

Switalskis Court of Protection Webinar Series

Who is the Official Solicitor?

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Official Solicitor & Public Trustee

Outline of Presentation

- What areas of work does the OS undertake?
- What does my role consist of?
- Impact of the pandemic on the work of the OS.
- What is on the horizon?

Bio

- Admitted as a solicitor in 1994. Prior to taking up the position of Official Solicitor and Public Trustee on 4 July 2019, practised in Local Government, specialising in Child Protection.
- Undertook articles with Kent County Council and moved to Berkshire County Council in 1997. The team is now established as the Joint Legal Team, a shared legal service hosted by Reading Borough Council which specialises in child protection, adult social care and education, and which represents all of the unitary authorities in Berkshire. Team Principal between 2012- 2019.
- Born in Bedworth in Warwickshire and was educated in St Joseph's Convent School in Kenilworth, St Mary's College at Durham University and the College of Law in Chancery Lane.
- Lives in Oxfordshire with her husband, John, and two stepchildren.

What / Who are the Official Solicitor (OS) and the Public Trustee (PT)?

- Sarah Castle (a solicitor) was appointed in July 2019. The 12th OS since 1876 and the first woman. In her role as the PT, she is the second woman to hold this position.
- A Civil Servant who holds two separate independent statutory offices.
- As the Official Solicitor (OS), appointed by the Lord Chancellor under the Senior Courts Act 1981.
- As the Public Trustee (PT), appointed by the Lord Chancellor under the Public Trustee Act 1906.



Who's who?!



History of the OS and PT

- The development of the functions of the Official Solicitor's office can be traced back through the 18th century when the Office of the Six clerks, which is mentioned in Samuel Pepys' Diary, assisted destitute litigants, lunatics and infants in Chancery suits. The role of the Official Solicitor dates back to 1871 when Henry Pemberton was appointed.
- The Public Trustee Office was set up in January 1908 under the PTA 1906 in order to provide the public with the services of a perpetual trustee guaranteed by the state to administer trust funds with integrity, fairness and impartiality at cost price.
- Since 2016 both positions have been held by one office holder.

OS 150

- In 2021 we celebrate 150 years of the role of the OS.
- We are planning internal and external stakeholder celebrations.

OSPT structure and areas of work

- The office (OSPT) is comprised of 138 staff, 28 of which are lawyers.
- The OS is supported by 2 Deputy Official Solicitor's. Supported as the Public Trustee (PT) by one deputy PT and supported in both roles by her Senior Leadership Team.
- OSPT is divided into 3 main areas of business, supported by a small corporate team:
- Litigation Services – Civil; Family Private and Public; Court of Protection Health & Welfare and Property & Affairs.
- Trust and Estates.
- International – International Child Abduction and Contact Unit (ICACU) and Reciprocal Enforcement of Maintenance Orders (REMO).

How we conduct our Litigation

- We only conduct in house litigation in respect of serious medical treatment cases (SMT) and Property and Affairs (PAA) cases.
- For the remaining cases, we retain private practice solicitors.
- The OS can be appointed as advocate to court.
- Conduct Harbin v Masterman enquiries.

OSPT

- My role is divided into 4 parts:
 1. Internal management
 2. Ministry of Justice
 3. Stakeholder engagement
 4. Public Trustee

Internal Management

Managing an Arms-length body of the Ministry of Justice - OSPT

Independent and yet connected

- Managing the staff and the business alongside giving direction and agreeing the position taken on cases.
- I am consulted and give the instructions on the Serious Medical Treatment cases. I even do the odd bit of advocacy!

Ministry of Justice

Part of the leadership team (Director Level) led by Second Permanent Secretary, Jo Farrar.

Within this group are the executive agencies i.e. OPG, LAA and CICA.

- This provides invaluable support and opportunities for me and my Team.

Stakeholder Engagement

- It is important that the OS is outward facing, as well as managing the internal business.
- A significant stakeholder for the OS is the Judiciary.
- Working well with the senior Judges. Regular discussions with the President and the Vice President and our dialogue is collaborative.
- Part of the HIVE group. This was set up by the VP in response to the Pandemic and has been very effective.
- MoJ policy are another significant stakeholder. We work together on new work streams as well as existing policy issues and cases.

