship Office carried out a review of the effectiveness of the Lord Chancellor's Department Visitor service in 2003-04. In June 2004 six new medical visitors and twelve new general visitors, including some reserves, were appointed through open competition.

The Public Guardianship Office has not implemented the recommendation to visit all new receivers in the first six months of appointment. The Court of Protection considered that this measure would be unnecessarily intrusive. However, all new receivership clients are visited in the first six months, with a repeat visit on the visitor's request, or at the request of the Court or caseworker or the Investigation Unit.

New receivers are given the option of attending the visit to the client by the Lord Chancellor's Department visitor. All Receivership Division clients are visited annually.

The Public Guardianship Office has set up a support network to enable experienced receivers to share experiences with new receivers.

The Public Guardianship Office has implemented a programme of regional receiver open days.

The Public Guardianship Office has provided receivers with more information through its website and published literature.

The Public Guardianship Office report quarterly performance to the Management Advisory Board using a Performance Review Report. The format of this report is also used for the Public Guardianship Office's monthly management board meetings. The Report provides information about performance against key performance measures, financial performance, risk and various projects. The Public Guardianship Office's performance against its targets is reported annually in Parliament.

PAC conclusion

xii: The Public Trust Office explains some of its practices, such as monitoring accounts and undertaking visits to patients, by reference to criteria laid down by the Court of Protection. In our view it is the responsibility of the Public Trust Office to identify areas which may not be adequately covered by Court guidance and to make a persuasive case to the Court for new measures where appropriate. For example the Public Trust Office should explore further with the Court how the criteria for visiting patients might be adjusted to allow flexibility for visits to patients where circumstances, such as late accounts, indicate that the patient's money may be at risk.

On managing patients' capital

xiii: The Public Trust Office's key investment targets should track performance of investments, including the majority (84 per cent) which are handled by the two brokers appointed by the Public Trust Office. Though the Public Trust Office is continuing to measure capital performance over one and three years, these are no longer key performance targets, because it considers the brokers' investment performance to be outside its control. However, the Public Trust Office appoints and monitors the brokers, and cannot escape responsibility for the performance achieved. We consider that the Public Trust Office should revisit its decision to change the key target, having full regard to the need to maximise the performance of investments.

xiv: The Public Trust Office's measures of investment performance focus on capital growth and take no account of the emphasis on income of 40 per cent of patients' portfolios. It is therefore not possible to evaluate and compare overall investment performance. We expect the Public Trust Office to discuss with the Lord Chancellor's Honorary Investment Advisory Committee how it might adapt its measures to make them more appropriate to patients' investment objectives.

xv: The Public Trust Office believes that the termination of the contract of one of its brokers from March 1998 will result in an improved investment performance for patients. We expect the Public Trust Office to provide us with evidence of actual performance as soon as it becomes available.

Current position

The Public Guardianship Office's Assistant Director Operations (Client Services) also has responsibility for the management of Court of Protection staff. This facilitates the continued exchange of information and understanding within the Court of Protection.

A risk assessment is carried out to determine the visit regime a client may require.

The Public Guardianship Office is engaging the Master of the Court of Protection in preparation for implementing the new Mental Capacity Act 2005.

The Court of Protection, when it appoints a receiver, sets an investment strategy for the client (there are currently four investment strategies available to the Court of Protection). The investment strategy outlines what proportion of the client's funds should be held as cash (on deposit with the Court Funds Office) and what proportion should be invested in equities. The investment strategy will vary between clients, and will depend on, amongst other things, the client's circumstances, the expected level of spending, and the receiver's and family's attitude towards investment risks. Over time the receiver can ask the Court of Protection to change the investment strategy, for example to reflect a change in the client's circumstances.

Where the investment strategy suggests investment in equities, the receiver can choose to use one of the two brokers suggested by the Public Guardianship Office (known as panel brokers) or can select his or her own broker (non panel broker). The activities of both types of broker will be regulated by the Financial Services Authority. The Public Guardianship Office's Investment Branch provides guidance to receivers about investment matters. It does not manage the investments.

