



**Transforming Legal Aid: Next Steps**

**A Report for The Law Society of England and Wales and the Ministry of Justice**

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## 1 Executive Summary

We were appointed by the Law Society in consultation with the Ministry of Justice (MOJ) as consultants with in-depth knowledge of the criminal defence market, to complement work being carried out by KPMG, to consider three particular issues:

- The volume and value of contract needed to ensure viability and thus the number of contracts that can be awarded;
- The size of the procurement areas and the impact that has on the costs firms incur;
- The ability of firms to expand and to do so quickly enough to the scale that would be required to deliver the contracts.

We were asked to research:

- The current financial position of criminal defence firms;
- Firm's views on the size of contract they would need to deliver a viable duty and own client contract;
- The impact of the proposals on firms that would just have an own client contract.

Both the MOJ and the Law Society recognised the need for an evidence based approach and this report summarises the principal findings and conclusions to emerge from that evidence.

Our research was undertaken by means of a questionnaire survey of criminal defence firms together with face to face or telephone interviews with a sample of respondents in order to explore the issues raised in greater depth.

We had a good response to our survey with approximately 170 firms participating and conducted in-depth interviews with 26 firms. In 2012-13 there were 1,599 firms undertaking criminal legal aid. Although in other research contexts, the response rate might be considered low, our experience of other similar surveys within the legal sector suggests that the response rate was good.

Our principal findings are that:

- The key issue facing most firms at present is a significant reduction in work levels;
- On average firms were achieving a 5% net profit margin in crime. Larger firms with 40+ solicitors were achieving lower margins than smaller firms. Previous reductions in fees, specifically for crown court work, may not yet be fully reflected in these figures. Firms in London are the least profitable;
- The finances of many crime firms are fragile. Most do not have significant cash reserves or high excess bank facilities (the difference between a firm's actual bank balance and its overdraft facility). In the qualitative interviews and in comments submitted with the surveys, a number of respondents expressed the view that their bank would be unwilling to extend further credit to them. In November 2013, the Solicitors Regulation Authority published

research into firms facing financial difficulties<sup>1</sup>. It found that 5% of firms had a high risk of financial difficulty and 45% percent of firms faced a medium risk. Generating at least 50 percent of revenue from legal aid, particularly crime or family, was identified as a risk factor;

- If the first reduction in fees of 8.75% takes place before there has been any opportunity for the market to consolidate the participants indicated that their profitability would be significantly weakened before they had managed to secure additional volume;
- In 2015 it is proposed that the balance of the fee reductions take place and for many participants, especially those in London and the South East, they would be very much greater than 17.5%, which is the overall national saving calculated by the MOJ. Many participants commented that they had already made such costs savings as they could and had little opportunity to reduce overheads further;
- If fees are reduced as planned, and contracts for duty work introduced, the participants indicated they would need duty and own client fees of approximately £600,000 in rural areas £1.1m in London and £1.2m in urban areas in order to be viable.
- Many participants indicated that the proposed procurement areas were too large. This raises concerns as the adoption of very large procurement areas would increase cost and reduce efficiency;
- Because volume in rural areas is low, a number of participants indicated that a reduction in the number of contracts in rural areas could be problematic and could have unintended consequences. The market in rural areas is already consolidated, with, on average, 60% of the work being undertaken by the top 8 firms in each procurement area;
- Most firms are dependent on duty contracts for generating fresh work and few would be sustainable in the medium term without it. A number of respondents suggested that practitioners may split away from firms that only secure an own client contract, resulting in an increase in the number of suppliers and a proliferation of small contracts;
- Some mid sized firms with 13-40 solicitors and the larger 40+ solicitor firms had experience of merger, opening offices and growth in staff levels and would have the management skills to manage reasonably rapid expansion;
- Few “general” firms will be willing or able to cross-subsidise crime;
- Many firms indicated that they lacked the necessary information about their own business that they would need to successfully construct a bid;
- It will be difficult for firms to reduce cost quickly;
- There is currently huge uncertainty facing the supplier base, and this uncertainty has made it impossible to plan;

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<sup>1</sup> Navigating stormy seas: financial difficulty in law firms – SRA November 2013  
<http://www.sra.org.uk/riskresources/>

- There are problems imposing national fees, especially for firms in London, as the actual cost of undertaking the work varies so significantly. If the remuneration proposals set out in Next Steps are implemented firms in London and other parts of the South East will see fee reductions significantly greater than the nationally calculated 17.5% saving, as the existing fee structure takes the higher costs of service delivery in these areas into account;
- Few firms expressed interest in contracts outside their procurement areas and there was little appetite for mergers.

Our principal conclusions, based on the comments made by participants in the survey, the quantitative data we analysed, and on our own knowledge of the sector are:

- All firms surveyed have experienced a significant fall in volumes of work in recent years, and they attributed that fall to falls in crime levels but also local decisions not to prosecute. The latter appears a significant factor and was a cause for concern amongst many of the firms we spoke to – not simply due to the impact it had on their business, but perhaps more importantly the impact this may have on local communities and victims of crime;
- Margins in crime are very tight, especially in London, and the effects of previous fee reductions in crown court work have yet to be fully felt. The survey strongly suggests that the supplier base is not financially robust and is very vulnerable to any destabilising events, for example rejections of bills due to incomplete claims or errors by LAA staff leading to delays in payment by the LAA;
- Based on the findings of the survey, in our opinion, any fee reductions should take place after, not before, the market has had a chance to consolidate as firms will otherwise be weakened financially at the very time that they will need to invest in new staff and systems, and fund any redundancies. Fee reductions prior to market consolidation would make it more difficult for the market to restructure;
- There are very few firms which can sustain the overall reduction in fees set out in the Next Steps document, which would be very much greater than 17.5% in some parts of the country, particularly in London and the South East; but also in some rural areas which had higher fees due to higher costs of travel and waiting. Due to the weak financial base, we conclude that few firms will be able to invest in the structural changes needed for a larger duty contract and recruit new fee earners;
- The proposed procurement areas are based on Criminal Justice Areas; but a significant number of respondents raised practical problems arising from this. We believe that this is because the Criminal Justice Areas were designed for a different purpose and may not be suitable as a basis for procurement areas without amendment. They are often extremely large geographically and would be difficult to service. A significant number of respondents expressed the view that it would be better to build a structure based on courts;
- The participants indicated that fees of approximately £1.1m in London, £1.2m in urban areas and £600,000 in rural areas were needed in respect of police station, magistrates court and crown court litigation to enable them to run a viable practice. Our research strongly suggests that it would not make sense to apply a single national contract size across the country and

that flexing contract sizes to take account of local conditions and volumes would be more effective. In calculating the size of contracts, a delicate balance will have to be struck by the MOJ. Too large and some very good, smaller firms will be excluded from duty contracts. Too small and existing major providers would have to scale back their operation;

- There is a small number of very large crime suppliers however there is also a large number of mid-sized suppliers, with current crime fees of approximately £750,000 to £1m. The large firms are clearly very important, however this group of mid-sized suppliers is likely to be key to any new system and would be able to sustain a modest increase in size;
- We consider that the MOJ should take a different approach to securing duty solicitor provision in rural areas. The supplier base is already consolidated in many rural areas and there may be insufficient volume to allow firms to achieve significant efficiencies. There is a risk that any attempt to reduce the number of contracts in rural areas could cause more problems than it would solve and could result in an over-stretched supplier base struggling to cover the whole of some very large procurement areas. The imposition of a single national system may fail to recognise differences in volumes of work available and the information generated by the survey suggests that the over-supply of firms relative to the work available is in London and urban areas, rather than rural areas;
- Some firms have the management skills needed to oversee reasonably rapid growth however that number is limited and their ability to grow is likely to be restricted by financial constraints.



## 2 Introduction

In September 2013 we were appointed by the Law Society, in consultation with the Ministry of Justice (MOJ) to undertake a research project following publication of the MOJ's revised consultation paper<sup>2</sup> on crime competition and duty contracts.

We were asked to research:

- The current financial position of criminal defence firms;
- Firms' views on the size of contract they would need to deliver a viable duty and own client contract;
- The impact of the proposals on firms that just have an own client contract.

In order to consider three particular issues:

- The volume and value of contract needed to ensure viability and thus the number of contracts that can be awarded;
- The size of the procurement areas and the impact that has on the costs firms incur;
- The ability of firms to expand and to do so quickly enough to the scale that would be required to deliver the contracts.

Both the MOJ and the Law Society recognised the need for an evidence based analysis and this report summarises the principal findings and conclusions to emerge from that evidence. This jointly commissioned report is the first part of a piece of research to obtain that evidence. The second part of that work was undertaken by KPMG who were asked to undertake financial modelling based upon the results of our research but also utilising data on volumes in each procurement area provided by the MOJ. Both reports will help inform MOJ's analysis of market sustainability and the final decision on the number of contracts for duty Provider Work.

A number of people have helped us undertake this project and we would like to thank Richard Miller and his colleagues at the Law Society; Officials at the Ministry of Justice; Bill Waddington, Mike Jones, Sue Johnson and their colleagues at the CLSA; Carol Storer and the members of LAPG; Marisol Smith and Mark Sefton who undertook most of the telephone interviews and helped us identify the themes that emerged.

In particular we should like to thank the firms who participated in our survey and those whom we interviewed.

**Andrew Otterburn and Vicky Ling**

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<sup>2</sup> Transforming Legal Aid: Next steps

### 3 Methodology

The project involved a questionnaire survey of criminal defence firms together with face to face or telephone interviews involving a sample of respondents in order to explore the issues raised in greater depth. The interviews supplemented the questionnaire to make the sample more representative according to size of firm and location and to explore issues in more depth.

KPMG were appointed by the MOJ to undertake financial modelling based upon the results of this research and to advise the MOJ with regard to the number and size of contracts to be awarded. We provided KPMG with a copy of our report and summary financial data from the quantitative survey, and were kindly allowed to read their draft report outlining the methodology followed, however we had no input into the design of their financial models or the underlying assumptions these were based on.

This project was undertaken by Andrew Otterburn and Vicky Ling, two consultants with considerable knowledge of this sector and who have contributed to previous research on behalf of the Legal Services Commission, Lord Carter and the Department for Constitutional Affairs. They undertook similar surveys for the Law Society in 2011<sup>3</sup> and also earlier this year<sup>4</sup>. Their conclusions are based therefore on the findings to emerge from the quantitative and qualitative research and also their wider understanding of the sector, and the issues facing it.

A wide variety of means was used to contact firms and encourage them to participate in the survey and 167 firms participated. In 2012/13 there were 1,599 firms undertaking criminal legal aid, so 167 participants represent 10% of the supplier base. A 10% participation rate, though low when compared with some other surveys, is very good for a financial survey of this nature especially amongst this type of law firm. It compares very favourably with the annual benchmarking survey undertaken by the Law Management Section (LMS), which is part of the Law Society. In 2012 approximately 10% of their members participated in their survey, however the LMS survey was very much shorter than this survey and its members are, by definition, interested in the management of their firms. To achieve a comparable response rate is very good, especially as we are aware that there was initially considerable scepticism amongst many firms as to the value of participating.

Completed questionnaires were returned in confidence to Otterburn Legal Consulting LLP, which undertook the analysis.

At the same time we undertook a qualitative survey to find out what firms thought about the proposals, the impact they expected them to have, and what they anticipated they might do. 26 firms participated in this aspect of the research.

Firms were selected on the basis of their size and geographical location, providing a spread of firms in London, urban and rural locations, some small, others large. The sample also included firms with differing proportions of own client and duty work, as well as including a number of smaller firms. The qualitative research allowed a more nuanced analysis of the quantitative data and gathered additional data.

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<sup>3</sup> Impact of the MOJ Green paper proposals on legal aid firms – Otterburn Legal Consulting – February 2011

<sup>4</sup> Price Competitive Tendering for Criminal Defence Services 2013 – Otterburn Legal Consulting – June 2013

Some of the interviews were conducted face to face by Andrew Otterburn and Vicky Ling. However, the majority were conducted by telephone by two independent researchers with a great deal of experience in researching the legal aid sector, Marisol Smith and Mark Sefton. They both provided confidentiality undertakings and their reports were submitted direct to Otterburn Legal Consulting LLP. No identifying details were shared with the Ministry of Justice or the Law Society, although they were provided with feedback about the themes that had emerged from these interviews.

Appendix I includes definitions of the key terms we have used in this report.

The tables in this report show the median together with the lower and upper quartiles. The median is the middle value in a range and is not influenced by the magnitude of the extreme values (as the arithmetic average or mean can be). The quartiles indicate the range of values. 25% of firms are below the lower quartile, and 25% of firms are above the upper quartile. Some of the sub categories are based on small samples, especially in London, and the figures must be treated with care.

#### 4 The firms that participated in our survey

The survey was based on the results of the 167 questionnaires received before our deadline.

Traditionally, Law Society financial surveys are categorised according to the number of partners each firm has, however some of the largest crime firms actually have very few partners, making categorisation by the number of partners of limited value. In this report we have instead classified firms according to the alternative basis the Law Society uses, which is by the number of solicitors<sup>5</sup> in each firm. We used the same classification in our report earlier this year for the Law Society. The tables in this report classify firms therefore according to the total number of solicitors the firm has, not just the number of solicitors in the criminal department.

68% the participants had fewer than 12 solicitors and most were partnerships:

<b>Table 4.1: The participating firms - by total number of solicitors in each firm</b>	<b>Number</b>	<b>%</b>
1-5 Solicitors	50	30%
6-12 Solicitors	64	38%
13-40 Solicitors	41	25%
40+ Solicitors	12	7%
<b>Total</b>	<b>167</b>	<b>100%</b>

We were not able to compare the profiles of firms in the survey against data on those firms holding criminal defence contracts with the LAA in terms of numbers of solicitors, as this data is not gathered by either the LAA or the Law Society; but comparisons are drawn in relation to geographical location and also crime fees as this data is held by the LAA. We are also able to make comparison with our earlier survey, and that also provides reassurance as to the representativeness of the sample.

<b>Table 4.2: The participating firms - by business structure</b>	<b>Number</b>	<b>%</b>
Partnership	77	46%
Sole principal	20	12%
LLP	30	18%
Limited company	40	24%
<b>Total</b>	<b>167</b>	<b>100%</b>

During the course of our research it became apparent that there were significant differences between firms depending on their location, and in our analysis we have sought to recognise this by grouping firms into three broad categories – London, “urban” and “rural”.

<sup>5</sup> i.e., the classification is by the number of solicitors in each firm rather than the number of partners or total fee earners.

We have classified firms in large, predominantly rural areas, such as Cornwall, Devon, Powys or Dorset as “rural” however those based in major centres such as Plymouth or Exeter have been categorised as “urban”. We have classified areas such as Greater Manchester, West and South Yorkshire and the West Midlands as “urban”. Some areas are more problematic. We have, for example, classified Hampshire and Oxfordshire as “urban” because, whilst large rural counties, most of the crime firms are based in major urban centres such as Portsmouth or Oxford. Appendix II indicates into which of the three broad areas we have allocated each locality.

Table 4.3 indicates an over-representation of firms in urban areas and under-representation of firms in London and in rural areas.

<b>Table 4.3: The participating firms - by location</b>				
	<b>Survey Number</b>	<b>%</b>	<b>Latest LAA data*</b> <b>Number</b>	<b>%</b>
London	30	18%	460	23%
Urban	87	52%	767	39%
Rural	50	30%	762	38%
<b>Total</b>	<b>167</b>	<b>100%</b>	<b>1989</b>	<b>100%</b>
* Based on firms who submitted claims in 2011/12. Includes VHCC. Total is higher than for analysis based on crime fees (table 4.10) as some firms have offices in more than one area - if this is the case each office is counted once.				

In all, the participants had approximately 5,700 fee earners and staff of whom just under half worked in their criminal departments:

<b>Table 4.4: <u>Current</u> Headcount (full time equivalent)</b>	<b>Crime</b>	<b>Whole firm</b>
Equity partners/members/directors	347	562
Salaried partners/members (PAYE)	62	148
Fixed share partners/members (self employed)	43	125
Consultants	183	233
Other solicitors	760	1,419
Other qualified fee earners (Legal Executives/ Barristers)	127	255
Unqualified fee earners / case workers	310	605
Trainee solicitors	80	172
Other fee earners	19	39
<b>Total fee earning staff</b>	<b>1,930</b>	<b>3,557</b>
Secretaries, support staff, and other administrators in departments	462	1,361
Central staff (reception, accounts, practice manager, etc)	235	824
<b>Total</b>	<b>2,626</b>	<b>5,742</b>
Average fee earners per firm		21
Number of firms with 50%+ BME fee earners		14

57% of cases dealt with by all firms in the survey at the police station were own client:

<b>Table 4.5: Police station cases - own client v duty and magistrates court own client cases</b>	<b>Number</b>	<b>%</b>
<b>Police station</b>		
Own client	84,547	57%
Duty	63,046	43%
<b>Total</b>	<b>147,593</b>	<b>100%</b>
<b>Magistrates court own client cases</b>	<b>82,261</b>	

It should be borne in mind that this is an average and the percentage for individual firms was often higher or lower than 57%. Firms in London and urban areas tended to have higher percentages of duty work, although there were some, even within those groupings that had higher own client percentages than the average for their group as a whole.

The firms had a combined income from crime of £143m. The table indicates the current annual fees earned in respect of the different areas of work:

<b>Table 4.6: <u>Current</u> annual fees from crime</b>	<b>£</b>	<b>%</b>
Police station	28,978,945	20%
Magistrates court	35,987,503	25%
Crown court litigation	40,990,802	29%
Crown court advocacy	12,090,224	8%
VHCC/Confiscation work	4,482,163	3%
Court duty fees	5,297,543	4%
Private crime	9,220,501	6%
Prison law	3,361,947	2%
Other	3,068,881	2%
<b>Total</b>	<b>143,478,509</b>	<b>100%</b>
<b>Number of firms</b>	<b>167</b>	
<b>Median police station fee - London</b>	<b>£233.33</b>	
<b>Median police station fee - Outside London</b>	<b>£181.31</b>	
<b>Median magistrates court fee - London</b>	<b>£490.20</b>	
<b>Median magistrates court fee - Outside London</b>	<b>£361.76</b>	

We calculated the average fee for each firm by taking their police station and magistrates court fees and dividing these by the numbers of cases each firm undertook. The figures have historically been higher in London reflecting the efficiency of the police, CPS, prison transport services, prisons and courts, and travel time/costs.

