

## Chapter 8

### Other Courts and Offices of the Supreme Court

Other courts are-

- **The Court of Protection** is responsible for the management and administration of the property and affairs of persons suffering from mental disability

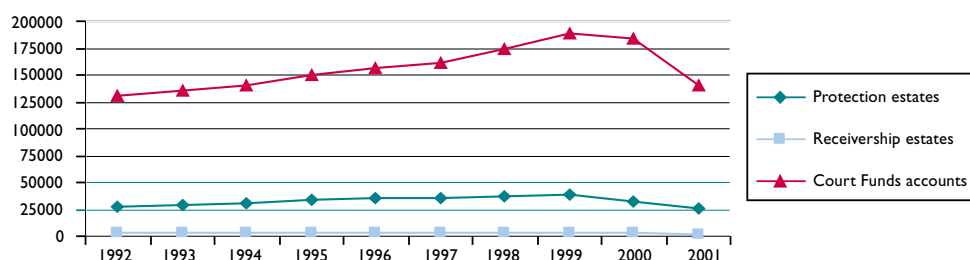
Offices of the Supreme Court include-

- **The Office of Official Solicitor and Public Trustee** - which has a duty to protect the interests of mentally incapacitated adults and children (other than the subject of child welfare proceedings) who are under a legal disability and to act as trustee when there is no-one else or suitable to do so
- **The Tipstaff** - whose main responsibility is for the delivery of persons to the court, prison or elsewhere as ordered by a judge of the Supreme Court
- **The Public Guardianship Office** - which deals with private monies either held in court pending a court case, or in Trust, or on behalf of the mentally disabled;
- **Court Funds Office** - involves receiving, holding and paying out money paid in satisfaction, awards by courts to minors and certain other sums

During 2001-

- new referrals and active caseload remained at a similar level to those in the previous year, and the new figures establish the baseline for the future as the first produced for the combined office following the transfer of children's work to CAFCASS and the take-on of Public Trustee trust work from the former PTO (Table 8.1)
- in the Court of Protection, orders made under the Mental Health Act 1983 by masters, assistant masters and nominated officers decreased by 41% to 4,280 (Table 8.4)
- the number of accounts at the Court Funds Office at the end of the year fell by just over 24% to 140,305. They held a nominal value of £2.6 billion

*The Public Guardianship Office and Court Funds Office:  
Estates and Accounts under administration at year end, 1992 - 2001*



## **The Office of the Official Solicitor and Public Trustee**

The Official Solicitor (a statutory appointment under section 90 of the Supreme Court Act 1981) acts in legal proceedings for those unable to represent themselves. In particular, he acts for the mentally disabled and children (other than those who are the subject of child welfare proceedings now the responsibility of the Children and Family Court Advisory and Support Service) who are vulnerable litigants because they lack capacity. He will also intervene when there is no-one else able or suitable to do so to prevent an injustice which would arise were he not to act for a party. His main objective is to protect the best interests and human rights of those he represents.

In family proceedings he will act as a guardian ad litem of a parent suffering from mental disability within the meaning of the Mental Health Act 1983; and in any civil litigation (e.g. personal injury claims, possession actions or applications in connection with inheritances) he will be invited by the court to act as the litigation friend of a party under disability. He is also brought in to represent incapacitated adults in medical or welfare cases where issues arise as to what lawfully should be done in their best interests. Other cases may involve him representing an estate of a deceased person, usually in circumstances in which there is a need to protect the property of a child or person under mental disability, or some person wishes to claim against an estate for which no personal representative is willing to act. He administers estates and acts as trustee when there is no-one else suitable to do so. He reviews the cases of persons committed to prison for contempt of court. His office represents persons without mental capacity in proceedings concerning their property and affairs before the Court of Protection. He can also be called upon to assist the courts by providing an advocate to the court.

His office administers the Child Abduction Unit in England and Wales (the Central Authority under the Hague and European Conventions on Child Abduction) to ensure that an aggrieved parent may, with minimal delay, make application to enforce orders in the child's home country, and where the claim is made out secure the return of the child.