The Department for Constitutional Affairs' Strategic Investment Board advises the Department and its agencies and other bodies, including the Court of Protection and the Public Guardianship Office, on the appointment and supervision of any investment advisors. It also monitors the advisers' performance against established industry benchmarks, and provides advice on strategy and specific investment matters.

Although the Public Guardianship Office is still continuing to measure investment performance, performance over one and three years are no longer key measures for the Public Guardianship Office, having been discontinued as performance measures in May 2003. Prior to that a Strategic Investment Board was established by the Lord Chancellor to advise on the appointment of investment managers (panel fund managers), to monitor their performance in looking after clients' funds and to provide advice on strategy and specific investment matters including guidelines for external managers. The Strategic Investment Board continues to monitor investments and reports to the Department.

Under reporting arrangements implemented in October 2003, the performance of the panel fund managers is calculated on the basis of both capital and return, and income.

New panel fund manager mandates were signed in March 2003, with one of the firms of investment managers being replaced by a new appointee firm. The Strategic Investment Board is continuing to monitor the process.

PAC conclusion

xvi: We consider that the Public Trust Office's initial response to the under-performance of one of its brokers against the capital targets was slow, and that it should have done more to probe the broker's explanations of performance, including whether income objectives might have been achieved at the expense of the capital targets. The Public Trust Office also needs to examine how it can draw greater benefits from having two brokers with similar allocations of patients, for example by making greater use of comparative information that would explain differences in overall performance.

xvii: The broker whose contract was terminated for poor performance charged substantially higher fees than the other broker, partly reflecting the need to restructure patients' investments to improve performance. After publication of the National Audit Office's report, the company made a without prejudice payment of £375,000 to the Public Trust Office, to be distributed among patients. We urge the Lord Chancellor's Department to ensure that the estates of those patients who have since died also benefit, and we expect to see progress reports on how the Lord Chancellor's Department and Public Trust Office are applying the payment to ensure that it benefits patients directly.

xviii: The National Audit Office found that 31 per cent of private receivership fees and 42 per cent of Public Trustee receivership fees had not been recorded correctly by the Public Trust Office in 1996-97. The gross impact of these errors, which included the incorrect calculation of fees, was £1.3 million. This is unacceptable and we expect the Public Trust Office to examine all fees and make adjustments to put errors right, including where the patient has died and fees need to be corrected before their estate can be wound up.

xix: The Public Trust Office has achieved a reduction in the cross-subsidy of Public Trustee receivership patients by private receivership patients, from 52 per cent in 1994-95 to 32 per cent in 1997-98, just missing its target of 30 per cent. The Lord Chancellor's Department believes that without public subsidy there is limited scope to reduce the cross-subsidy further. However, the Public Trust Office and the Lord Chancellor's Department should continue to examine the scope for further reductions, for example through efficiency savings.

xx: We are dismayed that consultants' recommendations for efficiency savings are still being implemented almost five years after they were made, and that for those recommendations which have been implemented, the Public Trust Office is unable to show what, if any, efficiency savings have been achieved. We expect the Public Trust Office to complete this work urgently and to ensure that measures are in place to identify the resulting savings.

Current position

The Public Guardianship Office's Strategic Investment Board monitors panel brokers' performance. This enables the Public Guardianship Office to take action quickly when problems are identified.

All of the recipients that were due payments have been paid.

The Public Guardianship Office established a team to improve the management of debt collection.

The Public Guardianship Office reviewed its fee structure to ensure that fees are based on an assessment of work undertaken in each individual case. The changes to the fee structure occurred on 17 April 2002.

Fees continue to be reviewed year on year.

The Public Guardianship Office had anticipated efficiency savings from the implementation of the MERIS IT project. A decision was made in October 2003 to reduce the scope of MERIS to exclude those elements of MERIS relating to case management for external receiverships, mainly planned as Phase Two of the Programme. The other elements of the MERIS programme have been implemented. Phase One supports the administration of the Enduring Powers of Attorney and went live in April 2004 and Phase Three (Accounting) went live in July 2004.

The Public Guardianship Office's targets for 2004-05 included a target to achieve a unit cost per case of not more than £510, and to recover 80 per cent of the Public Guardianship Office's services through fees.