Crime accounted for 51% of the fees of the participants. Within the sample, some firms were specialist firms that did only criminal defence work, or very little work in other areas of law. Crime accounted for over 75% fees for 60% of the firms, and 100% for 36% of the firms.

<b>Table 4.7: <u>Current</u> annual fees from all areas of work</b>		
	<b>£</b>	<b>%</b>
Mental health, immigration/asylum and social welfare	5,967,760	2%
Matrimonial / family/children	38,362,265	14%
Other fees	92,151,797	33%
Other income*	1,121,814	0%
Crime	143,478,508	51%
<b>Total</b>	<b>281,082,143</b>	<b>100%</b>
*including interest received on client account and other monies		

Median fees per firm were just under £900,000:

<b>Table 4.8 - Fees per firm</b>					
	1-5	6-12	13-40	40+	Overall
Lower quartile	232,700	582,027	1,715,165	5,091,750	476,977
Median	324,241	854,326	2,581,000	5,906,535	861,724
Upper quartile	517,827	1,083,038	3,794,804	7,616,883	1,801,222
Total	19,908,016	57,673,922	116,113,836	87,386,370	281,082,143

Median crime fees per firm were approximately £500,000:

<b>Table 4.9 - Crime fees per firm</b>					
	1-5	6-12	13-40	40+	Overall
Lower quartile	167,016	302,915	501,744	1,719,817	247,500
Median	251,500	500,260	900,000	3,415,020	499,539
Upper quartile	413,224	721,397	1,458,459	4,790,000	905,800
Total	15,541,289	36,311,588	51,222,096	40,403,536	143,478,509
Number of firms	50	64	41	12	167

Small firms undertaking crime fees of under £100,000 were under-represented in the survey, and there was an over-representation of larger firms:

<b>Table 4.10 - Crime fees per firm</b>				
	Survey		Latest LAA data*	
	Number of firms	%	Number of firms	%
Under £100,000	9	5%	503	28%
£100,000 - £300,000	41	25%	493	27%
£300,000 - £500,000	34	20%	307	17%
£500,000 - £800,000	34	20%	236	13%
£800,000 - £1m	13	8%	78	4%
Over £1m	36	22%	197	11%
	<b>167</b>	<b>100%</b>	<b>1814</b>	<b>100%</b>
* Based on firms who submitted claims in 2011/12. Includes VHCC				

The firms that participated in face-to-face or telephone interviews are summarised below. The firms were selected so as to provide a representative sample that would cover the various sizes of firm and geographic locations: We sought to speak to more smaller firms than might otherwise be the case so as to try to compensate for the low take up of very small firms in the quantitative survey:

<b>Table 4.11 - Face to face or in depth telephone interviews</b>					
	1-5	6-12	13-40	40+	Overall
London	2	1	4	2	9
Urban	3	3	3	2	11
Rural	3	3	-	-	6
Total	8	7	7	4	26

The face-to-face interviews typically lasted two hours and the telephone interviews approximately one hour. Each of the interviews followed a structured series of questions.



The participants in the quantitative survey have a very similar profile to those that took part in our previous survey, carried out for the Law Society in June 2013, which was based on a sample of 119 firms. The main difference was that in this survey more of the participants were “urban” and fewer were from “rural” locations:

	November Survey	June Survey
Number of participants	167	119
Average fee earners per firm	21	21
Median fees per firm	861,000	959,000
Medium crime fees per firm	500,000	515,000
Participants by size:		
1-5 Solicitors	30%	29%
6-12 Solicitors	38%	40%
13-40 Solicitors	25%	25%
40+ Solicitors	7%	5%
Participants by location:		
London	18%	16%
Urban	52%	27%
Rural	30%	57%

57 of the participants (34%) also took part in our June survey.

We consider this survey is broadly representative of the firms that account for the majority of criminal legal aid expenditure. The consistency in findings between this survey and the June survey provides additional comfort that the results of this survey are representative. There is the potential for some self-selection bias. The data was collected via a survey in which firms were invited to respond and only those firms that chose to respond are included in the analysis. There is a risk that better run firms that would have had access to the necessary data might have been more likely to participate and equally firms that would be most affected by the proposals may be more motivated to respond.

## 5 The current financial position of the participants in the quantitative survey

### Estimated figures

We asked the firms to provide us with an estimate of their current fee income, salaries and overheads. They were requested to take the figures for their financial year so far from their management accounts and annualise them. We asked them to provide current figures because we wanted to be able to assess their financial position after the reductions in fees that were introduced in 2011 and the removal of work from scope that took place earlier this year.

These estimated figures must be treated with caution. They will be less reliable than the figures provided in our June survey, which was based on the participants' latest annual accounts. In particular, there is a risk that participants may have understated their expenditure levels. When checking the questionnaires it was apparent that a number of firms had not completed all the questions on expenditure and a significant number had to be contacted for clarification or details of missing information. The clarification obtained showed that the firms tended to underestimate expenditure.

10 of the participants were excluded from the analysis because they did not provide complete financial information. Unless otherwise indicated this analysis is therefore based on the data provided by 157 firms.

### Measuring profitability

In assessing the profitability of the participants we have taken the income of each firm, less the salaries of its employees and its overheads – rent, professional indemnity insurance, etc. We have also made allowance for notional interest on partner capital and a notional salary for the equity partners. Where rent in the firm's accounts is below the market rate, for example, if the offices are owned by the partners, we have allowed for a market rent. These adjustments are made because many of the participants were partnerships, sole practitioners or LLPs, and the accounts of such bodies do not include a number of key figures, which would be included, for example, in the accounts of a limited company. The adjustments enable us to compare firms on a like for like basis and show their "real" profitability.

One of the key figures missing for the partnerships, sole practitioners or LLPs that participated is any remuneration in respect of the equity partners. "Salaries" in the accounts of such firms does not include any salary in respect of the equity partners - a sole principal with no other staff for example, would have zero salaries. For these practices we have allowed for a notional salary to reflect a cost for each equity partner. This has been based on the median salary of the highest paid employed fee earner in the firms in each size group plus an allowance of 15% to reflect the additional costs that would have been incurred if he or she had been an employee – employers' NIC (12%) and pension contributions (3%)<sup>6</sup>.

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<sup>6</sup> We are aware that not all firms will be paying 3% but have applied this across the board for consistency.

144 firms provided details of their highest paid employed fee earner:

<b>Table 5.1 Equity partner notional salary</b>					
	Solicitors				
	1-5	6-12	13-40	40+	Overall
Median salary of highest paid employed fee earner	35,182	45,000	56,050	75,000	45,000
Notional salary (Median + 15%)	40,459	51,750	64,458	86,250	51,750
Number of firms:	144				

A number of the participants were limited companies and their salaries figures will include an amount in respect of directors' remuneration, however when reviewing the completed questionnaires it was apparent that these were not always set at a commercial level. We have excluded any amounts for directors' remuneration and have instead charged a notional salary for each equity partner or director as described above.

As a matter of interest these figures are very similar to the median salary of the highest paid employed fee earner in the June survey where the overall median was £45,287, and the medians for the four size groups were £38,300, £40,900, £56,100 and £90,000 respectively.

In calculating profitability we have also made allowance for notional interest on partner capital. Firms of solicitors are funded through a combination of bank borrowing and retained profits left in the business by the partners and this notional interest allows for the cost of providing this funding. We have assumed a notional interest rate of 5%<sup>7</sup>. The table summarises the capital the equity partners had invested in their firms. This is based on the 120 firms that provided balance sheet information. It indicates some high levels amongst the larger firms:

<b>Table 5.2 Capital per equity partner</b>					
	Solicitors				
	1-5	6-12	13-40	40+	Overall
Lower quartile	30,000	15,364	51,702	105,287	30,750
Median	44,556	51,467	104,688	566,667	67,333
Upper quartile	60,750	95,417	200,575	1,000,000	138,603
Number of firms	120				

<sup>7</sup> Feedback from two banks approached indicated that interest on a typical capital loan would be charged in a range of between 2%-7% above base rate. We have taken an average of 4.5% + 0.5% = 5%.

The high levels of partner capital reflect the high fee earner gearing some of the larger firms have. The ageing profile of criminal legal aid practitioners was commented upon in the NAO ‘Solicitor Survey for Criminal legal aid Study 2009<sup>8</sup>’. High levels of partner capital can lead to succession problems as and when the partners in these firms wish to retire and will want to withdraw their capital.

### Current firm-wide profitability

The profitability of the firms is summarised below and indicates an improved margin of 9.4% compared to 6% in our June survey.

This improvement may be due to difficulty estimating expenditure but could also be attributable to improved profitability in the non-crime work the participants do. Crime accounted for just 50% of the participants’ total fees and the LMS 2013 Financial Benchmarking Survey<sup>9</sup> does indicate an improvement in overall profitability of approximately 10%. This may well have been the experience of the firms in this survey also:

<b>Table 5.3 Net margin % (after notional salary)</b>					
	Solicitors				
	1-5	6-12	13-40	40+	Overall
Lower quartile	-2.1	-2.8	0.6	0.5	-1.0
Median	10.7	10.6	5.7	10.8	9.4
Upper quartile	25.7	21.2	14.5	18.2	20.3
Number of firms	157				

It should be noted that the notional salaries used in these calculations are low and in our opinion are unlikely to be of a level that would encourage many people to take the risks of setting up and running their own firms. Legal aid firms have the advantage of reasonably reliable cash flow, at least for police station and magistrates court work, but carry some real risks:

- They are dependent on a single customer which can set prices;
- They are vulnerable to changes in number of suppliers – as illustrated by the current proposals which could result in significant numbers of firms losing duty work;
- There will be liabilities in respect of leases and redundancy payments;
- Partners can incur personal liability in respect of personal guarantees, which are not infrequently required by firms’ bankers.

<sup>8</sup> [http://www.nao.org.uk/wp-content/uploads/2009/11/091029\\_GfK\\_Survey.pdf](http://www.nao.org.uk/wp-content/uploads/2009/11/091029_GfK_Survey.pdf)

<sup>9</sup> Law Management Section, The Law Society

It is also important to recognise that these profits are very much paper profits<sup>10</sup> and are not necessarily available for the partners to take out of the practice. As indicated above, firms are funded by two principal routes – retained earnings and bank finance and part of the partner profits are invariably retained in the business. Firms have to fund their operating costs and then generate a surplus over and above that before they can pay their owners a sum to reflect their investment and risk.

### The profitability of crime

In assessing the profitability of crime we have taken the actual information provided by the participants with regard to the fees and salaries of their criminal departments and have included a notional salary in respect of any equity partners in those departments. We have then deducted an allocation of the overheads each firm has based on the number of fee earners in the crime department relative to the total in the whole firm. The overall profitability of the criminal departments in the participating firms is summarised below and indicates an overall margin of 6%:

<b>Table 5.4 Aggregate profitability of crime</b>	
	£
Fee income	137,185,864
Salaries, NIC, pensions, etc	65,885,621
Sub contract freelance/agency staff	6,489,278
Non assigned counsel	1,864,958
Fixed share partners	6,807,773
Equity partner notional salaries	17,819,664
<b>Total expenditure</b>	<b>98,867,293</b>
Contribution to overheads	38,318,570
Share of overheads	30,720,710
<b>Net profit</b>	<b>7,597,860</b>
%	6%
Number of firms	157
Number of equity partners	326

<sup>10</sup> The profits shown in a set of accounts is not the same as cash in the bank – they are determined by changes in debtors and work in progress – and an apparent profit is in reality one on paper only – it is often not supported by cash in the bank

Table 5.4 summarises the profitability of the firms in aggregate and is affected by the magnitude of the different firms. Table 5.5 summarises the margins earned by the individual firms (each firm is treated equally) and indicates a median of 5%.

<b>Table 5.5 Crime margin %</b>					
	Solicitors				
	1-5	6-12	13-40	40+	Overall
Lower quartile	-15	-14	-10	-19	-14
Median	5	9	3	-2	5
Upper quartile	20	23	14	13	20
Number of firms	157				

As indicated earlier, these figures must be treated with care as they are based on estimates, in particular expenditure on overheads may be understated and some of the firms that appear to be earning high profit levels may simply have underestimated expenditure levels when completing their questionnaire. The quartile results must be treated with care.

The table below is taken from our June survey which was based on actual accounts and the quartiles in this table probably reflect a more reliable view of the profitability of the more successful firms, ie, a margin of 14%:

<b>Table 5.5a Margin - Current profitability (June 2013 survey)</b>				
	Solicitors			
%	2-5	6-12	13-40	Overall
Lower quartile	-5	2	2	1
Median	10	7	6	6
Upper quartile	16	15	11	14

Both tables also indicate that larger firms are achieving lower profit margins than smaller firms.

It is also important to recognise that the impact of previous fee reductions has not yet fully worked through in respect of crown court work, as some of these are long running cases. The reduction in volumes will also be masked as some longer running crown court cases will still be going through the system. It will not be until those cases close, and are not replaced with similar numbers of crown court cases, that firms will fully feel the impact of the reductions.

The issue is discussed in more detail in the qualitative interviews – see page 65

## **Viable firms today**

It is difficult to define “viability” as each firm and partner is likely to take a different view. We have worked on the basis that a “viable” firm is one that:

- Provides the equity partners with an income at least as high as they would earn as a senior employed solicitor;
- Generates a surplus over and above this basic salary to justify the risk of partnership and personal liability;
- Generates sufficient profit (and cash) to enable the partners to invest in the future development of the business.

As indicated above, at present on average firms are generating a 5% margin from their criminal work. A margin of 5% would provide an equity partner with a base salary as set out at table 5.1 together with a profit of approximately £23,000<sup>11</sup>. A combined pre-tax income of approximately £75,000, depending on size of firm. This is approximately 60% of the median profit per partner shown in the LMS Financial Benchmarking Survey 2013, and considerably less than earnings of, for example doctors or dentists. It cannot be compared to the salary of someone who is employed as that person does not carry the personal risk and liability of partnership.

We have taken achieving a 5% margin as a minimum definition of a viable practice.

The supplier base is very diverse and a firm’s ability to make a profit depends on a range of factors that combine to mean there is no single size or format that is viable. Key issues include volumes of work that are available, which varies according to geographical location, the firm’s overall reputation and profile, its efficiency and use of technology, and the firm’s financial structure. It also depends crucially on many factors beyond the firms’ control, such as the efficiency of the police, CPS, prison transport services, prisons and courts where it operates. In the qualitative interviews, a number of respondents commented that the more efficiently these operate, the more efficiently a firm can operate. If there are problems elsewhere in the overall criminal justice system, these impact directly on firms’ profitability.

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<sup>11</sup> Calculated by dividing the overall crime net profit in table 5.4 of £7.5m by the 326 equity partners in the crime departments = £23,000.

One of the themes that emerged from the survey and interviews was that the position was very different in rural areas from the larger urban areas and London. The table shows the total crime levels typically undertaken in each of these three areas and indicates an overall median of £500,000:

<b>Table 5.6 Total crime fees per firm (inc. VHCC, crown court advocacy and Private)</b>				
	London	Urban	Rural	Overall
Lower quartile	363,300	299,486	206,648	252,000
Median	617,000	651,533	342,460	501,744
Upper quartile	1,093,758	1,061,000	544,000	911,600
Number of firms	27	85	45	157

The table below shows the lower current profitability of firms in London:

<b>Table 5.7 Crime margin % (based on total fees)</b>				
	London	Urban	Rural	Overall
Lower quartile	-14	-8	-23	-14
Median	-4	7	3	5
Upper quartile	13	25	15	20
Number of firms	27	85	45	157



Table 5.8 summarises the levels of fees that will be within the proposed new contracts in each of these three areas and indicates an overall median, at present, of £400,000:

<b>Table 5.8 Crime fees (police station, magistrates court and crown court Litigation)</b>				
	London	Urban	Rural	Overall
Lower quartile	304,500	199,000	166,026	198,000
Median	490,000	460,561	257,702	407,010
Upper quartile	876,000	808,000	408,072	709,110
Number of firms	27	85	45	157

Table 5.9 examines the fees that would be in the contract of the firms that are currently generating profit levels in crime above the median of 5%. It shows the position of all firms in the sample, analysed by location into London, urban and rural areas. It must be noted that the London figures are based on a very small sample so those figures should be treated with care:

<b>Table 5.9 Crime* fees of firms with margin % greater than median</b>				
	London	Urban	Rural	Overall
Lower quartile	540,000	353,616	205,204	270,713
Median	615,000	597,371	350,000	510,000
Upper quartile	1,156,000	874,364	468,000	813,000
Number of firms	9	49	21	79
* police station, magistrates court and crown court Litigation				

Table 5.10 summarises the fee levels that would be in the contract of firms that were earning below the median margin of 5%:

<b>Table 5.10 Crime* fees of firms with margin % lower than median</b>				
	London	Urban	Rural	Overall
Lower quartile	262,825	173,450	140,068	168,704
Median	393,000	381,305	193,000	320,475
Upper quartile	566,996	620,181	336,505	486,325
Number of firms	18	36	24	78
* police station, magistrates court and crown court Litigation				

The two tables indicate that the more profitable firms tend to be larger, however there are clearly different models that are successful in different areas. All of the firms in table 5.9 are achieving margins above 5%, even those with fees under the lower quartile. It should be noted that 2/3 of the London firms were earning a margin below 5%. Table 5.5 indicated that the most profitable size group was the 6-12 solicitor group.