The Public Trustee, appointed under the Public Trustee Act 1906, acts as executor or administrator of deceased persons' estates or trustee of wills or settlements, when nominated to do so and he accepts that nomination. Increasingly, since the policy changes announced by the Lord Chancellor in April 2000 in "Making Changes - the Future of the Public Trust Office", this function is concentrating upon providing a public sector service of last resort where there is a social need for the Public Trustee to act which could not be met in the private sector. Since 1 April 2001, as also announced in that policy statement, the office has been combined with that of the Official Solicitor following the appointment of the same individual to the two statutory offices.

**Table 8.1**  
**Supreme Court - Office of the Official Solicitor and Public Trustee: Cases accepted and carried forward, 2001**

	New Referrals	Average Monthly Active Cases
Official Solicitor		
Family Litigation	746	500
Divorce	156	368
Civil Litigation	619	1,006
Court of Protection	380	341
Bails/Contempts	258	66
Child Abduction	358	290
Estates	140	1,229
Public Trustee ( <i>since April 2001</i> )		
Trusts	19	1,472
Executorships	14	105
Pension and Institutional Funds	-	24
<b>Total</b>	<b>2,690</b>	<b>5,401</b>

## Tipstaff

The tipstaff is the enforcement officer of the Supreme Court. His main responsibility is for the delivery of persons (including minors) to the court, prison or elsewhere as ordered by a judge of the Supreme Court. In practice many of the orders are enforced by assistants (e.g. bailiffs, police) who are appointed by the tipstaff as and when required. When a child (minor) has been wrongfully removed from its legal guardian the court may make an order directing the tipstaff to find and return the child. These 'find and return' orders are usually made in guardianship of minors and wardship cases.

During 2001, 28 persons were conveyed to prison by the tipstaff or his assistants, 36 less than in 2000. In 2001, 141 warrants were executed (138 in 2000) and 19 warrants were suspended, discharged or expired. In 2001, 184 'find and return' orders for minors were received and 203 were executed, compared with 177 and 201 respectively in 2000.

**Table 8.2**  
**Supreme Court - Tipstaff: Warrants dealt with, 2001**

	Warrants executed	Persons conveyed to prison	Warrant suspended or discharged
<b>Warrant issued by</b>			
Court of Appeal	-	-	-
Queen's Bench Division	12	3	-
Chancery Division	8	5	1
Bankruptcy	12	6	9
Insolvency	3	3	9
Family Division:			
Domestic Violence and Matrimonial Proceedings Act 1976	-	-	-
Other	64	11	-
Admiralty Shipping			
Arrested/Released	5	-	-
<b>Total</b>	<b>141</b>	<b>28</b>	<b>19</b>

**Table 8.3**  
**Supreme Court - Tipstaff: 'find and return' orders for minors received and executed, 2001**

Orders received for execution	184
Orders executed	203
Cases pending at end of year	73

## Court of Protection

The Court of Protection is an office of the Supreme Court which exercises judicial functions in respect of the property and financial affairs of persons who are incapable, by reason of mental disorder, of managing and administering their own property and affairs. Such persons are technically known as *patients*.

The Court's powers are conferred by the Mental Health Act 1983, Enduring Power of Attorneys Act 1985, the Court of Protection Rules 1994, and the Court of Protection (Enduring Power of Attorneys) Rules 1994.

These powers are exercisable by the Lord Chancellor, nominated judges (the judges of the Chancery Division and since 5th May 2000 by the judges of the Family Division), the master, assistant masters and other nominated officers of the Court of Protection, and the Public Trustee.

Certain orders can only be made by the Lord Chancellor or a nominated judge but, subject to these exceptions, the jurisdiction is in practice exercised by the other people mentioned.

In 2001 there were two orders made by a nominated judge (three in 2000) with 7,953 orders being made by the master, assistant masters or nominated officers (10,673 in 2000).