PAC conclusion

On accountability and the role of the Lord Chancellor's Department

xxi: Audited financial statements are fundamental to accountability. The Public Trust Office became an executive agency in July 1994 and was required to produce audited accruals accounts from 1996-97 at the latest. It failed to do so then and again in 1997-98. The Public Trust Office has drawn up a plan to implement actions which the National Audit Office considers are necessary, and to produce accounts for 1998-99. This work needs to be given a high priority: another year without audited accounts would raise further questions about the Public Trust Office's competence.

xxii: The Public Trust Office is the monopoly supervisor of receivers and patients' funds, and those under its protection have no choice in the matter. It therefore has the strongest obligation to provide a high standard of service. We look to the Public Trust Office to make itself more accountable for the service it provides, for example by keeping under review aspects of its work that receivers and others interested in patients' welfare consider to be the most important, and publishing the performance results.

xxiii: There has been a serious deterioration in the Public Trust Office's performance in several key areas since our predecessors' 1994 report, which has not been addressed through the Lord Chancellor's Department's oversight and monitoring. The Department needs to take greater responsibility for improvements in performance in future, for example by ensuring that the Public Trust Office gives due priority to producing better and more comprehensive management information in important areas such as visits, and receipt and review of accounts.

xxiv: The Treasury requirement for independent validation of performance before paying performance bonuses was promulgated in 1993. We are concerned by the Lord Chancellor's Department's decision, contrary to this guidance, to pay bonuses to the Chief Executive of the Public Trust Office for the three financial years to 1996-97 based on information that was not fully and independently validated. We expect the Department to ensure that there is comprehensive validation of the Public Trust Office's performance in future, and to check that the Public Trust Office has reliable systems in place to measure performance.

Current position

The production of audited accounts for the Public Guardianship Office is now timetabled on an annual basis to adhere to the terms of the Agency's framework document. Introducing staff with accountancy qualifications has helped the Public Guardianship Office to develop its financial management regime and reduce the risk of poor accounting.

The Public Guardianship Office has established a consultative forum to enable key stakeholders to participate.

An independent adjudicator is in place and the Public Guardianship Office tracks the number and types of complaints on a monthly basis. Complaints is a standing item on the agenda of the quarterly Ministerial Advisory Board.

There is a Department for Constitutional Affairs representative on the Public Guardianship Office Audit Committee.

Key Performance Measures (KPMs) are reported monthly to the Public Guardianship Office's Management Board and on a quarterly basis to the Ministerial Advisory Board. The Public Guardianship Office announces its KPMs to Parliament each year and publishes performance against KPMs in its Annual Report.

There are separate KPMs on Visits, and Collection and Review of Accounts.

The Public Guardianship Office's Chief Executive is subject to Senior Civil Service pay arrangements. The Chief Executive's pay is not arithmetically linked to the delivery of performance targets. The Department for Constitutional Affairs Internal Audit Division validated the Public Guardianship Office's performance information for 2003-04.

APPENDIX 4

The Public Guardianship Office's key performance targets

The Public Guardianship Office's key performance indicators for 2003-04

KPI	Description	Target for 2003-04	Outturn for 2003-04
1	We will increase the satisfaction of our customers in the delivery of our services.	Customer satisfaction rating of at least 50 per cent for both professional and lay receivers, as measured by our annual customer survey	55 per cent (weighted)
2	We will increase the proportion of effective visits by the Lord Chancellor's visitors.	Maintain a minimum of 6,000 visits to include all Receivership clients	6,675
		Visit all new clients where the Chief Executive of the Public Guardianship Office has been appointed receiver	368 visits to receivership Division clients completed
		To achieve 75 per cent effective visits during 2003-04	79 per cent
3	We will increase the percentage of accounts collected and reviewed on time, as a basis for effective action to meet clients' needs.	100 per cent reviewed within four weeks of receipt	100 per cent
		Collect 60 per cent within two months of the due date	72 per cent
		Collect 80 per cent within four months of the due date	91 per cent
		Collect 100 per cent within six months of the due date	100 per cent
4	We will deliver an improved service to clients.	Respond to 95 per cent of correspondence within 15 working days of receipt	97 per cent
		Give directions for the release of funds to the Court Funds Office or external receiver within ten working days for 95 per cent of requests received	95 per cent
		Dispatch 95 per cent of Court Orders and Directions within 25 working days	92 per cent
		Close 95 per cent of cases within 25 working days	95 per cent
		Register and return 95 per cent of Enduring Powers of Attorney (correct and with no objections) within five working days	99 per cent
5	We will demonstrate improvements in efficiency by meeting three financial performance targets.	To remain within budget	Not achieved
		To achieve a unit cost per case of not more than £535	£503
		To achieve fee income of £13.1 million	£12.3 million