Table 5.11 summarises duty cases as a % of all police station attendances in London, Urban and Rural respectively. This is based on the actual split for each firm and illustrates the greater importance of duty work for London firms, where for a quarter of firms it accounts for more than 70% of police station work:

<b>Table 5.11 duty cases as a % of all police station attendances</b>				
<b>Fees</b>	London	Urban	Rural	Overall
Lower quartile	40	25	25	26
Median	53	36	40	40
Upper quartile	71	50	61	56
Number of firms	27	85	45	157

## Potential profitability in 2014

The consultation paper indicates that the 17.5% reduction will be phased with the first reduction of 8.75% taking place in the early part of 2014. The clear view of the participants was that by making the first reduction before there has been any opportunity for the market to consolidate means that the profitability of the supplier base would be significantly weakened before they would have managed to secure additional volume. This will also be a time when firms may be incurring expenditure preparing themselves for the new contracts. Some firms may be able to cut expenditure levels however many have already made those cuts following the 10% fee reductions in 2011.

Table 5.12 illustrates the position in 2014 after the first 8.75% fee reduction has taken place. For VHCC we have assumed the full 30% reduction in 2014. Projected income is forecast to fall by £12m:

<b>Table 5.12: Projected fees from crime after the 2014 reduction</b>			
	Now	2014	% change
Police station	27,490,580	25,085,154	8.75%
Magistrates court	33,877,660	30,913,365	8.75%
Crown court litigation	39,341,588	35,899,199	8.75%
Crown court advocacy	11,715,624	10,690,507	8.75%
VHCC/Confiscation work	4,182,163	2,927,514	30.00%
Court duty fees	5,161,339	4,709,722	8.75%
Private crime	9,077,812	9,077,812	0.00%
Prison law	3,300,947	3,012,114	8.75%
Other	3,038,151	2,772,312	8.75%
<b>Total</b>	<b>137,185,864</b>	<b>125,087,700</b>	<b>8.82%</b>
<b>Number of firms</b>	157		

The table summarises the net margin of the firms:

<b>Table 5.13 Net margin % (after 2014 reductions)</b>					
	Solicitors				Overall
	1-5	6-12	13-40	40+	
Lower quartile	-26	-25	-20	-31	-23
Median	-4	0	-6	-13	-3
Upper quartile	13	15	5	5	12

The table assumes no reductions in staff or overheads and constant 2013 prices. It should be noted that the relatively high upper quartile figures in this table are likely, in our opinion, to be due to the

potential understatement of expenditure referred to earlier rather than the actual profitability of crime in those firms.

The tables illustrate that at the very time firms will need to start investing in staff and IT, and potentially incurring the costs of redundancies, the profitability of most of the participants will have been reduced<sup>12</sup>. We note the larger firms are most affected most adversely. Some of the participants indicated they were preparing for the reduced fees by making redundancies now, however others indicated they had already made the savings that were possible, and that further reductions would be delayed until they knew whether they had secured a duty contract. They did not wish to lose good people who they may need in the event of winning a duty contract for a larger geographic area, and incurring redundancy costs.

The problem is illustrated by these comments from two of the participants which are typical of such comments:

*"We cannot at the moment see a way of surviving the initial 8.75% cut in Feb without massive reductions in salaries and certainly could not fund the changes required to meet any new contract in 2015, particularly if we do not gain a duty + contract. The 8.75% cut is too much too fast and our business cannot adapt to it in such a short time. There are, for instance, consultation periods required before we can enforce reductions in salaries. The investment opportunities which may occur in 2015, such as our applying for contracts in neighbouring areas could not be taken up with our balance sheet taking any further hit as a result of the proposed 8.75% reduction. We will simply not be able to secure investment funding."*

*"The truth is that any cuts coming in before we are able to restructure and expand will kill us, simply because they remove the funding necessary to make the changes required to put ourselves in a position to be able to obtain and then take advantage of the growth in work which everyone agrees is required to be able to take the cuts! It is madness. If they want to cut then they need to allow us to reorganise and obtain the higher value contracts first. We would then be able to leverage that certainty to fund 3-9 months of work before the LAA start paying us. That is the only sustainable way to get this done."*

### **Potential profitability in 2015**

In 2015 it is proposed that the balance of the fee reductions take place and these are not simply a further 8.75%. For many firms, especially those in London and the South East, the total reduction is

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<sup>12</sup> In its impact assessment in relation to these revised proposals, the MOJ quoted from p.45 of our earlier report that *'The table does indicate however that 25% (of) firms would still be profitable after such a cut (17.5%) suggesting that it showed that 25% of current providers surveyed said they could sustain a reduction in fees of 17.5% without making any structural changes and without the redistribution of work from those providers that would leave the market. We believe that this means an initial 8.75% reduction is unlikely to lead to substantial sustainability issues....'* We should like to emphasise that our comment was made subject to a number of caveats and in the Executive Summary, we set out the position as follows: *'most firms would not be able to survive such a cut – many of their costs are fixed and would remain, and they are already operating at low staff levels; because their overheads would still need to be paid, firms would need to maintain the current financial contribution their criminal departments achieve. A 17.5% cut in fees would mean that salaries in the criminal department would need to be cut by 24%.'*

very much greater than 17.5%, which is a nationally calculated saving on the MOJ's budget. Table 5.14 indicates an overall reduction over both years of 23%:

Table 5.14: Projected fees of the participants from crime after the 2015 reduction					
	Now	2014	% change	2015	% change
Police station	27,490,580	25,085,154	8.75%	22,596,174	9.92%
Magistrates court	33,877,660	30,913,365	8.75%	20,493,485	33.71%
Crown court litigation	39,341,588	35,899,199	8.75%	32,758,019	8.75%
Crown court advocacy	11,715,624	10,690,507	8.75%	9,755,088	8.75%
VHCC/Confiscation work	4,182,163	2,927,514	30.00%	2,927,514	0.00%
Court duty fees	5,161,339	4,709,722	8.75%	4,297,621	8.75%
Private crime	9,077,812	9,077,812	0.00%	9,077,812	0.00%
Prison law	3,300,947	3,012,114	8.75%	2,748,554	8.75%
Other	3,038,151	2,772,312	8.75%	2,529,735	8.75%
Total	137,185,864	125,087,700	8.82%	107,184,002	14.31%
Overall reduction:	23.13%				

The table was calculated by applying the further 8.75% reduction to all areas except police station and magistrates court fees. The reduction in the latter two areas was calculated by calculating each firm's current mean police station and magistrates court fee and recalculating using the new national fees of £160.45 and £258.71 respectively (excluding VAT). There are very few firms which can sustain a 23% fall in fees (because they are not achieving these profit levels to start with); be able to invest in the structural changes needed for a larger duty contract; and recruit new fee earners.

### The bank and cash position of the participant firms

Table 5.15 summarises the bank position of the participants that provided this information and indicates that most smaller firms had a small positive bank balance (rather than being overdrawn):

Table 5.15 Bank balance per firm					
	Solicitors				Overall
	1-5	6-12	13-40	40+	
Lower quartile	0	-4,546	-129,995	-607,000	-57,659
Median	12,002	30,000	-30,000	-371,860	16,490
Upper quartile	29,200	70,000	94,456	-21,000	67,292
Number of firms	150				

Table 5.16 compares each firm's actual bank balance with its overdraft facility (for those that provided this information) and indicates that most firms did not have very much headroom:

<b>Table 5.16 Excess bank facility per firm</b>					
	Solicitors				
	1-5	6-12	13-40	40+	Overall
Lower quartile	12,001	28,750	65,611	22,750	20,875
Median	26,178	68,000	164,000	128,140	61,611
Upper quartile	47,245	119,202	266,000	707,595	140,000
Number of firms	135				

Taking the 1-5 solicitor firms in the table as an example, on average the participants in that size category had just £26,000 unused overdraft, which is a low level for a business with annual fees of approximately £320,000 (table 4.8).

Tables 5.15 and 5.16 are in respect of the whole firm however, as discussed earlier, crime accounts for just 51% of the fees of the participants. Table 5.17 summarises the bank position of the firms for which crime accounted for 75% or more of their fees:

<b>Table 5.17 Bank balance per firm - firms for whom crime = 75%+ fees</b>					
	Solicitors				
	1-5	6-12	13-40	40+	Overall
Lower quartile	5,000	10,808	-103,230	-151,500	4,042
Median	16,500	47,500	5,000	-21,000	25,000
Upper quartile	31,250	70,000	101,433	144,297	69,194
Number of firms	87				

Table 5.18 summarises the excess facility for these firms and once again indicates relatively little headroom:

**Table 5.18 Excess bank facility per firm - firms for whom crime = 75%+ fees**

	Solicitors				
	1-5	6-12	13-40	40+	Overall
Lower quartile	10,951	25,000	29,395	25,000	22,300
Median	52,000	21,600	62,988	80,311	36,977
Upper quartile	46,210	101,000	185,314	597,392	103,250
Number of firms	84				

In particular this needs to be considered relative to the one off costs firms may incur making the changes to the new contracts. Many participants were also locked into relatively long leases – the median was 3 years, with a quarter over 5 years:

**Table 5.19 Number of years to next break clause and one-off costs?**

	Years to next break clause	One off costs
Lower quartile	2	11,250
Median	3	30,000
Upper quartile	5	60,750

Table 5.20 summarises the capital per partner for the 75%+ crime firms:

**Table 5.20 Capital per equity partner - firms for whom crime = 75%+ fees**

	Solicitors				
	1-5	6-12	13-40	40+	Overall
Lower quartile	16,550	5,750	16,000	78,000	12,175
Median	43,154	23,750	100,000	1,000,000	45,000
Upper quartile	57,833	82,833	167,500	1,283,844	100,000
Number of firms	66				

In assessing the bank position of crime firms it is important to recognise the importance of regular LAA payments to firms and the impact of change in other areas of legal aid. A number of the firms

that took part in this survey also undertake family and civil legal aid and will be affected by changes in those areas of legal aid. In particular some crime firms also undertake Care work and, following the introduction of the revised Public Law Outline (PLO) in August 2013, some of these firms indicated that there has been a significant reduction in the number of proceedings initiated by most local authorities. This will have an impact on the profitability and cash position of these firms during 2014.

The finances of many legal aid firms therefore can be precarious and it is not possible to look at the impact on firms of any changes in crime in isolation.

In November 2013, the Solicitors Regulation Authority published research into firms facing financial difficulties<sup>13</sup>. It found that 5% of firms had a high risk of financial difficulty and 45% percent of firms faced a medium risk. Generating at least 50% of revenue from legal aid, particularly crime or family, was identified as a risk factor.

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<sup>13</sup> Navigating stormy seas: financial difficulty in law firms – SRA November 2013  
<http://www.sra.org.uk/riskresources/>



## 6 A viable own client and duty contract

### Introduction

The Consultation paper referred to the need for viable duty contracts, however the focus of the research we were asked to undertake was on viable duty and own client contracts. In other words we were not asked to examine duty contracts in isolation. With 167 respondents we had few procurement areas with more than four participants, so it is difficult for us to comment other than in relatively broad terms on the size of viable contracts. The MOJ appointed KPMG to undertake financial modelling based on the information taken from our work and the most recent claim data from the LAA, and they will be advising the MOJ in greater detail with regard to the size and number of contracts in specific procurement areas.

In its consultation paper, the MOJ indicated at paragraph 3.32 its intention for the contracts to deliver duty Provider work to be large enough in volume and value to be sustainable in their own right after the cumulative national fees reduction of 17.5%.

At paragraph 3.35 the MOJ referred to our earlier work for the Law Society<sup>14</sup> and quoted three hypothetical organisations that would have a better chance of sustaining their business after a 17.5% reduction in fees, if they had an annual turnover of around £1m, including VAT.

Paragraph 3.35 indicated that the estimated spend on criminal legal aid services in scope of the proposed new contract, and after the 17.5% reduction in fees, would be approximately £570m. On the basis that a viable firm needed fees of approximately £1m the MOJ suggested it may offer no more than 570 contracts for duty Provider work. This was widely interpreted by many firms that the MOJ had in mind contracts for duty work of £1m, and that own client work would be additional.

During the course of this project we asked the MOJ if it could clarify the calculation of the £570m and they explained that it included VAT and was in respect of both duty and own client work. It is the entire spend on representation and litigation services excluding advocacy, VHCC and prison law that remain in scope after the 17.5% fee reduction. Assuming, as shown in table 5.11, 40% of the national spend is in respect of duty work, the actual amount available to firms may be approximately £200m<sup>15</sup>, very much less than many had initially understood.

### The volume of work

The participant firms currently face a number of difficulties, however the key issues for most are a reduction in the volume of work relative to the number of suppliers and the reductions in fees paid – both those that are proposed and those that have already taken place, especially crown court.

A significant fall in the volume of work was the main current issue raised by virtually all the participants, and they attributed this to falls in crime levels and also local decisions not to prosecute.

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<sup>14</sup> In that report we looked at three illustrative procurement areas, West Yorkshire, Greater Manchester and West Mercia and indicated the staffing and overhead levels required under the form of contracting then being proposed. It does not follow that those figures would apply to the different scenario described in this Consultation paper. The figures we cited excluded VAT.

<sup>15</sup> A figure confirmed by Dr Elizabeth Gibby at the LAPG Conference in October 2013

The latter was seen as a key factor in reducing the volume of work and uncertainty in this area may impact on firms' ability to build viable bids.

The feedback we received during the survey strongly suggests to us that due to a range of factors beyond practitioners' control, there is currently less work than there used to be. The change in prosecution practices was a cause for concern amongst many of the participants we spoke to – not simply due to the impact it had on their business, but perhaps more importantly the impact this could have on local communities and victims of crime. The following quote, which is included verbatim, from one of the participants, was typical of the type of comment that was made:

*"I had a call out 12-15 months ago for a young defendant who was about 17 or 18 and had been arrested for assault. He had been arrested outside a nightclub and had been involved in an incident in which he had punched a young man to the ground in a random, unprovoked attack. The young man fell to the ground with the single punch, a second male kicked him in the head, like a football, and the third male ran in and jumped on his head with full force. The lad on the ground was unconscious for several minutes. The puncher was arrested at the scene and I represented him and he was interviewed by CID. To my surprise and indeed satisfaction at a job well done because the client was very pleased, he was given a fixed penalty for drunk and disorderly. My client in the interview identified the other two lads and the CCTV was certainly of such quality that the police would have been able to prove who the two lads were and they had their names and the streets where they lived. In my experience, over 25 years, that would have been the trigger for the police to pull them in because there was clear evidence on CCTV of a very serious offence having been committed which I would expect to be dealt with in the crown court by way of significant sentences. I would think the kicker would be looking at perhaps 12 months to two years although obviously if he had no previous convictions and good character he may avoid that. The jumper in my experience would be looking at two to three years and there are people I am aware of who are actually doing life sentences for murder for jumping on peoples' heads. I was staggered to hear that the police never even chased up the enquiries. My concern about the case was that the police never chased up the other two lads who were obviously very involved and very easily identifiable and it was symptomatic of what was happening at the time, where the police seemed not to care and have the same hunger they had had in the past for putting bad people in prison. Their attitude at the time was that they were saving public money."*

This participant quoted a second example, to illustrate this changed approach that he believed was now widespread across the country:

*"A lad who was involved in a situation where he had a new girlfriend and the ex boyfriend was aggrieved. He was in the town centre and was dragged out of his vehicle by three males and kicked in the face causing a significant cut below his eye, so you have road rage, vengeance and kicking on the ground – a very serious situation. The three lads were not arrested but were given an harassment warning and that is never going to appear in any statistics about crime, so that's a crime that hasn't happened. If that had gone to the crown court they would have been running the risk of a significant sentence. The attitude of the police had been - well, they wouldn't have got anything at court anyway."*

We asked other participants if they had seen a similar change:

*"The other method used by the police is that of the PACE 9 interview as a volunteer. Arrangements are made for clients to meet an officer - they are not arrested and are then interviewed choosing not to have a solicitor. Matters are then dealt with by Postal Requisition and not charged - which can cause up to 6 months delay and circumvents CPS involvement. I know one firm had a client who came in for Rape on a summons."*

*"This is what is going on to a greater or lesser degree all over the country."*

*"We are experiencing the same throughout Worcestershire. By way of example until 2010 the number of detainees at Worcester police station was normally around 12,000. This year it will be 5,000. This reflects the officers' desires to resolve matters as quickly as possible and avoid having to wait to book people into custody, so most of the time they try to deal with the person 'voluntarily' which avoids that lengthy process. What it does mean is that the person making the decision about disposal is the 'line manager' in the form of a response sergeant who has targets to meet."*

*Where the issue lies is detections. Without getting too political, government became obsessed with performance targets and of course the principal target for police is 'how many baddies are you catching?' A detection isn't the same as a charge. All that is needed for a detection is an admission, so a voluntary interview where the offender is told beforehand they will receive a caution or community resolution provides a huge incentive for that person to admit the relevant offence. A community resolution can be anything from an apology or some money or the return of the items stolen. The paperwork is miniscule for such a disposal compared to the paperwork for a charge or consideration of a charge."*

*So, under the current system everyone is happy. The police have less paperwork and more detections. In fact time and again I speak to officers who obsess about detections. You will find very few officers willing to spend several hours talking to a young troubled teenager about the impact of a life of crime because that activity cannot be recorded in a way that satisfies their superiors. The offenders are happy because they get away 'Scott free' and the victims are often content because the officers sells the deal to them by saying that they will get the money for the loss or by assuring them that the court would let them off anyway. The politicians are happy because detections go up and Prosecutors are happy because it means fewer cases so they make more redundancies and come in on budget. Defence lawyers raising this issue are seen to be biased because of the effect on their business but personally I have to say, putting that aside for one moment, the shift in culture is a cause for real concern and a ticking time bomb."*

*"Group violence, particularly in the city centre at night and in drink is a problem in this city (Newcastle upon Tyne), which has significant numbers of 'stag' and 'hen' do's. Dealing with drunken people from out of town isn't something particularly high on the police's agenda and so many situations which may once have been regarded as violent disorder are now dealt with by out of court disposal. We do get to see some of those who are arrested and are then cautioned, however I wonder how many serious incidents on the street are dealt with by fixed penalty tickets. We have all dealt with serious matters which have resulted in caution or similar; perverting the course of justice being one such matter that springs to mind. We also dealt with a woman who was seriously assaulted by her partner. Her injuries were probably on the cusp of grievous and actual but he was*