The Court of Protection shares office accommodation with its Executive Agency, the Public Guardianship Office, at Archway Tower, 2 Junction Road, London N19 5SZ. It is the Lord Chancellor's policy to make the Court more accessible to the public by providing it with a regional presence, and since 1 October 2001 a district judge, sitting as a part-time deputy master of the Court of Protection, has heard contentious matters at Preston Combined Court Centre.

**Table 8.4**

**Supreme Court - Court of Protection: Proceedings under the Mental Health Act 1983 and the Enduring Power of Attorney Act 1985, 2001**

**Nature of proceedings**

Orders made on first applications under the Mental Health Act 1983 by master, assistant masters and nominated officers	4,280
Orders made on subsequent applications	2,013
Orders for sale and purchase of property	861
Wills executed for clients and sealed with the Court's seal and orders for settlement and gifts, excluding those made on applications relating to Enduring Powers of Attorney	224
Orders made on applications relating to Enduring Powers of Attorney dealt with by the Registrars Department	182
Applications for orders appointing new trustees under sections 36(9) and 54 and 96(1) (k) of the Trustee Act 1925 and section 20(2) (c) of the Trusts of Land and Appointment of Trustees Act 1996	507
Orders determining proceedings on a patient's recovery	110
Visits carried out by the Lord Chancellor's medical visitors	75

## The Public Guardianship Office

The Public Guardianship Office (PGO) was established on 2 April 2001 as an Executive Agency within the Lord Chancellor's Department. The agency operates as part of the Court of Protection, and undertakes the Mental Health functions previously carried out by the Public Trust Office.

The PGO provides an integrated service for its Clients, safeguarding their financial interest while avoiding unnecessary state intervention. Its major function is to protect and promote the interests of its clients by overseeing and supporting the activities of Receivers appointed by the Court of Protection to manage their financial affairs. Where the Court of Protection adjudges a person mentally incapable of managing their own financial affairs and, there is no one else willing or suitable to act as Receiver, the PGO will appoint one of the professionals from the panel of Receivers to act on behalf of that person. In exceptional cases if no one can be appointed as Receiver the PGO will take the role itself. In addition, the PGO carries out the administrative functions arising from the Court of Protection's jurisdiction under the Enduring Powers of Attorney Act 1985.

At the end of 2001 the Agency was protecting the affairs of some 25,365 Protection Division clients, a decrease of 22% on 2000. It was also directly managing the affairs of 1,533 Receivership clients, a decrease of 61.6% on 2000. The nominal value of these accounts was £1.9 billion.

**Table 8.5**  
**The Public Guardianship Office: Matters under administration, 2001**

### Nature of Proceedings

#### Protection Work:

Estates under administration:	
At year start	32,530
Total applications brought in during year	7,648
At year end	25,365
Annual accounts and enquiries passed	18,489
Directions given	5,723
Directions of the Public Trustee	286
Certificates issued	2,360
Schedules (others than orders) for dealing with funds	22,022
Lodgement schedules (other than orders) for payment into Court	5,255
Enduring Powers of Attorney:	
Applications received during year	13,110
Number registered during year	11,405
Total remaining registered during year	61,163

#### Receivership Work:

Estates under administration at year start	3,511
Estates under administration at year end	1,533

*Estimated value of funds under administration was £1.9 billion*

## **Court Funds Office**

Court Funds Office transferred to the Supreme Court Group of the Court Service on the 1 April 2001. Court Funds work involves receiving, holding and paying out money paid in satisfaction, awards by Courts to minors, money held on behalf of Public Guardianship Office, Protection and Receivership clients and certain other sums. Whilst the money is held it is invested on behalf of that Court and their clients.

The Court Funds opened 66,378 new accounts in 2001, a decrease by nearly 44% on 2000; 23,245 accounts were closed, a decrease of 81% on 2000. The net result was a decrease of 24%, to 140,305 accounts remaining at the end of the year. The nominal value of these accounts was £2.6 billion.