Source: National Audit Office analysis of the Public Guardianship Office's performance data

NOTES

- 1 The target for 2002-03 was 100 per cent within five weeks.
- 2 The target for 2002-03 was 70 per cent within four weeks.
- 3 The target for 2002-03 was payment within 15 days.

Target met or exceeded	Outturn for 2002-03	Performance for 2003-04 as good as or better than 2002-03?	Performance for 2003-04 as good as or better than that reported in 1998-99?
Yes	40 per cent (weighted)	Yes	Not applicable
Yes	6,354	Yes	Yes – 2,000 visits (although this was not a target for the Public Trust Office)
No	Not a target for 2002-03	Not applicable	Not applicable
Yes	64 per cent	Yes	Not applicable
Yes	100 per cent ¹	Yes	Yes – 85 per cent of receivers' accounts were reviewed within four weeks of receipt
Yes	67 per cent	Yes	Yes – 11 per cent of receivers' accounts were submitted on time, with almost 20 per cent more than six months late.
Yes	89 per cent ²	Yes	
Yes	100 per cent	Yes	
Yes	82 per cent	Yes	Not applicable
Yes	85 per cent ³	Yes	Not applicable
No	78 per cent	Yes	Not applicable
Yes	64 per cent	Yes	Not applicable
Yes	99 per cent	Yes	Not applicable
Yes	Not a target for 2002-03	Not applicable	Not applicable
Yes	£536	Yes	Not applicable
No	Not a target for 2002-03	Not applicable	Not applicable

APPENDIX 5

Membership of the Public Guardianship Office's stakeholder groups

1 The Public Guardianship Office is working with stakeholder groups to discuss issues, processes and good practice.

The Local Authority Partnership Group

2 The Local Authority Partnership Group originally consisted of representatives of public authorities who carry out receivership work. The purpose of the original group was to discuss ways in which they could work more closely with the Public Guardianship Office to better serve mutual clients. The existence of the group led to the formation of the Association of Public Authority Receivers (APAR). The membership of the local authority group has recently been expanded to include Adult Protection Officers nominated by the National Network of Vulnerable Adult Coordinators to enable the Public Guardianship Office to engage with the wider adult protection community.

Public Guardianship Office's Consultative Forum

3 The Consultative Forum enables key stakeholders to participate much more closely in the work of the Public Guardianship Office. The forum has been used to identify areas of concern in relation to the welfare of clients, to gauge opinion and to raise awareness amongst stakeholder customer groups. The stakeholders include representatives from charities, voluntary organisations, the Law Society and the Muslim Council of Britain.

Professional Receivers Forum

4 The Professional Receivers Forum consists of representatives from firms of solicitors appointed to the panel of professional receivers, as well as representatives from the Public Guardianship Office. The forum meets to advise and update on relevant issues and to share good practice.

APPENDIX 6

Fees charged by the Public Guardianship Office for its services

Fees apply to all new applications to the Court of Protection, and in some instances, apply to cases already under the jurisdiction of the Court.

Commencement Fee

This fee is payable when submitting the first application for the appointment of a receiver or other initial application for a Court direction or order. From 1 April 2005, this fee is £240.

Appointment Fee

This fee is payable when the Court appoints a receiver for the first time. A fee of £315 applies to all orders appointing a receiver made on or after 1 April 2005.

Administration Fee

From 1 April 2005, there are two types of administration fee. For cases where the Court makes a Short Order, the fee is £190 (new fee), payable on the anniversary of the Short Order. Where the Court appoints a receiver, the fee is £240, due annually on the anniversary date of appointment. There are occasions when the Public Guardianship Office will charge part of the fee for other periods. The administration fees apply to all anniversary dates falling on or after 1 April 2005.