*given a caution. She came to see us about challenging the decision to give him a caution. We tried and failed to have it overturned. We continue to regard it as an appalling (and not isolated) decision to caution where there are serious injuries in a domestic setting. The whole thing was compounded by the fact that the man had boasted about what he had done on social media. Out of court disposal does worry us on many fronts and it is building injustice into the system where some people can get such a disposal and others go to prison. It calls the integrity and honesty of the police into question and even results in postcode justice as different forces have different (unpublished) policies. It is now not unusual to see defendants with lengthy criminal records who have even longer lists of cautions.”*

*“Similar “injustices” are commented upon by practitioners In Coventry almost daily. The examples are of course instances where the police actually turn up and arrest someone. I would suspect that many crimes are simply not reported any more as people, particularly victims, are too worried to get involved- especially where violence is alleged. I have had clients cautioned after arrest for GBH and Burglary. We had a client cautioned for fraud on a bank/building society where the loss was well over £100K. On a practical level it is hard to advise clients when the police let it be known before interview that some form of community resolution or even caution may be available to the repentant (particularly when they don’t have a strong case and a quick “cough” would wrap things up nicely) but the alternative if the case goes to court is the possibility of 2 or 3 years in prison.*

*I have no doubt that police officers at the sharp end enthusiastically embark on investigations (sometimes they or their colleagues have faced personal danger in the preliminaries) and enjoy the confrontations with suspects and their solicitors. What they don’t seem to be able to handle is the dead hand of the CPS who have to advise if moderately serious charges are to be considered. I am dealing with a very serious allegation of Theft at the moment where the police repeatedly re-bail my client telling me they cannot get advice from the CPS. It is likely that the officers will become so thoroughly cheesed off that they will kick it into touch or as often happens they will be moved to other duties or find something more interesting to do. If the CPS do show any interest then they refer to their “charging guidelines” i.e. unless it is very serious (violence or sex) charge as low as possible to ensure the case stays in the magistrates court to avoid expensive proceedings in the crown court. We have all had cases where our clients are arrested for GBH but have been charged with “common assault” which can only be dealt with in the magistrates court (max sentence 6 months prison). Again the defendant is relatively happy and not being in line for 2-3 years but the court is appalled. We had a case involving our client smashing a bottle over someone’s head in licensed premises causing cuts and brief KO. That would always have been a crown court case but no longer. He was charged with common assault and escaped custody in the magistrates court.”*

The MOJ has recently announced moves to restrict the use of cautions for more serious offences, however we are conscious that the current low levels of apparent crime must be viewed with care, and that they would rise if the police approach to prosecutions were to change. That would have implications both for the volumes of work individual firms were able to undertake and for the overall legal aid budget.

This issue is discussed in more detail in the qualitative interviews – see page 63

## A viable own client and duty contract

In our survey we asked the participants to indicate their view of the minimum size of a viable duty and own client contract for their procurement area. This was a difficult question for them to answer, as it will have been necessary to make assumptions regarding the numbers of court and police station “duty” slots they would have to cover and the number of contracts that may be awarded.

Firms were asked to indicate “the minimum contract value you would need to undertake a combination of duty work covering your whole procurement area, and own client work, for your business to be viable in a world with a 17.5% cut in fees”?

Approximately 100 firms did answer this question. From follow up work with respondents, by telephone and email, we believe that some of the firms will have provided their minimum figure, however others may have provided the figure representing the size of contract they would prefer. It was clear from the questionnaires the participants had completed that some had based their answer on a detailed analysis, for others it was at best an estimate. Some firms refer to police station and magistrates’ court work as ‘contract Work’ and they may not have appreciated that the MOJ also included the crown court litigation flowing from police station and magistrates court work within the budget for ‘contract Work’. The question would have been especially difficult for firms that also undertake crown court advocacy and VHCC work as their fee earners may do those areas of work as well as the police station, magistrates’ court and crown court litigation. As indicated earlier we believe some firms under-estimated expenditure levels. The figures must therefore be interpreted with this in mind.

Table 6.1 summarises the figures provided by the participants and suggests median fee levels for a viable contract ranging from £375,000 in rural areas to £1.1m in London. It is regrettable that some very large crime firms declined to take part in the survey and also that so few small firms participated:

<b>Table 6.1 Viable contract sizes provided by participants - duty and own client</b>				
	London	Urban	Rural	Overall
Lower quartile	650,000	400,000	231,250	350,000
Median	1,142,500	791,000	375,000	625,000
Upper quartile	1,797,500	1,390,000	556,597	1,296,250
Number of firms	20	50	28	98

The minimum viable contract sizes provided by the 20 participants in London are illustrated below:

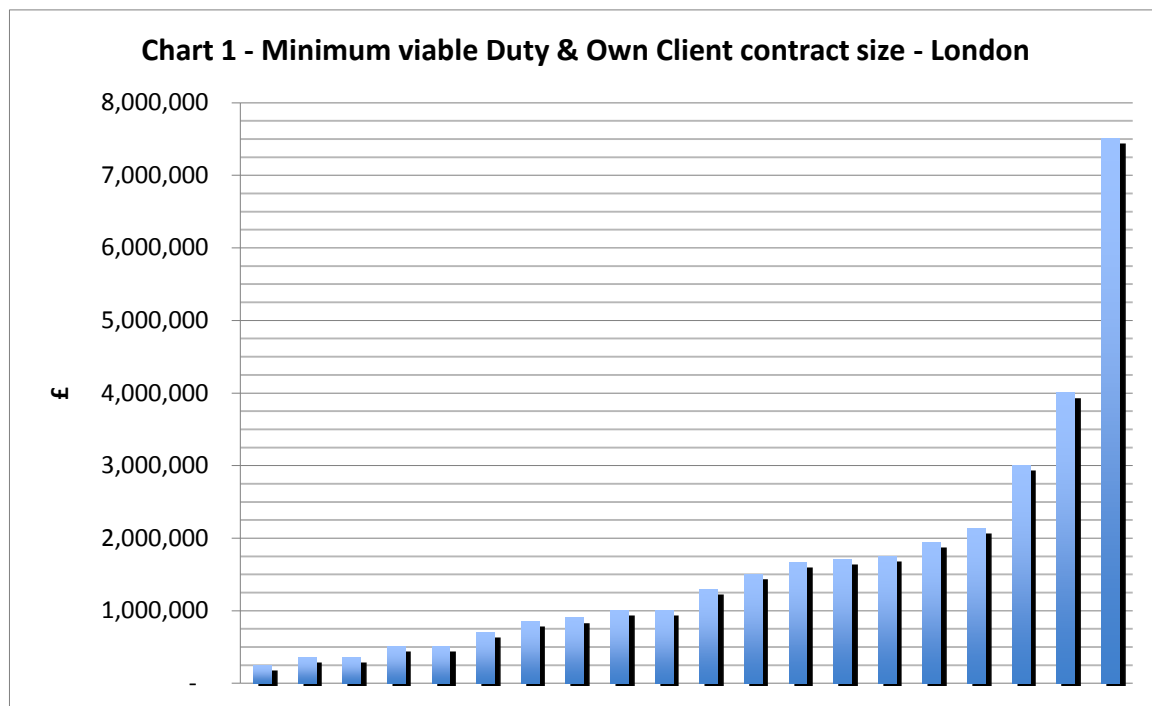


Chart two illustrates the 50 urban firms:

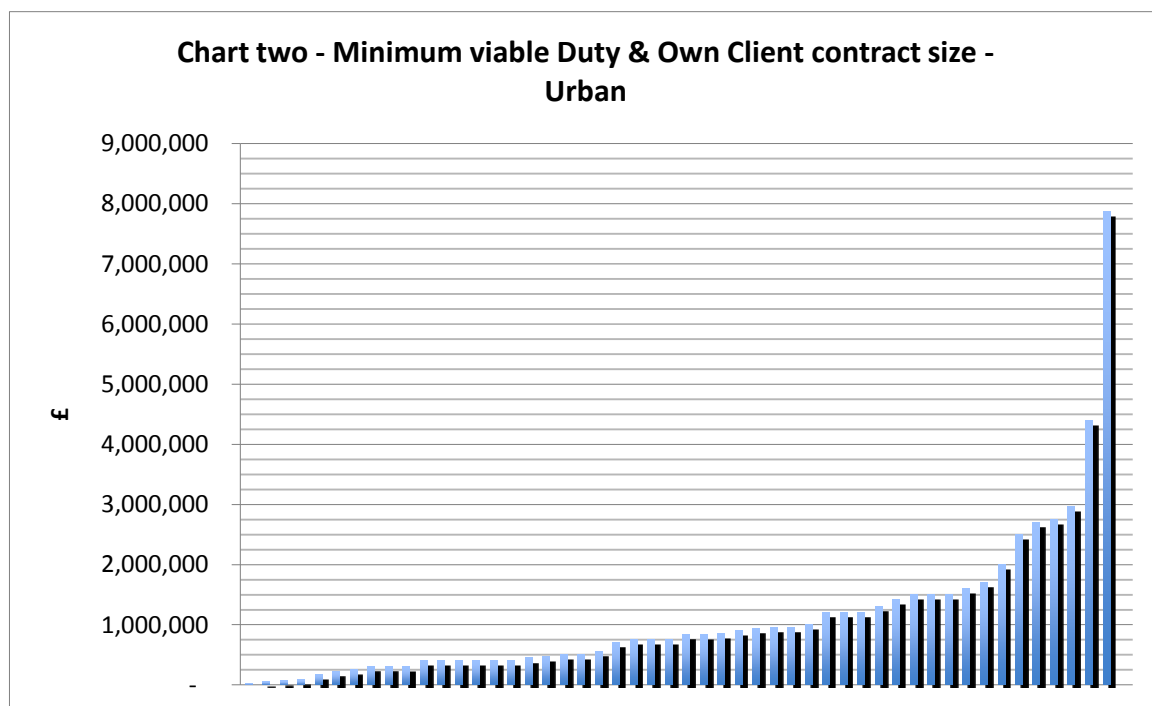
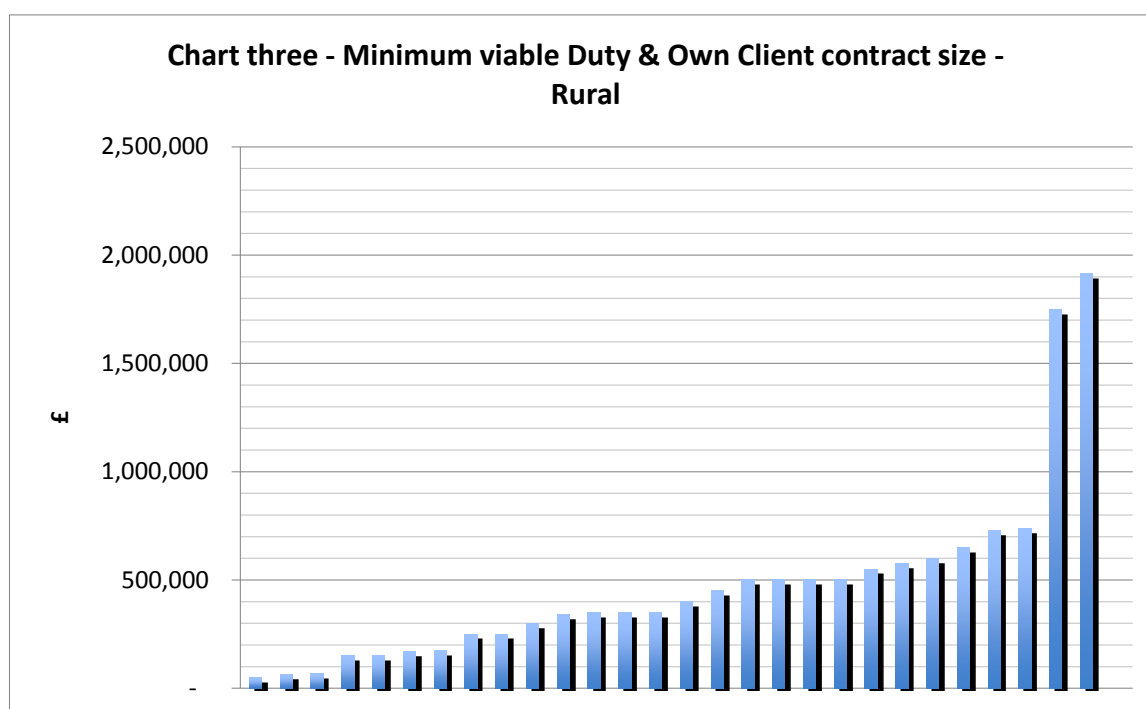


Chart three illustrates the 28 rural firms:



For many of the participants the fees they suggested together with their projected costs for such a contract did not actually result in a viable business. The projected net profit margins of the participants is summarised in the table below however this indicates that over half of the firms would actually incur losses at these fee levels. Once again however the figures must be interpreted with care as we know that some firms had difficulty estimating the headcount and salaries of a viable contract. Some firms that also undertake VHCC and substantial private work may have had difficulty isolating the cost of simply doing the work that would be included in the contract as fee earners may do a mix of work, and they may have overstated their salaries and overheads. These margins are after the 17.5% national reduction in fees and based on the minimum fee levels indicated in table 6.1:

<b>Table 6.2 Viable contract sizes provided by participants - net margin %</b>				
	London	Urban	Rural	Overall
Lower quartile	-13	-31	-18	-23
Median	2	-4	-4	-3
Upper quartile	12	10	12	12
Number of firms	20	50	28	98

Table 6.3 summarises the contracts in London that were viable (based on projected costs for such a contract) and indicates that the average viable own client and duty contract size indicated by the participants was £1.1m:

**Table 6.3 - Minimum viable duty & own client contracts - respondent London firms achieving a net margin greater than 5%**

	Whole crime department***			Contract only****		
	Now - Total	Now - average	%	Proposed total	Proposed average	%
Contract fees*	7,996,426	888,492		10,050,000	1,116,667	100%
Other fees**	1,660,401	184,489				
Total crime fees	9,656,827	1,072,981	100%			
Salaries	5,905,597	656,177	61%	6,364,396	707,155	63%
Overheads	1,832,937	203,660	19%	2,204,585	244,954	22%
Net	1,918,293	213,144	20%	1,481,019	164,558	15%
%	20%	20%		15%	15%	
Fee earners	146	16.2		143	15.9	
No of firms	9			9		
Fees per fee earner		66,143			70,280	

\* police station, magistrates court and crown court litigation  
 \*\* crown court advocacy, VHCC, private and other crime  
 \*\*\* salaries and overheads are the totals for the firms' criminal departments  
 \*\*\*\* salaries and overheads relating to contract work only



Table 6.4 summarises the contracts in urban areas that were viable and indicates that the average viable own client and duty contract size indicated by the participants was £1.2m:

<b>Table 6.4 Minimum viable duty &amp; own client contracts - respondent Urban firms achieving a net margin greater than 5%</b>						
	Whole crime department***			Contract only****		
	Now - Total	Now - average	%	Proposed total	Proposed average	%
Contract fees*	13,297,833	782,225		21,187,000	1,246,294	100%
Other fees**	4,664,374	274,375				
Total crime fees	17,962,207	1,056,600	100%			
Salaries	11,486,120	675,654	64%	12,682,438	746,026	60%
Overheads	2,850,073	167,651	16%	3,408,210	200,483	16%
Net	3,626,013	213,295	20%	5,096,352	299,785	24%
%	20%	20%		24%	24%	
Fee earners	251	14.8		265	15.6	
No of firms	17			17		
Fees per fee earner		71,563			79,951	
<p>* police station, magistrates court and crown court litigation</p> <p>** crown court advocacy, VHCC, private and other crime</p> <p>*** salaries and overheads are the <u>totals</u> for the firms' criminal departments</p> <p>**** salaries and overheads relating to contract work only</p> <p>Note: In this table other fees of £4.7m includes £2m in respect of one firm</p>						

Table 6.5 summarises the contracts in rural areas that were viable and indicates that the average viable own client and duty contract size indicated by the participants was £600,000:

<b>Table 6.5 Minimum viable duty &amp; own client contracts - respondent Rural firms achieving a net margin greater than 5%</b>						
	Whole crime department***			Contract only****		
	Now - Total	Now - average	%	Proposed total	Proposed average	%
Contract fees*	2,370,624	296,328		4,776,388	597,049	100%
Other fees**	663,845	82,981				
Total crime fees	3,034,469	379,309	100%			
Salaries	1,697,571	212,196	56%	2,504,912	313,114	52%
Overheads	914,195	114,274	30%	943,256	117,907	20%
Net	422,703	52,838	14%	1,328,220	166,027	28%
%	18%	18%		28%	28%	
Fee earners	38	4.8		55	6.9	
No of firms	8			8		
Fees per fee earner		79,854			86,843	
* police station, magistrates court and crown court litigation ** crown court advocacy, VHCC, private and other crime *** salaries and overheads are the <u>totals</u> for the firms' criminal departments **** salaries and overheads relating to contract work only						

## Duty contract size

This section considers the data provided by the participants in our survey regarding viable contract sizes and uses that information to assess the scale of growth that might be required. KPMG will be undertaking more detailed modelling based upon certain financial information from our survey together with detailed LAA data regarding each procurement area to determine the actual number of contracts that could be awarded.

Size is likely to be important following the proposed fee reductions, as a reasonable volume of work will be required in order to achieve economies of scale. In setting the size of duty contracts a balance will need to be struck between:

- Providing firms the volume that will enable them to develop more cost effective structures;
- Not requiring firms to be so large that it will be difficult for them to scale up from their current size – in particular because this may cause cash difficulties.

We have assumed that duty contract sizes will be related to existing levels of duty work as these vary across the country.