- Introduction of an Out of Hours Service for Serious Medical Treatment Cases:
 - Barnsley Hospitals NHS Foundation Trust v MSP [2020] EWCOP 26
 - University Hospitals Plymouth NHS Trust v RS & Anor [2020] EWCOP 70 ; Z v University Hospitals Plymouth NHS Trust & Ors (Rev 1) [2020] EWCOP 69 ; RS, Re [2021] EWCOP 6 ; Z v University Hospitals Plymouth NHS Trust & Anor (Rev 3) [2020] EWCA Civ 1772; and Z v University Hospitals Plymouth NHS Trust (NO 2) [2021] EWCA Civ 22 (13 January 2021)
 - East Lancashire Hospitals NHS Trust v GH [2021] EWCOP 18

Public Trustee

- In my role as Public Trustee, I am a Trustee of Chequers.
- Part of the full board of Trustees, as well as the Management Committee.
- This year we celebrate the 100 year anniversary of the occupation of the house, by a Prime Minister.

The Impact of Covid

Some reflections

- The system pulled together to try and keep the wheels of Justice moving.
- We improved our stakeholder relationships, as we actively participated in a number of key dial ins (some daily).
- We made more progress over the past 12 months than we had made in years, or were ever likely to make, with the Banks and Financial Institutions. They had previously refused to deal with us electronically (Pre acceptance checks for certain applications).

- Medical professionals could give their evidence from the hospital, sitting in their scrubs, and it was a better quality of evidence. It saved time for them and somehow it was more compelling.
- Family members could give evidence from their homes which was less intimidating.
- In the Serious Medical Treatment cases, the Judges found a way to involve P, including them sitting in their hospital bed: *Avon and Wiltshire Mental Health Partnership v WA & Anor* [2020] EWCOP 37
- In some aspects we will not go back to how it was before.

Lessons for my Office

- We can operate very effectively remotely.
- Our IT performed very well!
- Demonstrated great flexibility.
- Enhanced awareness of our staff wellbeing.
- Demonstrated consistent flexibility.
- Working model will never go back to what it was.

The Impact of the Pandemic on Vulnerable People

- What is the future of Possession Proceedings/ housing and social care for the vulnerable?
- Will there be further stays on eviction proceedings?
- A large homeless population poses particular problems in a Pandemic.
- Will budgetary considerations lead to more challenges of failure to provide housing/social care.
- Will the impact of the Pandemic on peoples mental health increase the number of litigants without capacity?
- The OS could see an increase in work across all of the Litigation Teams.

Significant cases involving the OS

- Handout of cases will be circulated.

What is on the horizon?

- The case of *A local Authority v JB*[2020] EWCA Civ 735. Will the OS be granted permission to appeal by the Supreme Court?
- The case of *EG,R (on the application of) v The Parole Board of England and Wales*[2020] EWHC 1457(Admin)(09 June 2020) confirms the OS can act in Parole Board Cases. We are currently working with the Parole Board in finalising guidance on the appointment of LF and some cases have already been referred.
- We are receiving an increasing number of enquiries about Tribunal work which to date includes the Employment Tribunal, the Upper Tribunal (Administrative Appeals Chamber) and the Upper Tribunal(Immigration and Asylum Chamber).
- Following the decision in *AM (Afghanistan) v Secretary of State for the Home Department* [2018] 4 WLR 78 it is expected that this work will be developed further.

- The Legal aid means test review being carried out by the Ministry of Justice. It will be interesting to see the consultation which is planned for late spring as many incapacitated litigants do not qualify for legal aid on the current financial eligibility criteria but have insufficient means to means to fund legal costs.
- The HIVE will look at the practices, which have developed in the Court of Protection, during the Pandemic and which of those practices should remain. A strong emphasis on the part played by technology and the remote Hearing. What are the implications for the participation of P?



Any questions?