Account Fee

This fee covers the cost of collecting and passing receivership accounts and is set at £100 from 1 April 2005. The fee is payable 28 days after the last day of the period covered by the account and applies to all accounts ending on or after 1 April 2005.

Transaction Fee

These are fees payable at the time of application in cases where it is necessary for the Court of Protection to approve or authorise a service, action or activity, which falls outside the usual administration fee. A separate transaction fee applies to enduring power of attorney applications (see below).

From 1 April 2005, these fees are:

For the settlement or gift of property under section 96(1)(d) of the Mental Health Act 1983.
£100 (for transactions with a value of up to £10,000)

For the carrying out of contract under section 96(1)(h) of the Mental Health Act 1983.
£360 (for transactions with a value of up to £10,000)

Under section 1(3) of the Variation of Trusts Act 1958.
£500 (payable on the Court fixing a date for an attended hearing to consider the application)

For vesting stock in a curator outside England and Wales under section 100 of the Mental Health Act 1983.

£60

For the exercise of powers under section 96(1)(k) of the Mental Health Act 1983.

£130

Pursuant to section 54 of the Trustee Act 1925 (concurrent jurisdiction with High Court over trusts)

£130

For authorisation of person to act as trustee under section 20 of the Trusts of Land and Appointment of Trustees Act 1996.

£130

Appointing a Trustee pursuant to section 36(9) of the Trustee Act 1925

£130

For the execution of a Will under section 96(1)(e) of the Mental Health Act 1983.

£540

For the sale or purchase of land under section 96(1)(b) of the Mental Health Act 1983.

£170

On an application under section 96(1)(a) or (b) of the Mental Health Act 1983 authorising the managing and letting of property

£170 (new fee)

On making an application for the appointment of a new Receiver

£190

On approval of an estate account where the client has an absolute interest or life interest

£100 (new fee)

Winding up Fee

This fee covers work connected with winding up Public Guardianship Office involvement in the client's finances.

From 1 April 2005, the fee is £290 and is payable on the death of a client where a receiver has been appointed.

From 1 April 2005, an additional winding up fee of £150 is payable on each anniversary of the death of the client, until the Court passes the final receiver's account or directs that it is dispensed with.

Enduring Power of Attorney Registration Fee

From 1 April 2005, a fee of £120 is payable when an application is made to register an Enduring Power of Attorney. The Public Guardianship Office cannot refund this fee if the power is not registered.

Enduring Power of Attorney Transaction Fee

Enduring Power of Attorney transaction fees apply in certain cases where it is necessary for the Court to approve or authorise a service or action or activity, which is outside the normal powers of the attorney. The fee applies from 1 April 2005 as follows:

On making an application or making a direction under section 8(2)(d) or (e) of the Enduring Powers of Attorney Act 1985.

£100 (for transactions with a value of up to £10,000)

£360 (for transactions with a value of over £10,000)

£500 (payable on the Court fixing a date for an attended hearing to consider the application)

Enduring Power of Attorney Account Fee

An Enduring Power of Attorney account fee of £100 is payable if the Court directs that an Attorney should submit accounts. The fee is payable when the Court passes the account and applies to all directions to account made by the Court after 1 April 2005.

Enduring Power of Attorney Search Fee

From 1 April 2005, there is a £20 fee payable to search the Register to see if an Enduring Power of Attorney has been registered.

Fees where the Chief Executive of the Public Guardianship Office acts as the receiver

Appointment Fee

This fee is payable when the Court appoints the Public Guardianship Office as receiver. The fee is £1,000 and applies to all orders appointing the Public Guardianship Office as receiver made on or after 1 April 2005.

Receivership Administration Fee

From 1 April 2005, this fee is £4,500 and is payable annually on the anniversary date of the appointment of the Public Guardianship Office as receiver.

Tax Return Fee

This fee covers the cost of completing an Inland Revenue tax return on behalf of the client where the Public Guardianship Office acts as receiver. The fee is £520 and applies to all tax returns completed on or after 1 April 2005.

Winding up Fee

This fee covers work connected with winding up Public Guardianship Office involvement in the client's finances where the Office acts as receiver. The fee is £850 and is payable on the death of a client where the Chief Executive of the Public Guardianship Office has been appointed receiver.