Table 6.6a takes the average viable fees indicated by the participants in tables 6.3, 6.4 and 6.5 and assumes their duty/own client split is the same as now for other firms in London, urban areas or rural areas as shown in table 5.11. We have applied these percentages to the viable indicated fees to calculate an illustrative size of duty contract because it is that element that will be subject to competition. The table then shows the level of own client fees the firms would require:

<b>Table 6.6a Possible size of contracts</b>				
	London	Urban	Rural	Overall
Average viable duty and own client fees indicated by participants*	1,116,667	1,246,294	597,049	1,059,217
Assume same duty % as now**	53%	36%	40%	40%
Illustrative size of duty contract	590,646	443,201	238,819	423,282
Own client requirement	526,021	803,093	358,229	635,935
* police station, magistrates court and crown court litigation				
** from Table 5.11				

Table 6.6b considers these participants in more detail and indicates the fees they earn currently in respect of work that will be included in the contract – in London, for example, the figure is just under £900,000. It estimates their own client fees and these are then reduced by 17.5%<sup>16</sup>. The table shows the shortfall in fees required and the overall level of growth<sup>17</sup> required:

<b>Table 6.6b - Scenario 1- The participants who indicated the viable fees required</b>			
	London	Urban	Rural
Contract fees now (table 6.3,6.4,6.5)	888,492	782,225	296,328
Own client % now	47%	64%	60%
Own client fees now	418,536	504,054	177,797
Less 17.5%*	345,292	415,845	146,682
Fees shortfall	180,729	387,248	211,547
Overall fee growth required	43%	77%	119%
* Assuming that in the proposals finally published the fee reductions are approximately 17.5% across all procurement areas			

The table indicates additional fee requirements ranging from £180,000 in London to nearly £400,000 in urban areas. The shortfall could for example be achieved through amalgamations or recruiting lawyers with followings, however the rates of overall growth – of both own client and duty work are challenging in urban and rural areas.

Table 6.6c shows the same calculation for the average firm that participated in our survey. Current fees are much lower with London fees, for example, of £490,000:

<b>Table 6.6c - Scenario 2- Firms currently achieving median fees:</b>			
	London	Urban	Rural
Contract fees now (table 5.8)	490,000	460,561	257,702
Own client % now	47%	64%	60%
Own client fees now	230,821	296,779	154,621
Less 17.5%	190,427	244,842	127,562
Fees shortfall	335,593	558,251	230,667
Overall fee growth required	145%	188%	149%

<sup>16</sup> Assuming that in the proposals finally published the fee reductions are approximately 17.5% across all procurement areas

<sup>17</sup> Existing fees have been reduced by 17.5% so as to show the overall increase in work levels

The table indicates quite high fee shortfalls and very high rates of growth required.

In table 5.8 a quarter of the participants were already achieving relatively high fees and table 6.6d shows the fee shortfall and growth requirement for these firms:

<b>Table 6.6d - Scenario 3 - Firms achieving upper quartile fees:</b>			
	London	Urban	Rural
Scenario 3 - Firms achieving upper quartile fees:			
Contract fees now (table 5.8)	876,000	808,000	408,072
Own client % now	47%	64%	60%
Own client fees now	412,651	520,663	244,843
Less 17.5%	340,437	429,547	201,996
Fees shortfall	185,583	373,546	156,233
Overall fee growth required	45%	72%	64%

Once again, the fees shortfall is not large, at under £200,000 in London and rural areas, however the urban and rural growth rates would be high.

In our survey we are aware that there was relatively little enthusiasm for mergers or amalgamations however we suspect that once the MOJ announces its response to the consultation consolidation of the market will start to occur as firms position themselves to be best placed to win a duty contract. They will do this in order to acquire the own client work necessary to achieve the scale of firm that would be likely to be successful. Some partners will not be interested in any form of consolidation and will continue with an own client contract but others will ensure they are part of a firm that is likely to be successful.

This consolidation may be achieved through merger or acquisition, or by acquiring people who will bring own client work with them. There are likely to be very few cases where it is a merger of equals and it is quite likely that the equity partners in a firm being taken over will not be equity partners in the acquiring firm. In some instances the people will simply join from the firm being acquired and the old firm will collect its debts and pay its liabilities – in other words its debtors and work in progress will not transfer. In such instances cash management will be crucial as the acquiring firm will have to manage a potentially large increase in scale and much of the work take some time to be paid. There will need to be detailed and open discussions with the firm's bank.

Some firms may achieve critical mass through the creation of consortia however these are unlikely to create the more efficient financial structures required. They will be unable to re-structure the balance between equity and other fee earners, will not benefit from one set of systems and will have added an administrative task in liaising with the other firms in the consortium, and guaranteeing consistent performance, that someone will need to manage.

## **The procurement areas**

It is important to note that the proposed procurement areas are based on Criminal Justice Areas, and these were designed for a different purpose. Many firms in the survey raised issues about the proposed procurement areas and a number indicated that something based upon the locations of courts would be more logical and efficient for the purpose of delivering defence services in police stations and magistrates' courts.

Many firms cited problems with the size of their proposed procurement areas and the impact this would have on cost. In order to create volume the MOJ has created large procurement areas however respondents argued that this size results in increased cost in servicing them. Some of the proposed areas are very large and mainly rural, however many of the crime firms are located in urban centres, in some cases some distance from the towns at the opposite end of the procurement area.

Firms often mentioned that unless it was easy for clients to come to their offices, quality would suffer and there would be delays in court listings. For example, one firm in Hampshire commented: *'With the proposed procurement area [Hampshire 1], clients would not be able to see their solicitor in the office it would have to be at court. We would need to ask for adjournments to take instructions. Sometimes at present Fareham court is used instead of Portsmouth – clients on ESA cannot afford to get there. We have everyone waiting and the client does not attend. It's a waste of public money. Fareham is only 20min from Portsmouth by car but clients do not have cars.'*

In appendix III we summarise the feedback from the participants in the quantitative survey with regard to their procurement areas.

This issue is discussed in more detail in the qualitative interviews – see page 68.

## **Rural areas**

As indicated earlier the viability of a firm depends very much on its location and the volumes of work that are available to it. The situation is very different in London and the larger urban areas to rural areas where volumes of work are low and the number of suppliers relatively small. Some rural procurement areas are very large and many firms doubt that they would be able to cover them effectively.

The KMPG report indicates that a considerable amount of consolidation has already occurred in many rural areas, with, on average 58% of work already being undertaken by the top 8 providers in each procurement area – compared to just 15% in London. In some areas it is approaching 80%, and the market in most rural areas is already consolidated.

Based on the respondents' views we would suggest that the MOJ consider the extent to which reducing contract numbers for duty provider work is viable in many rural areas and would deliver a sustainable market. Based on the qualitative data we have gathered, it is our view that the existing system would be placed under enough pressure by the reduction in fees and there is a risk that any attempt to reduce the number of suppliers could cause the system to collapse as illustrated by this participant:

*Our situation here in North Devon (an area of 100K square miles not blessed with great infrastructure or communication) is dire. Of the 11 current duty solicitors we have two “one man bands” and the remainder work in mixed practices. Of the 11 only 4 specialise in crime. Of the 11 only 3 are under 50 years of age. The reality is that the mixed firms will pull out of crime and retire or redeploy staff. If anyone felt able to stay in North Devon to cover duty work for any other provider, they would be on call every day and either dead from overwork or at the very least divorced within six months!*

Another North Devon firm expanded on the problems:

*“This large rural and seaside area is comparatively sparsely populated for 7 or 8 months of the year and during the summer months its population vastly increases to a level beyond the capacity of its roads and infrastructure. At the present time the main arterial route out of North Devon, the A361, is closed throughout the evenings and nights for road works with a circuitous diversion. The most direct route, along the infamously dangerous and twisty A377, is currently completely closed, and has been for some weeks due to a section of the road collapsing into the river.*

*At the present time there are 11 duty Solicitors in North Devon working out of 7 firms. This provides a reasonable spread to cover the duty Solicitor requirements with opportunities to swap where necessary the days of cover and to cater for conflicts of interest in most situations. The current workload is successfully and adequately catered for by this number of solicitors most of the time. On the unusual occasions that it may not be possible to cover a case then it must be put to firms in Exeter, Torquay, Plymouth or Cornwall, frequently producing hours of delay. There are some firms which would potentially have a higher than average percentage of own client work, but even for those firms the removal of duty work would completely undermine the viability of doing crime. Because of the very large and problematic distances involved there is no prospect of any firm in North Devon applying for a duty contract elsewhere.”*

There are also issues about ending payment for travel in rural areas:

*“Our view is that the new proposals and in particular the cut in rates of 17.5% would not make doing criminal work in a rural area such as ours viable, either for a duty/own contract or own client only contract. There is just not sufficient volume to sustain it with the additional travel and waiting time that we incur for each case. We need to continue to be remunerated for this separately as is currently the case for rural areas for MC cases. The police station proposal in our area is also quite ridiculous as it will mean travelling substantial distances for minimal sums.”*

There are clearly potential difficulties in defining rural areas, but our concern is that the imposition of a single system may fail to recognise differences in volumes of work available and could result in an over-stretched supplier base which would struggle to cover the whole of a procurement area, particularly in rural areas. The information generated by the survey appears to suggest that the over-supply of firms relative to the work available is in London and urban areas, rather than rural areas.

### **Urban areas**

The research suggests that very few if any firms in London or in urban areas that will be able to sustain the national 17.5% reduction in fees without changes in volume. Unless they undertake

more profitable areas of work that can cross-subsidise the work, and the partners in those areas of work are willing to subsidise other areas, the participant firms believe crime will cease to be viable. To date there have been no major failures amongst crime firms however there is no reason to suppose that would not be the case in the event of fee reductions of the magnitude planned. The clear view amongst larger firms is that it is only through greater volume that they will be able to build a viable business for the future.

In section 5 we indicated the likely impact of an 8.75% reduction in fees on firms. Without the opportunity for greater volume there will be very few, if any, firms that would still be viable after a 17.5% national reduction unless they were able to become more efficient or reduce staff numbers, and this research suggests this may not be possible, as many such savings have already been made. There are likely to be two main options for existing suppliers:

- to fragment - as individual solicitors operating as sole practitioners or freelancers working from home may well be viable, provided they can obtain professional indemnity insurance;
- to become larger by having access to greater volume. A larger firm can more easily adopt a lower cost base model that enables it to remain viable at reduced levels of income.

In the survey, we found that there were many firms that currently do less own client and duty work than is likely to be required of successful bidders post market consolidation. They would need to scale up in order to deliver new contracts. Some appear to have experience that would allow them to do so (see section 8 for more information), others would probably have difficulty convincing the LAA that they could. There are likely to be larger providers delivering greater volumes of work than will be available in the procurement areas where they are currently located. In calculating the size of contracts, a delicate balance will have to be struck by the MOJ. Too large and some very good, smaller firms may be excluded from duty contracts. Too small and existing major providers may have to scale back their operation.

Just as in rural areas, the large size of some of the urban procurement areas will increase costs for many firms and this increase may not be justified by the greater volumes firms would be able to secure.

*"The problem with winning a duty contract would be the expense of covering that contract in terms of staff costs. We are currently just on one duty scheme in Manchester. If instead we had to cover 5 duty schemes with, say, 1/8 of the work, we would need much higher staffing levels."*

Within the conurbations such as Greater Manchester and some individual towns, the imposition of contracts across a wider region will cause problems for firms that might have been viable covering a smaller more focused area.



## Example procurement areas – based on data provided by participants

Table 6.7 examines the information provided by the participant firms in four procurement areas in more detail. As indicated earlier, firms were asked to provide details of the headcount, fees and costs of running a viable duty and own client contract, and in these four procurement areas we had a reasonable number of firms able to provide this information. The table shows the average staffing and fees provided by the firms in each area:

	Greater Manchester	London South	Northumbria	Merseyside
Number of firms	5	6	5	5
Equity partners/members/directors	2.0	3.2	1.8	1.6
Salaried partners/members (PAYE)	0.6	0.2	-	0.2
Fixed share partners/members	1.9	-	0.2	0.4
Consultants	0.8	5.5	-	0.2
Other solicitors	7.8	7.3	3.0	4.8
Other qualified fee earners	1.6	1.3	-	3.4
Unqualified fee earners / case workers	5.0	5.5	1.0	3.6
Trainee solicitors	1.4	1.5	0.2	0.8
Other fee earners	0.8	0.2	0.6	-
<b>Total fee earning staff</b>	<b>21.8</b>	<b>24.7</b>	<b>6.8</b>	<b>15.0</b>
Secretaries, support staff	4.7	3.8	2.2	2.0
Central staff	3.8	1.7	1.8	3.3
<b>Total</b>	<b>30.3</b>	<b>30.2</b>	<b>10.8</b>	<b>20.3</b>
Minimum fees	1,430,000	1,490,000	414,000	890,000
Payroll (inc notional salary)	1,106,326	1,050,064	337,633	668,620
Gross	323,674	439,936	76,367	221,380
Overheads	544,737	366,438	132,909	360,933
Net	-221,062	73,497	-56,542	-139,553
Net %	-15%	5%	-14%	-16%

### Greater Manchester

In Greater Manchester the firms' estimates for viable contracts ranged from £700,000 to £2.5m, with fee earner numbers ranging from 11 to 37. Ironically, the two largest estimated contracts would not actually have been viable, at least on these initial figures, as on the staffing levels proposed they would have incurred losses. The smallest estimated viable contract required fees of £750,000 however this would involve a quadrupling in the number of fee earners from 4 to 17 fee earners. This was a firm that had not undertaken a merger, nor opened offices, and had not

experienced a significant increase in staff numbers, so expansion on such a scale could be difficult. The next smallest estimated viable contract was for £1.2m and required 16 fee earners. The firm in question was already achieving fees of this level and their proposal visualised a slight reduction in staff numbers. Their questionnaire included a detailed calculation, very similar to the format included in the Law Society's Legal Aid Toolkit, that constructed a model based on a series of assumptions such as % of clients who are seen at the police station who are charged; number of hearings per case; average attendances per police station case, etc. In other words the firm's figures were based on good historic data and a well thought through plan and appeared credible.

#### London South

In London South the estimated viable duty and own client contracts had fees ranging from £250,000 to £3m. Fee earner numbers ranged from 9 to 45. The smallest estimated viable proposal had fees of £1,750,000 and 29 fee earners. Fees would have to increase by 75% from current levels and the number of fee earners would have to increase by 33%. This estimate was provided by a two-partner firm that has not previously merged, opened additional offices or expanded significantly and we could foresee potential difficulties.

#### Northumbria

In Northumbria, the firms' estimated viable fees ranged from £170,000 to £650,000. Two of the firms suggested 5 fee earners and three suggested 8. Only one of the firms would actually generate a profit on their estimated figures and that was on fees of £500,000. This firm already has similar fee earner numbers and is undertaking similar levels of fees so their estimated viable contract would result in little change. They had some concerns about the size of the procurement area, in particular the inclusion of southeast Northumberland. They identified a number of areas where the Law Society or LAA could usefully provide support including computer/technological support, training and equipment. They highlighted the need for consistency from the LAA in its rules and guidelines and the need for consistent, regular LAA payment. Also they indicated a need for speedier and more effective responses from the LAA.

#### Merseyside

In Merseyside two firms estimated viable fees of £400,000; and the other three were £950,000, £1.2m and £1.5m. Fee earner levels to service the procurement area ranged from 8 to 22. Only one of the firms would show a profit, and that was based on fees of £1.2m. Its estimated viable contract assumed very little change from its existing staff and fee levels. This firm considered that they were in a strong position in terms of being able to meet the requirements of the contract, however, *"a 17.5% reduction in fees would more than eliminate any profit margin that would allow continued investment to enable growth, development and modernisation."*

## 7 An own client only contract

The overwhelming strength of opinion amongst firms responding to the survey was that own client only contracts were not viable beyond a relatively short period of time. However, there was one firm that felt it would prefer such a contract. Clearly this was very much a minority view and most firms appeared to regard the MOJ's suggestion that there are opportunities for growth for firms with just a contract for own client work, as fanciful – 'Transforming Legal Aid – Next Steps', paragraph 3.29:

*"Providers would be able to deliver services to their own clients and ensure their business remains sustainable within the reduced fees by growing the amount of own client Work they deliver and where necessary explore opportunities for consolidation during the contract term. We believe that the proposed modified model would support those providers to make those changes by offering greater flexibility in terms of business structures; giving them the opportunity to grow their business and innovate; and adopting a staged reduction in fees."*

The problem was summarised by one firm:

*"My firm has direct experience of what happens when a criminal firm loses presence on a duty rota. Historically, firms in our town were eligible to join two neighbouring schemes. When the last contract commenced, the LSC reverted to "one office, one rota" eligibility criteria and all the firms were removed from the two additional schemes. This was a national policy so similar outcomes must have happened in other parts of the country too. A significant volume of work we carried out in those two courts disappeared overnight. If a client instructs a supplier at the police station as duty solicitor, most suppliers would then refer to that client as an own client at the magistrates court if they were charged. Clearly the police station duty client would be free to go elsewhere at point of charge (in practice they rarely do though). A magistrates court duty client would generally be viewed as one picked up as court duty who then requires representation at a subsequent hearing. A very significant volume of "own clients" are however first represented by a supplier as a duty client at some stage previously.*

*Taking today as an example, we have had five clients in court – one is the brother of a client I first represented as duty solicitor about 15 years ago and who has been in and out of trouble ever since, one was a youth on his 5th set of offences since I first represented him as court duty earlier this year, one was a trial for a youth new to the area who I picked up as court duty when he pleaded not guilty at the first hearing 6 weeks ago, one was an adult we first represented as court duty solicitors about 3 years ago who has stayed loyal since and one was a repeat offender who followed my business partner from his former firm 7 years ago... who he recalls as originally being a police station duty client! Notionally, only one of those clients is a "duty" client – the youth for trial – but in reality, all were.*

*I would like to think that my firm enjoys a strong reputation locally – we are the second biggest supplier in the city and have 6 duty solicitors on a rota of 29. Without duty work, it is my firm opinion that despite our strong "own client" base, we would, at best, have enough work for 1 solicitor within 2 months."*

Most firms considered that the loss of a duty contract would be terminal, and based on the figures they provided, it appeared that most would make a loss on such contracts within the first year.

The firms in our survey were asked to provide an estimate of their fees if they just had an own client contract, and to indicate their headcount, payroll cost and overheads. 90 firms attempted to answer this; the rest either left the question blank or stated they would have to close. The table summarises the position of the firms and indicates that in the first year at least they would make substantial losses:

<b>Table 7.1 Aggregate profitability of own client only contracts</b>	
	£
Fee income	37,475,207
Salaries, NIC, pensions, etc	21,270,807
Sub contract freelance/agency staff	1,642,187
Non assigned counsel	417,896
Fixed share partners	879,108
Equity partner notional salaries	8,438,171
<b>Total expenditure</b>	<b>32,648,169</b>
Contribution to overheads	4,827,038
Share of overheads	14,399,817
<b>Net profit</b>	<b>-9,572,779</b>
%	-26%
Number of firms	90

As identified in the NAO survey<sup>18</sup>, criminal defence practitioners have an increasing age profile. This is particularly true of partners, as they tend to be the most senior and longest qualified solicitors. Some respondents suggested that for some partners approaching retirement the opportunity to continue doing at least some work would be attractive, and it may facilitate a dignified wind down of their firms. For others it would spell the end of their business even though they are currently viable and they would wish to continue. It may also lead to a fragmentation of the supplier base because although a firm in its current form may not be viable, individual partners working from home with minimal overheads may well be. A firm in the midlands commented:

*'This is a recipe for fragmentation. Young solicitors will see it as their last chance to leave their firms and set up their own firms. own client firms will cling on – a sole practitioner with a following only needs one or two good cases a year to make money. They will rely on 'fixers' in the community to bring them work. This will reduce the work available for firms doing the duty work and unprofitable work in the magistrates court.'*

<sup>18</sup> Solicitor Survey for Criminal legal aid NAO 2009

This issue is discussed in more detail in the qualitative interviews – see page 61

## 8 The ability of firms to respond and manage the change that might be involved

A number of firms reported that they had already undertaken efficiency exercises, had streamlined their operations and had had to make staff redundant as a result of previous cuts in crime fees, LASPO cuts in other areas of law, and other changes in the market. As a result, they were smaller than before. However, some had been exploring the possibility of entering into joint bidding arrangements in consortium with other firms, although the uncertainty of what would be permissible was limiting the extent to which they could develop their plans. Firms said they would need a period to lead in to develop such mergers/associations although there were varying views of the minimum needed. Broadly, the minimum was thought to be 9 months. There is more information about this in section 9.

One of the key issues identified at the outset of this project was that, if a reduction in the number of suppliers was to take place, there would be a need for a number of firms to expand and that expansion could need to be rapid. There was uncertainty whether many firms had the management skills to deal with such rapid expansion. We asked a number of questions to gauge the firms' experience of managing growth. The answers suggest that the larger firms, those with 13 solicitors or more, would have many of the skills that would be needed to grow and manage a larger firm. However, as we have previously shown, we have concerns about whether these firms are sufficiently financially robust to do so if the proposed fee cuts are implemented in the proposed timescales.

We asked whether the firms had undertaken a merger or had taken another crime team over. On average, 17% of firms had relevant experience. As might be expected, experience of merger was higher amongst the medium sized and larger firms:

<b>Table 8.1 Has your firm merged with another firm or taken a crime team over?</b>					
	Solicitors				
	1-5	6-12	13-40	40+	Overall
Yes	1	9	15	3	28
No	49	55	26	9	139
Number of firms	50	64	41	12	167
% that had merged	2%	14%	37%	25%	17%

28 indicated that they had and interestingly nearly 40% of the larger, 13-40 solicitor firms had experienced a merger.

We asked if they had opened additional offices. Once again a similar number had (indeed the additional offices may have been as a result of a merger) and this included 41% of the 13-40 solicitor firms and 67% of the 40+ firms:

<b>Table 8.2 Has your firm opened additional offices?</b>					
	Solicitors				
	1-5	6-12	13-40	40+	Overall
Yes	2	5	17	8	32
No	48	59	24	4	135
Number of firms	50	64	41	12	167
% that had opened offices	4%	8%	41%	67%	19%

We asked if headcount had increased by 25% and many of the larger firms had experienced growth of this scale:

<b>Table 8.3 Has headcount increased by more than 25%?</b>					
	Solicitors				
	1-5	6-12	13-40	40+	Overall
Yes	6	7	9	5	27
No	44	57	32	7	140
Number of firms	50	64	41	12	167
% with >25% growth	12%	11%	22%	42%	16%

We asked how the firms were managed – by a managing partner, a CEO, or by the partners. Table 8.4 summarises the results and indicates that most of the firms were managed by the partners, with the 40+ firms being generally managed by a managing partner or CEO:

<b>Table 8.4 Our firm is managed by:</b>					
	1-5	Solicitors 6-12	13-40	40+	Overall
A managing partner	12 24%	19 28%	16 30%	8 67%	55 30%
A CEO or Practice Director	7 14%	8 12%	7 13%	2 17%	24 13%
The partners	31 62%	40 60%	31 57%	2 17%	104 57%
	50	67	54	12	183
What % of this person's time is spent on management?	32	40	64	93	47

The table indicates the increasing amount of time devoted to management in the larger firms.

We asked if the firm was used to managing freelancers/consultants, and if so how many they were currently managing. The table indicates relatively low use of these people:

<b>Table 8.5 Is the firm used to managing freelancers/consultants? How many are you currently managing?</b>					
	1-5	Solicitors 6-12	13-40	40+	Overall
Lower quartile	1	2	2	2	1
Median	2	2	4	4	2
Upper quartile	3	4	10	5	5

We asked the firms “What do you see as the main problems achieving the size of firm required to achieve a viable contract consisting of duty and own client work?” Appendix IV lists the responses and we have categorised them according to location.

The analysis in this section would suggest that the larger firms, with more than 13 solicitors, have many of the skills they would need in growing and managing a larger firm although it is doubtful many would have experienced the scale of growth that might follow. Taking urban firms as an example, table 6.3 indicates they may need fees of approximately £900,000 in order to run a viable



contract. On average urban firms are currently undertaking under £500,000 of such work, so an increase of that level would represent an 80% increase in scale. That would be difficult to manage but could also create potential cash flow issues especially with regard to funding crown court work.

The appendix indicates a range of uncertainties that might make many firms hesitate. These include:

- Uncertainty and commercial risk;
- The low volumes of work the duty scheme is actually generating;
- The difficulty securing funding;
- The problems of the procurement areas;
- Supervision issues in the event of having to use freelance staff.

This issue is discussed in more detail in the qualitative interviews – see page 74

Finally, we asked the participants whether there was any practical help or support that could be provided. A selection of responses is included at Appendix V and a number revolved around IT and consortia:

- Training in the secure email system;
- Guidance on consortia and draft collaboration agreements;
- Reduced regulation and fewer audits;
- Assistance in funding IT investment costs, perhaps through an increase in the standard monthly payment;
- Law Society possibly facilitating contact between firms re possible merger or associations;
- Technology grants;
- More cooperation from police and courts;
- WIFI in courts.

## 9 Themes to emerge from the qualitative interviews

Our report has so far been based upon the results of the quantitative survey. This section summarises the conclusions of the qualitative interviews which were designed to probe some of the issues arising from the quantitative survey in greater depth.

We are very grateful to the firms that took part in the face-to-face and telephone interviews. Everyone was very open and the points raised are extremely helpful. In this section we have included a number of comments in full, as they were written down by the person conducting the interview, as the points made were clear and useful. These are shown in italics.

We have taken out any references that might have identified the firm making comments.

We have added a short introductory summary of points under each theme. These are shown in normal type.

### Key issues and themes

The key issues and themes raised by the respondents were:

- Lack of reliable data
- Importance of the police station duty Scheme
- duty and own client contracts
- Significant reduction in the volume of work available
- Cumulative impact of changes that have already taken place
- Tight profit margins in the sector
- Ability/willingness to cross-subsidise crime
- Concern over timing of consolidation of the supplier base
- The difficulty of reducing cost quickly
- Impact of uncertainty
- Issues in relation to some procurement areas
- Impact of national fees
- Prison law
- Needs and aspirations of different types of firm
- Mergers / associations
- Management skills
- Need for a robust tender process
- Other issues

### **Lack of reliable data**

There was a range of responses among firms in having ready access to the data they needed to complete the survey questionnaire and this may reflect their capacity to construct a bid.

We also noted that there were discrepancies in what respondents told us in the qualitative interviews and what they had out in their survey response. There were also differences among firms in how they determined their figures for own client and duty client work at the police station and differences in case management systems.

*own client/duty shares were very difficult to work out. Respondent advised that this was not information he had previously required for planning purposes in his firm. He arrived at his figures by looking at CDS 6 forms for a couple of months and was 'surprised' at how substantial the police station duty work was and estimated that balance was 50/50 in terms of case volumes.*

*Another respondent estimated that the split was 50:50, when the data from the duty Solicitor Call Centre showed it was actually 70:30.*

### **Importance of the police station duty Scheme**

All the firms emphasised the key importance of the duty scheme for generating new clients, although there were differences among firms related to geography and population profile which dampened this effect. For example, firms in large urban areas reported being more reliant on the duty scheme for work and this was borne out by their figures. Firms in the provinces or rural areas had more stable own client bases but this tended to be lower value work. All of the firms regarded duty work as critical for future revenue streams, using phrases such as 'top-up', or 'duty conversions' or 'renewal' and as such they felt the boundary between duty and own client was blurred and a somewhat artificial distinction.

Given the introductory impact of duty, the firms reported that a duty contract was integral to medium term viability. Some of the respondents reflected on a market which had duty firms and non-duty firms and the possible unique selling point of being a non-duty firm and the potential for advertising. However, there were mixed views on how this might play out.

The response of many firms was to anticipate playing a waiting game to see who might survive. If they secured an own client contract they might reduce down to just partners and try to pick up more work as other firms went under. But, this was a risky strategy and would depend on when they could exit fixed costs.

*An own client contract could be viable (in London) but would require the firm to lose most of its staff which raises the question of whether this would really be the same firm and therefore, what is really meant by viability. Is viability defined as when firm would leave the market, for example. It would be possible to lose all the staff and for the partners to continue ticking over just doing 'own client' work.... The only way to offset this would be to try and market the firm so that clients won't use the duty. He anticipates that being an 'own client' only firm could become a unique selling point and that there might be a backlash against the use of duty firms if the marketing worked to persuade clients that the duty sol was somehow an inferior product. Note however, while this strategy might slow the*

*rate of contraction it would not be sufficient to offset the loss of return from duty conversions. On top of this, there would be losses associated with the change of status as there would be redundancy costs and the continuing drain of overheads which could not be reduced as quickly as the decline in revenue. So, the main conclusion that 'own client' is simply not sustainable over time.*

*Regards having a duty contract as crucial to the firm's revenue stream, mainly through its role introducing future own clients. While foreign nationals and young people don't convert much to own clients, the remaining clients who reoffend do (estimates could be as much as 50% of duty clients) and so the duty is an important part of future revenue streams.*

### **Duty and own client contracts**

Several firms were able to outline what a viable contract might look like although their ideas of viability varied considerably:

*Again, he found this a difficult question to answer and made a best guess at between £500,000 and £600,000. Thinks that to get any efficiencies you would need to be able to have a team to cover the work and he has arrived at the figure assuming that a team with an office base is needed to ensure quality and continuity of service to clients. But he recognises some firms will adopt a different approach and maximise by using freelancers with one supervisor in the office. There is a risk with this beyond continuity in that the freelancers are not at beck and call of the firm and therefore coordinating work could be an issue. (London firm).*

*If concentrates in South London for duty work then would estimate a minimum contract size in the range of £500,000 - 750,000. However, this has to be viewed in context because of the proposed changes in fees (so this would mean a huge number of cases if only getting paid at 160). Indeed, his biggest concern with the proposals is that he cannot see how a service can be provided on the fees being suggested. This is a particular issue for London because of an estimate that the fee is being cut by 35% (because of the move to the average). A South London duty case at the station will fall from £252 to £160. Given the travel and waiting times to see clients in police stations (hanging around for interview rooms and disclosure for example) he holds the view that the most straightforward of cases take 3 hours plus travelling time. If the firm concentrated on the cases in its nearest police station they could sustain some of the fee cut because the proximity to the office would enable staff to walk and minimise the time hanging around.*

*A minimum size contract is very difficult to determine (in a rural area) and the figure of £250,000 is a best guess. He reached this figure by looking at current volumes and reduced revenues of 17.5%. He then had to assume that the firm would need to employ another fee earner to cover the larger area and that would generate additional admin costs. Main challenges of a combined contract would be the size of the PA so increased travel and waiting times against a backdrop of reduced rates for the work. Is concerned about the potential use of agents as that means a lack of continuity for clients. There is also the question of whether you could recruit agents to work in a rural area, although the proposed changes may result in more people looking for work.*

*This is a difficult question to answer as it is shaped by the amount of work available. In Cornwall, the value of the work is probably only enough to support 4 firms. It is a county of only ½ million people with low average incomes. 'The figures don't justify more than 4 duty contracts. The best guess at a*

*viable contract is a minimum of £300,000. A combined contract would allow the firm to pick up mags court cases as a duty sol.*

*We await with interest the proposals as to the number of contracts in each PA. The figure of £1m per contract is unrealistic as only £18 million worth of duty police station work is available in London. Not all the proposed allocation criteria can be achieved – profit margins are too low on the volumes available to finance stand alone contracts whilst providing sufficient contracts to avoid conflicts of interest.*

*Duty on its own is not profitable for new entrants. If had to work from a 'standing start' then would have to invest in the area which means taking on costs. As payments take 4-6 months to start to come through there would be a need to cover costs for a period and even after that the work would not be profitable. The real money is in crown court work and that doesn't generate an income stream for up to 12-18 months.*

*Estimates that he needs a combined figure of £175,000 in order for the firm to continue to be viable (rural area). He reached this figure by making assumptions about the existing area he is working in and has taken account of a fee reduction in the police station of 10%. Volumes of work would have to be steady to generate the revenue. If the PA were to be the whole county the figure wouldn't change as he assumes that he can trade work from scheme elsewhere with another firm situated closer to that custody suite. In other words, you could need cooperation between firms to achieve this.*

*He is seriously considering winding down the firm given there is a break clause in the lease for 2015. Would have to give notice July 2015 and that will be a pinch point for the business. Could possibly consider continuing the own client work especially if gets reasonable cases coming through but would try to avoid police station work entirely.*

*Big firms need big contracts.*

*A lot of the small firms will survive. The cherry pickers who take the high cost cases will survive. There may not be many high cost cases; but they make a big difference to the bottom line. It is unfair that firms doing the PS cases at £160 a time should be denied the big cases of £100k +. Every firm will apply for an 'own client' contract. Particularly there will be over-supply in SE England. There will be further fragmentation of the market.*

*own client firms will cling on – a sole practitioner with a following only needs one or two good cases a year to make money. They will rely on 'fixers' in the community to bring them work. This will reduce the work available for firms doing the duty work and unprofitable work in the magistrates court. This is a recipe for fragmentation.*

*If they split it between own client and duty work in rural area nobody will do it – it equals the end. Big firms can't represent everywhere – ignore provinces and they don't want the rural areas. Big firms won't want to touch anything rural with a bargepole. The whole basis of law and profit basis is very different in rural areas, completely different to cities such as Birmingham, London, Manchester.*

## **Significant reduction in the volume of work available**

The backdrop to the changes is the reduction in volumes of work which the majority of firms have experienced in the last 12-18 months. Various explanations were provided for this dependent on area but generally rooted in changes to police practice in respect of detections, charging, and alternative disposals. Reduced resources at the CPS also felt to be a contributor. Virtually all those interviewed reported a significant fall in work:

*There has been a significant drop in volume of work (in London). Not clear whether this is really due to a fall in crime or rather fewer people being arrested and charged. His view is that there has also been a reduction in the number of people being charged with an offence and that only 50% of people arrested subsequently get charged.*

*Main issue has been the reduction in work available as the amount of crime detected/prosecuted has been falling (in Surrey). The number of other firms/lawyers competing for work has been significant set against this trend. Feels that in the last 4 years the firm has been squeezed at two ends. At the low value end the number of cases has been declining as more cases are dealt with in the community through e.g. fixed penalties. At the top end the work has also shrunk.*

*Police stations: police conducting more and more interviews with detainees as volunteers, not under arrest – can mean police easily able to persuade people they don't really need a solicitor, so they don't hit the radar.*

*Key issue facing the firm has been the reduction in volumes, which have 'gone off a cliff'. He observed that 15 years ago he would have been doing 5-6 cases per day in the mags court and that this week he has a single case. The drop in work is explained by a 'combination of things'. Firstly, there are far fewer arrests. As an illustration of this point, he notes that the custody numbers are sequential and reset to 1 each year. Numbers 1-999 are reserved for voluntary attendances. The most recent custody number last night was 4906 suggesting under 4000 cases so far this year. This gives a running rate of 400 per month so year end likely to be under 5000. This contrasts with a couple of years ago when the year total would be 6600 across all the custody suites. Secondly, there are fewer people being charged with offences, either because the CPS does not wish to proceed or because the police do not wish to proceed. Respondent think this is due in part to lack of resources at both parties. Overall, the throughput in the local mags court has been significantly reduced. court clerks estimate 23% reduction two years ago and a further 10% reduction this year. Similar falls have occurred [in an adjoining area]. Illustrative of the reduction is that only 2 or 3 court rooms are used each day when it used to be 5. This is despite the court closures in other areas which means that all the local work goes through [that court]. To illustrate these trends, respondent provides figures for today's date. At [name] Mags court there are only two courts running today; the first with 10 cases and 8 defendants and the second with only one case listed for trial and at 10:45 the defendant hadn't turned up. This court covers a large area which has produced only 9 defendants from an entire weekend. This contrasts with a decade ago when every day he would be in the mags court for between 3 and 7 clients.*

*A significant issue is decreasing volumes of work. Caseload is shaped by local practice and in Devon and Cornwall, the police had reorganised the way they work so there were fewer arrests and more diversion. The 'restorative justice push' has led to less police station work. Overall, the significant decline in detections means 'throughput in mags court has fallen through the floor'. crown court work has been steady with trials somewhat longer.*

*Key issue faced by the firm has been a noticeable drop in the volumes of work. The police have been making fewer arrests and fewer of these have resulted in cases going through the courts. Because the firm is 'lean' it has been able to cope with this decline in volumes and has not had to address the reduction with personnel changes. Nevertheless, the backdrop to the changes sees arrests dropping, prosecutions declining, and a reduction in pages of evidence (PPE) from prosecution and police which means return to crown court work is also on a downward trend.*

*Volumes of court work believed to have dropped, particularly in terms of youth court work, due to diversion measures and reduction in charging.*

### **Cumulative impact of changes that have already taken place**

The impact of earlier fee cuts, especially with respect to crown court work, and the removal of areas of work from scope, in particular in Family, are still working through. The full impact of the reductions has yet to be felt. The impact of the last crown court fee reductions have yet to fully work through. Recent years have seen many changes.