Fees payable in other cases

Separate fees apply in cases where the Court appoints someone other than the Public Guardianship Office as receiver.

Fee remissions

The Court has discretion to remit (waive or postpone collection of) all or part of any fee if payment would cause hardship to the client, to his or her dependants, or if there are other exceptional circumstances. There is no statutory definition of hardship and the Court deliberately does not seek to come up with a working definition, because to do so may fetter its discretion to remit fees. In a practical sense, hardship is a client's inability to pay a fee.

APPENDIX 7

The approach adopted by organisations similar to the Public Guardianship Office to raising awareness

The Office of the Public Guardian in Scotland

The Office of the Public Guardian was established by the Adults with Incapacity (Scotland) Act 2000. Its main function is the supervision of any guardian or other authorised person in the exercise of his/her functions relating to the property and financial affairs of the adult concerned.

The Office of the Public Guardian is sited within easy communications reach of 80 per cent of the Scottish population. There is evidence of a powerful service delivery culture with an emphasis on making a difference to the most vulnerable in society. For example, in raising awareness, the Office of the Public Guardian:

- Initially, conducted high level seminars for local authorities, NHS trusts, etc. to publicise and explain the legislation
- Has visited all NHS trusts
- Conducted meetings with all local authorities, either at the Office of the Public Guardian or by travel, for example, to the Western Isles
- Conducted seminars for solicitors and law accountants
- Made available pamphlets, leaflets and posters in every library and doctor's surgery throughout Scotland
- Conducted seminars for small groups of frontline carers
- Is following a staff suggestion to pilot Saturday surgeries in Edinburgh and Glasgow

- Is an open organisation. For example, the staff list is on the website with direct dial telephone numbers
- Has prepared documentation in ethnic languages and Gaelic
- Has produced a CD-Rom containing interactive forms that are also available on the website

www.publicguardian-scotland.gov.uk

Office of the Attorney General, State of California, USA

The California Attorney General's Crime and Violence Prevention Center (CVPC) and the Bureau of Medi-Cal Fraud and Elder Abuse in conjunction with the American Association of Retired Persons (AARP) have developed a new, comprehensive consumer guide to help Californians protect their elderly family members and friends. A Citizen's Guide provides helpful information on how to detect the most common signs of physical abuse, emotional abuse, financial abuse, or abuse that occurs within a long-term care facility. This free, 36-page guide also contains a list of valuable web sites and other resources for advice and information. This guide is the first in what will be other outreach programmes that are part of the CVPC's Elder and Dependent Adult Abuse Statewide Media Awareness Campaign.

caag.state.ca.us/bmfea/publications.htm

Elder Financial Protection Network, California, USA

The Elder Financial Protection Network is a non-profit organisation which was launched in 2000 to prevent financial abuse of elders and dependent adults through community education programmes, public awareness campaigns and coordination of financial institution employee training.

In the last three years, the Elder Financial Protection Network has:

- Facilitated partnerships between over 80 financial institutions, adult social service, law enforcement and regulatory agencies, organisations, foundations and community groups in twelve counties in California
- Raised over \$500,000 for prevention efforts and programme development
- Won three international video awards for the 'Be Wise' video training programme
- Received the 'Distinguished Service Award for Elder Abuse Prevention' from the Attorney General of California in 2003.

www.bewiseonline.org/index.shtml

Office of the Public Guardian and Trustee, Ontario, Canada

The Office of the Public Guardian and Trustee is part of the Family Justice Services Division of the Ministry of the Attorney General, Ontario. The Office is responsible for helping to protect the rights and interests of mentally incapable adults who have no one else to act on their behalf and for screening private applications to replace the Public Guardian and Trustee as guardian.

The Office provides extensive education to other service providers, professional groups and the public about issues such as mental incapacity, guardianship processes and powers of attorney.

The Office takes advantage of opportunities to speak at conferences, serve on panels and attend local meetings to help stakeholders and the public better understand its role. During 2001-02, 118 outreach sessions to more than 3,200 people were held. The audiences included health practitioners, seniors, parents of disabled children, lawyers, and many others.

www.attorneygeneral.jus.gov.on.ca/english/family/pgt/