*Due to the lack of work, we are more reliant on duty than before. We used to get good cross referral between legal aid family and crime; but that has been hit by the reduction in Family legal aid.*

*This may be the last set of reforms for the next 4 or 5 years which would have the effect of creating some stability and therefore sustainability. A good thing is the proposal to break the link between duty solicitors and slots in the rota. Small changes such as relatively small changes in fees are a bigger problem for firms because they change revenue but don't create any opportunities for changes to the business model/approach. The government haven't really thought through the proposals and how firms will respond e.g. they will simply not do any trials as the fee structure does not incentivise trials.*

*On the civil and family side, a lot of work is now out of scope. This is 'a massive challenge'. On the civil side the main impact is from legal help work going. On the family side they are still doing well on public law children work - it is the private law family work where most cases have been taken out of scope. They are trying to respond to cuts by increasing the privately paying work, offering terms such as fixed fees, and expanding wills and probate work; but waiting for this work to pick up.*

### **Tight profit margins in the sector**

Profit margins in the sector are low. This was reported by all the firms, including those which had pared back and regarded themselves as very lean operations. There was a widespread view that the margins were much lower in the bigger firms and this was the group which was likely to struggle the most when the fee cuts were imposed. The bigger firms had greater fixed overheads and would have to get volumes to stand a chance of surviving the cuts. However, consolidation leading to the volume increases were scheduled for after the fee cuts so would arrive too late.

There were differences among firms in respect of private paying client work. This seems a function of geography, population and average incomes in the local area. This work is more significant for London firms.

*'We don't want to give up yet; but may have to. We have put aside money to wind up the practice but fees are so low, we are having to raid that fund just to keep going.'*



*Over the last 12-18 months the key issue facing this firm is they feel they have been “running to stand still.” There has already been a pay cut of 12.5% which was imposed.*

*Key issue is the fee reductions. If fixed fees for police station work fall further he will be losing money on the work. To generate the income stream he will have to take more cases. The only way to make this model work will be to invest less effort into each case.*

*The proposed fees changes are too high and he estimates that 10% is the most that can be absorbed. The 17.5% will hit Manchester firms very hard, but especially the larger firms who have narrower profit margins. The big firms locally are already showing signs of stress. He is aware that there are already two firms who are laying off staff and three firms where the workers are being asked to accept pay cuts to try and ensure the firms’ viability.*

Cash flow was also an issue which exacerbated the problem of low margins.

*Key issue is a cash flow problem and the inability of the LAA to pay bills quickly. As profit margins are fairly low (maybe 5%) this means that the firm is surviving ‘hand-to-mouth’ a lot of the time. The firm recently had to use an overdraft for the very first time.*

*Key issue for the firm is cash flow. Had previously operated with an SMP from the LSC but found periods of significant overpayments and underpayments. Despite alerting LSC to problem the system was ‘cumbersome’ and the ‘mechanism for change too slow’ so he opted out and elected to have a variable monthly payment (VMP) or ‘pay as you go’. The firm has had experience of significant recouping of overpayments coinciding with a year of lower revenues and this was difficult to absorb. The variable payment comes with other disadvantages though, namely the handling of non-standard fees. As these are paid on top of the VMP there is little predictability on when they are likely to be paid. Example was provided of a case which was closed on 02/08, approved at the beginning of September but will not be paid until 1st of November. (Because there is no predictability in the timing of these cases, this does not get smoothed through time). As the non standard fee cases are usually larger payments this has a big impact on cash flow. Although for the firm it is a credit the bank may not understand that the money will be coming in.*

*Delays in payment by LAA; effects on cash flow. During the summer monthly payments dropped to less than half what they normally had been.*

In addition, several respondents commented on their difficult relationship with their banks, which they felt would not take the risk of advancing funds for investment.

### **Ability/willingness to cross-subsidise crime**

This varied across the sample more than might be anticipated. One of the firms interviewed had taken a decision to close its criminal department it would no longer be viable and the partners were no longer willing to support it. Another firm had taken over the criminal department of another firm that had decided to stop doing crime because they did not consider it to be sufficiently profitable. Another respondent’s firm did not expect to make a profit from crime.

*Interviewee said that whilst the criminal department was making a small profit – and better in some years, then even if it wasn’t profitable in other years, the firm was prepared to keep it on as they believed it a service to the community – and also to clients of the firm’s other departments (there is*



*some overlap and potential for cross-referrals between, in particular, clients involved in public law and private law children cases and criminal cases). But it just wouldn't have been possible under the proposals.*

*Regarding position of rest of firm, it's worth saying that criminal dept doesn't have to cover all overheads – as long as makes some contribution, covers fixed costs and staff and some variable costs. Question is, could the firm reduce the contribution to costs required from crime? That supposes other departments make enough to cover the difference and to keep the firm profitable – it's reasonable to expect partners to be able to take some profits out of firm.*

### **Concern over timing of consolidation of the supplier base**

A common theme was concern that the first fee reduction would wipe out the profitability of firms before they had had an opportunity to scale up:

*The fee cuts are the overriding issue. How can 'massive' fee cuts be brought in at a time when firms need to spend money on reorganisation to cope with the proposed changes? He describes the 30% fee cuts at the police station as 'utterly unworkable'. If these cuts go ahead he is no doubt that the firm will 'go under', although they may go into debt first before they fail. Holds the view that the MoJ appear not to have assessed what the costs are for providing a service. There is a chicken and egg problem as without consolidation the cuts are not viable but consolidation is not possible because of the cuts. Consolidation is not costless as there are buying and merging costs plus the costs of moving to electronic working and rolling out of IT. They have already warned staff that they may have to take pay cuts of 10% if firm is to survive. He has no problem with the goal of restructuring the market and the principle of consolidation and would regard the firm as 'probably one of the sharks among the fish' and restructure offers an opportunity to grow the firm. However, the cuts make this impossible.*

*The strategy should be reordered allowing consolidation first and then see what is left and how much the fee could be reduced after that.*

### **The difficulty of reducing cost quickly**

Several firms outlined the difficulty they would have reducing their cost base quickly:

*In respect of fixed costs, the firm owns the property in which it is based and pays a mortgage on this. Although the building is owned, couldn't be confident of selling it quickly if decided to withdraw.*

*Key fixed costs: Has some significant fixed costs e.g. rent on premises but regards rent as quite cheap (30,000 pa) and is on a 12 year lease with regular 3 year break clauses. Other significant overheads are employed staff and IT which is hosted elsewhere on contract.*

*'How the hell' are they going to cope with 8.75% price cuts next year and 8.75% again the following year? It would probably mean talking to staff about cutting wages – they have done what they can to cut other overheads.*

*Respondent observes that a withdrawal is not without its costs. He is liable for the redundancy costs of the admin worker. There is also the 12 months' notice on the lease for the office which has to be considered. If the firm closed he would also have to cover the costs of runoff insurance.*

## **Impact of uncertainty**

Many firms commented that there are too many unknowns to begin planning for the changes. They need to know all the detail, requirements for offices, the selection criteria, the requirements for a single legal entity etc, contract sizes, volumes of work through time, the number of competitors, the eventual size of procurement areas, and the criteria for selecting the 'winners'. On top of these factors there are external variables over which firms have no control eg. closure/relocation of police stations and courts, general price rises for utilities, petrol etc. There is a feeling that once the criteria are set firms may take action to try to put themselves into the best position to survive.

*There has been so much change over the years that it has been impossible to make a medium-term business plan. We cannot plan or invest as we do not know how the landscape will change from one year to the next.*

*Second major issue is the 'massive uncertainty' and the need to second guess what the government may choose to do. This backdrop makes it very hard to maintain staff morale, and creates staff retention difficulties. It is impossible to have a business plan in this environment because firms do not know the terms on which work may be offered.*

The uncertainty makes it impossible to plan:

*Identified key issue as uncertainty or, "if no change there is the threat of change". Firms can have no confidence that the changes will stop, especially looking back over various periods of time such as Carter review and then other proposals. The uncertainty means that firms cannot put itself into a position to consider mergers with other firms etc as neither party can be confident about the potential changes. Highlighted specifically Grayling's view that firms should merge to be able to benefit from economies of scale but his view is the necessary conversations are stymied by the uncertainty and this is a major barrier.*

*The behaviour of the other players in the criminal justice system has to be taken into account. At the moment firms are being asked to plan for the future with no idea of the plans of two other major players, namely, the police and MoJ in respect of the courts. This adds another layer of uncertainty.*

*Key issue facing the firm is uncertainty. There have been many proposals over recent years that have not been implemented but which have created tremendous uncertainty for firms.*

*There is tremendous uncertainty about the process and what will be the criteria for contract award. Some possible criteria include KPIs, historic financial stability, volumes of work, peer review scores, number of duty solicitors etc. Big fear is that there is no knowledge yet about either the criteria or the weight to be attached to each. Therefore, it is impossible to know what to do to place the firm into the best position for making a bid or bids.*

## **Issues in relation to some procurement areas**

Many firms raised concerns about the procurement area and the underlying logic of them being based on Criminal Justice Areas. They were often regarded as too large and having no logic on the ground. CJS Areas were designed ten years ago to facilitate planning and joint working between the

wide range of different stakeholders who are involved in the criminal justice system, they were not designed as a procurement mechanism to commission duty solicitor schemes in police stations and at courts.

A number of respondents expressed a view that a better approach would be to focus on courts and then reorganise around those, albeit recognising that they too may be subject to change. Others mentioned basing the procurement exercise around police stations. However, both groups felt that a system which centred on the locations where services have to be delivered is an important principle.

*Sees the procurement area issue as a stumbling block (in London). He thinks the areas/contracts should be shaped by choosing the courts and allowing the police stations to follow e.g. 2 mags courts plus associated crown court and police stations which service these courts. This would be a sensible approach and would not require any change if the boundaries of the justice areas were changed. By concentrating on certain courts this would allow solicitors to 'double-up' and attend for more than 1 case in a day. His view is that the agencies at court are significantly under-resourced and this leads to significant waiting times which are more of a drain than travelling time. If they could double-up in a court this would offset some of the waiting or dead time.*

*Chief criterion for determining the PA should be potential for efficiency gains. If the geography is such that there will be a requirement for multi-offices or agency contracts then the PA should be made smaller. He thinks that the PA approach is a hangover from PCT and that now there should be no need to worry about the number of contracts other than with respect to ensuring sufficient volumes. His favoured approach would be to look at case volumes at police stations and volumes at the mags courts they feed (and to some extent location of CPS offices) and then determine PA from that starting point.*

*There is a fundamental problem (in rural areas) in the trade-off between getting the volume of work and having to cover a very large geography. Having a single PA for all of the county (Cornwall) is probably the correct balance but nevertheless, this remains a significant challenge.*

*Sussex 2 is simply too large geographically. The county has population centres up in the north (Crawley) and then in the south along the coastal strip (Worthing and Chichester). The travel time between the two areas is not insignificant (could be in excess of 1 – 1 and 1/2 hours depending on the time of day and road conditions. Both the private and public transport infrastructure between the two areas is poor and/or expensive to navigate. A contract across all of Sussex 2 would mean an extra office in Worthing or an arrangement with a firm in Worthing. He thinks the Sussex 2 PA should be subdivided into two parts – southern coastal strip and northern tip.*

*Surrey has similar issues in that a Reigate office in SE Surrey would have to service Guildford and Woking and the transport between the two areas is difficult (congestion and no direct route). So, a Surrey contract might also necessitate another office or complicated agency arrangements.*

*The split of London into 9 zones is quite sensible.*

*There are specific problems for rural Wales because the effect of travel and waiting payments on the firms are so significant. The question of size of the PA cannot be separated out from assumptions about travel and waiting or from requirements of office locations.*

*The proposals to divide Cumbria on an East-West split is not sensible as would require firms to cover in the East both Carlisle and Kendal. This is a 45 mile journey which is at least an hour each way, a long journey which can be awkward in winter. He sees similar problems with a West Cumbria PA with Barrow in the south and Workington in the North and poor transport links between the two towns. It is simply not 'worth' the travelling time to try and cover other areas. He views the existing status quo with Cumbria split into four as the most appropriate configuration as this is tailored to the transport infrastructure and population densities of the area. Even retaining this structure doesn't generate huge geographical efficiencies as the custody suite was built well outside town and that means lost time for travelling.*

*The proposed Greater Manchester area is 'too big'. The ideal would be the 'status quo', in other words, 1 court with 1 police station. At the moment, Greater Manchester has a minimum of 10 police stations and 8 functioning or operational courts. There is a problem with disjointed planning in that the police are making decisions on the number of stations and the MoJ is making decisions on the number of courts. This also creates uncertainty for defence firms because it affects the location of the work.*

*The PA (Staffordshire) is too big as proposed with a countywide approach. The current configuration essentially is based on a triangle with three access points, Stoke, Cannock and Stafford. I could envisage a merging of the Cannock and Stafford schemes but it would make sense to leave Stoke on its own (probably does half the work in the county anyway). A joint Cannock/Stafford scheme would have just enough duty work. His main concern with county wide PA is the mechanics of the proposals for clients. At the moment they are required to respond to duty requests within 20 minutes and that would have to be abandoned. Moreover, clients are seriously disadvantaged by the geography and the poor transport links, especially on the east-west axis. If they wish to visit the solicitor's office they would have to take multiple buses. There are similar problems of transport for clients in accessing courts. At the level of principle he thinks it may be a mistake to rely on CJS boundaries as they are 'completely artificial.' There is no logic to the areas when you look at what is on the ground in terms of police stations and courts.*

*The main factor influencing the viability of this contract (in London) would be geography as it was assumed that efficiencies would emerge if the bulk of the work was coming from a single local justice area so that it was heavily concentrated in 2 mags courts and 1 crown court. This is the only way they could absorb the 20% increase in the work needed to offset fee reductions.*

*Manchester is too big. Should be 2 PAs – north and south. No way a client from Stockport would go to Wigan to see a solicitor. 1.5 hours travelling time not realistic across the PA. Should focus around the police station areas – 3 big police stations in greater Manchester.*

*The whole system has evolved based around local police stations. The only way it would be viable is if they keep the same Devon areas as at present: 4 centres – Barnstaple, Exeter, Plymouth, Torquay. All have police stations there.*

*Hull is a challenge. Vast problems with geography. The PA is Humberside. Includes both Hull and Bridlington to north of Humber estuary, and Scunthorpe and Grimsby to the south. Could do Grimsby to Hull in 45 minutes if was as crow flies – but the river is in the way so you can't.*

## Impact of national fees

The proposed fee cuts were a recurrent theme in all the interviews. There were few firms which felt they would be viable with the new fees. The firms had all tried to assess what the proposed changes meant in their areas. For London firms in particular it was felt that the average reduction was closer to 35%. For firms in rural areas with significant travel and waiting times the average reduction also tended to be greater than the 17.5% average.

Firms were generally considering how they could 'optimise' their behaviour e.g. to avoid trial work if at all possible, to make the fees viable, although they also recognised the difficulties with this approach.

*The big issue is removing the higher standard fee – it means you cannot earn money on many trials. We will lose 30% of our magistrates' court fees. Most solicitors will do their job but some will advise their client to plead guilty – an issue for quality.*

*The fee for murder would go down to £9,800. No swings and roundabouts on murder – nobody pleads to murder. Nobody would want to do a murder any more.*

*Fee changes dwarf other proposals – profit margins too low to survive in London.*

*Rate cuts have had an impact on the firm, and the proposed fee cuts will have a major impact. As we service a rural area with low volumes the travel and waiting costs are a major issue. police station closures and court closures have also been a factor affecting volumes (as clients may be deterred from asking for a duty solicitor if they will have to wait a long time). The local courts no longer have listings on every day of the week which has also affected the firm. For example, if the [ court name removed so as not to identify the firm] isn't sitting then a client may be taken to [ court name removed so as not to identify the firm] to attend court and if the firm attends this incurs a significant extra travel time. Waiting times at court have also increased significantly as we are required to arrive at court for 9 am but the client is not due until midday.*

*The national model does not fit local circumstances. The large geography and dispersed population of rural areas means that firms require multi-operational staff (eg capability of doing courts, duty work etc), so efficiency savings from specialisation are not realisable. More substantial changes allow firms to optimise within a new framework. So, these changes may well lead most firms to decline to do trial work.*

*Key issues facing the firm at present are fixed fees – example of East Cornwall, which used to be £246 but have fallen to £218 with a projection to £160.*

*The key issue is fee cuts combined with falling volumes. Not clear the system is viable with new fees. Restructuring is fine but cuts cannot be absorbed.*

*The 8.75% cut in fees would see us out. We are under pressure from our bank. The proposed simplification of the police station fixed fee scheme and the magistrates' court standard fee scheme will close every London firm.*

*They are cutting the fees too much. They should not have included the telephone only fees when they were working out the average PS fee. It's a 35% cut for us in the magistrates court due to the national fixed fee – the regional rates were there for a reason. You can't make up the losses through*

*increased volumes as there will also be a corresponding increase in Mgs court cases – on which you will lose more money. If they were prepared to be a bit flexible on the fees, it could work.*

### **Prison law**

Very few firms interviewed mentioned prison law work but the the impact of the changes in scope would affect those that did, differently:

*Sanguine about changes to prison law – small part of the business; but good for client care.*

*Most of our income is from prison law, appeals and reviews – mostly the latter. We may well decide to specialise in that area. The reduction in scope does not bother us as we do not do the kind of cases that are going out of scope anyway.*

*We will be hard hit by the reduction in prison law scope. We used to have 6 people doing it – 2 people left recently and we haven't replaced them.*

### **Needs and aspirations of different types of firm**

Objectives of firms varied but included profit maximising, cost minimising, income maximisation, and variants of these through time. It appeared that the responses of firms would be determined in part by the need to minimise liabilities e.g. struggle on until they can get out of rent agreements or until some staff have left, and by the opportunity cost of the capital tied up in the business.

Practitioners at the older end of the age spectrum have invested considerable human capital in terms of their expertise in criminal defence law and would find it difficult to retrain into something else. For them, especially if in sole practice, it makes sense to try and survive for long enough to wind down with the minimum legacy liabilities.

There is a tension between big firms and the rest about what the selection criteria ought to be e.g. big firms would favour something in respect of duty solicitors employed as that would give them a significant competitive edge.

*The firm thinks that the proposals to reduce the number of firms is probably a good one as it has been difficult to make the duty sol arrangements profitable, particularly as the arrangements favoured duty sols over firms (he would have been happy with a system which rebalanced giving half the duty slots to firms and half to sols). However, the fee cuts are a real issue and this alone will have a major impact. (London – mid sized firm).*

*contracts have to be worth at least £1million. Big firms need big contracts. Shame you can't have variable sizes to keep some of the good smaller firms in.*

*We have 6 offices – we could cover the ground. Our current contract is around £1m for duty work – total turnover of the crime department about £1.5. Would need to look at the amount of work in the PAs to see where it would be sensible to bid.*

*If the MOJ keeps the idea of £1million as a minimum, then will have to expand. We have some experience as we previously took over a neighbouring Crime team and are confident we could do so.*



*Why would we want a duty contract? We would need to expand massively and it just would not be worth it – the work just is not there. We think there is a big query over the quality under the new contracts. Big firms will staff them with ‘ghosts’, who are also working for other firms. They will be over-stretched to deal with all the calls. It is a low cost model and this will be the only way of doing it.*

*Doesn’t see how a big firm can do any better in (in a rural area) given the geography and the low volumes. There are simply not the economies of scale to be had.*

### **Mergers / associations**

Few firms expressed interest in looking at contracts outside their existing PAs. The overwhelming feeling was that expansion would require setup costs and that this was too much of a commercial risk. Some firms had managed mergers in the past; but there was little appetite for joining with other firms through formal merger in order to bid for these contracts, not least because this involved costs with no guarantee of any return. However, there was a recognition that some sort of ‘association’ might be required to succeed on a bid for duty work, especially across geographically large PAs.

Facilitators for joint working were identified by many of the participants; help with cashflow so interim payments or interest free loans, removal of regulatory blocks e.g. reducing time it takes for SRA to register LLPs/ABS, changing the rules regarding the ratios of qualified to unqualified staff (as can’t make fees pay otherwise), assistance with forming associations and collaborative agreements e.g. production of template documents and introductions to matched firms. Firms said they would need a period to lead in for mergers/associations although there were varying views of the minimum needed. Broadly, the minimum was thought to be 9 months.

*£1m would be hard for us – would not want to expand too much. Would consider a consortium.*

*Would they look at adjacent PA? Have pondered, but unlikely this time around. No physical presence in adjacent PA – further office would be needed.*

*Have been talking to other firms locally with a view to informal co-operation; but nothing definite in view of the lack of certainty in the proposals.*

*Regards the firm as one which has the business skills to succeed and regards himself as a ‘business lawyer’ which are ‘few and far between’. But to capitalise on the opportunities need resources in place now. Key changes the firm is planning are acquisitions and mergers and they are in talks with enough providers to predict that they could double in size within 6 months. Thinks most of the competitor firms will disappear within a year or two and that the deals they are being offered by firms have arisen as a result of proposals.*

*Considering relationship with another firm – looking at developing consortium arrangements if need to develop relationship. But not considering merger.*

## **Management skills**

Some of the firms clearly had the management skills to expand/manage a potentially larger firm. In some cases, these were the larger or medium size firms already.

Most firms already use 'agents' (counsel or freelance advocates in court and/or freelance reps in police stations). They did not anticipate that it would be difficult to increase the volume via this method as it would be low risk for them because they would only pay agents after the work was done and billed/paid for.

Some firms were unwilling to expand because they would incur expense to do so; but others could expand significantly without increased overheads.

*Not explored in detail, but the main difference would appear to be in terms of increased use of freelancers/paralegals, and they already have experience of managing consultants and other freelancers (accredited reps). They have been changing the business model along those lines over the last 2.5 years or so.*

*Have managed mergers – most recently took on a whole department from a firm in the area.*

*Growth is not a problem – not very different from what we do now. Have not done mergers etc – we have grown organically. Could see this coming and saw what others were doing – followed the model.*

*Would not need to grow – already large enough. Confident in ability but reluctant to open more offices as it will increase overheads to no real benefit.*

*We could double our volume without having to increase – we have not got enough work. We effectively operate our own duty Solicitor scheme with a police station Controller and a magistrates court Manager. Our IT could allow us to expand with no problem and offer services to other firms.*

*We have taken over the Crime team from a neighbouring firm in the last 18 months.*

*No experience of mergers etc and not keen to expand – you lose quality.*

*At present they have a managing partner. His job to handle, anticipates trends, and can deal with implementing efficiencies. But he is leaving – and is concerned that senior management team couldn't afford to employ anybody to replace him so deciding to do it themselves. Doesn't think the partners have the expertise – need to cover finance, HR, IT – so not replacing him is a risk.*

## **Importance of a robust tender process**

Some respondents expressed their views on the need for the LAA to have a robust process that would identify unrealistic bids:

*The delivery plans are the weak point in the tender process. LAA needs experienced people to spot 'howlers'.*

*Needs to be realistic about how much an organisation can expand. LAA should keep in the criterion from the PCT model which limited the percentage you can deliver through use of sub-contractors.*

*Query the criteria for selecting winners for duty contracts – there are a lot of quality firms which will score really highly – they can see all satisfying the criteria. How will they choose firms?*



## Other issues

Several other interesting points were raised:

*Sees the main issue as a problem of fees, irrespective of the reforms to the schemes. Respondent set out examples of the fees changes and what they mean for case types. One example is in the crown court where reductions for trials are 'enormous'. Has calculated a matrix of fee changes using number of pages of evidence against types of cases and results show significant losses on fees for trials. For example, looking at a burglary case with 300 pages of evidence and lasting 3 days ('pretty standard') get a reduction from £2807 to £1220. In general there are increases for guilty pleas which generate the wrong incentives.*

*Tremendous pessimism locally about the long term survival of criminal work. It is barely viable in the short to medium term. The age profile of solicitors in the area is towards the retirement end and so there are question marks over who might come in to do work in criminal law when these solicitors leave. There have been so many cuts over the last few years and the rates are no longer viable, especially when set against rising costs. Observes also that the premise of needing to reduce spend on criminal legal aid needs to be questioned as this has not been a growing area of spend for some time. The only growth is created by the creation of new offences.*

*One overriding issue that has faced the firm is trying to operate in an environment that is shaped by the link between duty sols and slot allocation. This has distorted the market and altered the profile of firms. The respondent estimates that in Cornwall there are 45 duty sol of which a significant proportion are part-time and working as consultants. He estimates that nationally maybe one-third of duty sols are operating like this. He believes the going rate for the slots is around £12,000 per annum.*

*Doesn't see the need for the proposed procurement changes as he thinks the effect of volume declines and fee changes will do the job. The MoJ might as well wait and let these factors 'play out' as they are likely to get the outcomes they need.*

## Appendix I – Definition of key terms used in this report

LLP	Limited Liability Partnership
Equity partner	An equity partner owns part of the equity (or capital) of a firm and receives a share of the profits as agreed between the partners. They are self-employed and pay tax through Schedule D.
Salaried partner	A salaried partner has the title of partner and is liable for the liabilities of the firm but is paid a salary through PAYE and is included in salaries in the firm's accounts. They do not normally contribute any capital.
Fixed share partner	A fixed share partner is not paid through PAYE but is instead self-employed and is allocated a fixed profit share. They may receive a small additional profit share dependent on the performance of the firm. They may contribute a nominal amount of capital.
Consultant	A consultant is a freelancer, often a former partner, is usually self-employed and has control over their own working hours.
Fee earner gearing	The number of fee earners who are not equity partners relative to the equity partners. If, for example, a firm had 5 equity partners and a further 15 fee earners it would have a gearing of 3.
Professional Practice Finance Loan	These are personal loans provided by banks to new partners. They are not shown on the firm's balance sheet and are normally secured on the firm's assets and repayable on retirement.

## Appendix II – The London/Urban/Rural classification

In analysing the data we have allocated the various procurement areas into three broad categories as shown in the table:

Location	London	Urban	Rural
Bedfordshire			1
Brighton			1
Bristol			1
Bury St Edmunds, Suffolk			1
Cambridgeshire			1
Central & West London	1		
Cheshire			1
Cornwall [Devon & Cornwall]			1
Derby			1
Derbyshire			1
Devon			1
Durham			1
Dyfed-Powys 1			1
East Gwent			1
Essex			1
Exeter			1
Gateshead			1
Gloucestershire			1
Greater Manchester			1
Gwent			1
Hull			1
Ilford - London	1		
Isle of Wight			1
Kent			1
Leicester			1
London	1		
Merseyside			1
Milton Keynes			1
Newcastle upon Tyne			1
NEWPORT (GWENT)			1
Norfolk			1
North East London	1		
North London	1		
North Nottinghamshire			1
Northampton			1
Northumbria			1
Norwich			1
Nottingham			1
Plymouth			1
Shropshire			1
Slough East Berks			1
South Cumbria			1
South East London	1		
South East Surrey			1
South London	1		
South Wales			1
South West London	1		
South Yorkshire			1
Staffordshire			1

Stoke-on-Trent		1	
Sunderland		1	
Surrey		1	
Sussex 2		1	
Teesside		1	
Thames Valley		1	
Vale of Glamorgan			1
Waltham Forest	1		
Warwickshire			1
West Dorset			1
West Mercia			1
West Midlands		1	
West Yorkshire		1	
Wiltshire			1

### Appendix III – Participant feedback on Procurement areas

These comments were made by respondents in addition to those quoted elsewhere in the report and are included for the sake of completeness.

Avon & Somerset	Too large. Avon and Somerset needs to be divided into 2, north and south. North would be Bristol Bath and Weston-super-Mare and south Taunton Yeovil and Bridgwater. It's too far from say Bristol to Yeovil to cover a police station call-out.
Barry, Vale of Glamorgan	Too large. The current duty areas are the right size as they enable us to get to police stations swiftly and also enable the clients to have access to offices during the day.
Bedfordshire	<p>Too large and only require 4 Crime contracts</p> <p>Absolutely not, there is a suggestion that it will be Thames Valley, and that any provider would still only require one office in the area. To my mind that is a fundamental failure of access to justice. I would stress that this point has no bearing what so ever on the financial future of firms, but the far more important question of a clients access to justice. As an example I would ask how would a single parent from Slough, arrange a meeting with their solicitor in Milton Keynes? Drop the kids at school then a minimum 2 hour train journey to Milton Keynes, then 1 hour meeting then 2 hours back. Assuming both school and solicitors are in central locations, and everything runs smoothly, they still might miss school pick up, and it assumes they can get time off work if required. At the Law Society event the panel paid lip service to this fundamental problem.</p> <p>We are on the Luton/Bedford scheme (Bedfordshire - 7 providers proposed) and Milton Keynes scheme (Thames Valley - 4 providers proposed). Bedfordshire the procurement area is probably the right size but we would argue that there should be 12 providers. Thames Valley is too large (4 providers for the whole of Thames Valley is mad!) we would propose Thames Valley being left as it is with the same amount of providers as there are currently in Milton Keynes.</p>
Bolton Greater Manchester	Too small. The contracts need to be made available to more firms and should be localised for example Bolton rather than all of Greater Manchester.
Brighton	Too many solicitors fighting for a piece of the pie.
Bristol	Seems acceptable.
Bury St Edmunds, Suffolk	It is too large. Unless there is an expectation for us to travel all over the County, there will, in effect be only one provider in the West of the County, i.e. a monopoly. There would be no competition and little incentive to do the work required. There should be a minimum of two providers in each location.
Cambridgeshire	Too large. Difficult to cover all of Cambridgeshire from just one office. Difficult to cover all the police stations due to distance between them.
Cheshire	<p>Too large. If it just covered the duty scheme area as it stands then we would not have to treble our size merely to bid, with all the attendant risk and uncertainty.</p> <p>Too large. It is not necessary or sensible for one firm to cover a geographically</p>

expansive county with relatively low population. The custody centres and courts are already adequately covered by representatives at a low cost to the LAA.

Cornwall [Devon & Cornwall]	The proposal in the 2nd Consultation to split the Devon & Cornwall CJA into [1] Cornwall and [2] Devon is one which I support as the geographical area of the Devon & Cornwall CJA is substantial, resulting in excessive travel times. However, the consequence of that split is that the volume and value of the available work is insufficient.
Derbyshire	Derbyshire is about right.
Devon	<p>FAR TOO LARGE, SHOULD BE SPLIT INTO 4 (i.e. DUTY SOLICITOR AREAS)</p> <p>Too large - better size as at current based on police station</p> <p>Too large. Devon is the second largest County in England with a poor road infrastructure. There is a case for rural exceptionalism procurement areas should be significantly smaller and Devon could be divided into 3 areas - 1. Plymouth and West, 2. Exeter and North, 3. Torbay, Teignbridge and South Hams. This would achieve consolidation of the market to some degree and would make a duty contract a more attractive proposition for existing providers who could expand without taking huge risk.</p> <p>Too large - Devon is a large county</p> <p>Vastly too large. No firm can cover it. No-one can afford to expand or amalgamate over such a widespread area. The area should be run on police station areas as it is now.</p>
Durham	<p>Far too large it would be better on a town boundary</p> <p>Perhaps it should remain as it is ie split into South Durham and North Durham. The system currently works!</p>
Dyfed-Powys	<p>It is too large as the travel time from Llanelli to Haverfordwest is a minimum of 1 hour 30 mins (traffic dependent) so would mean 3 hours travel for some police stations and with waiting time included the reduced fee would be totally uneconomical</p> <p>Carmarthenshire and Pembrokeshire is manageable for my firm. Dyfed-Powys 2 is absurd in it's size, we currently do some work in Ceredigion but would not seek a duty contract in that procurement area due to the size of the procurement area.</p>
East Gwent	The area is too large but the work is too little so it is a difficult divide.
Essex	<p>The current model works well. County wide requirement would be untenable for all but large chain operators. Small independents will go out of business.</p> <p>I do not yet know the planned procurement size and feel that the old contract requirement of local practitioners provide local services is much more appropriate</p> <p>Essex should be one area we agree. Suffolk should not be 2 areas. The Suffolk market is highly fragmented (one man bands, etc). Should be one area not East &amp; West.</p> <p>A procurement area of the entire county is not possible for a firm of this size.</p>

The firm operates perfectly within duty areas available from its office. There is no good reason to change from the current system. Creating large areas will not serve clients well either. they will have greater distances to travel to see their solicitor. The representative will also lose the local knowledge if forced to travel across the county to areas that he is not familiar with.

Right size

Gateshead

Right size

Gloucestershire

If it were just Gloucestershire as it is now that would be just right

Greater Manchester

It depends on the number of contracts on offer. Greater Manchester is manageable if the contracts allow for greater response times for police stations. Travel time and costs will be a significant increased burden and challenge efficiency. Travel times and cost will be an issue as we cannot respond for the whole county within the current 45 minute rule

Having to cover such a large and congested area poses all sorts of logistical problems

It is far too large. There is too great a distance involved in travelling through a busy conurbation.

The procurement area is about right.

Greater Manchester is too big an area to make fixed fees cost effective - we see little wrong with the current duty areas of Manchester, Salford, Trafford, Stockport, Oldham, Bolton, Bury

The Greater Manchester area is too large and thinly spread. There are 7 courts and even more police stations, some as far as 40 miles apart from one another. A fee earner could spend all day at Wigan on a police station when the office is in Trafford or Stockport.

Too large, significant travelling difficulties. Better size would be Bolton, Bury and Wigan

Gwent

Right size.

Hampshire

The area is too large and initial indications were to include the Isle of Wight. Travel to the island is problematic and ferries do not operate 24 hours a day. Staff would have to be permanently located on the Island. The work on the Island is seasonal, creating management problems when allocating work.

Not sure. Probably too big.

Too Large - unpaid travel time and expenses will be massively increased to police stations/courts. These travel times and expenses will be prohibitive to the clients coming to see solicitors to provide instructions. It will result in miscarriages of justice: delay in the justice system. Also will delay attendance at the police station and thereby resulting in an increase in costs for the police etc in detention times etc.

Hampshire is too large requiring an unachievable number of duty solicitor qualified fee earners. It is not possible to enter into consortia arrangements in the timescales available. A realistic area would be Southampton and New Forest.

Surrey is too small - Hampshire is too spread out - there is a very real "North / South divide" in Hampshire with virtually no transition in firms or client base... There is a large rural area in the centre of the county... Thames Valley is VAST...

The size of the area is correct depending on the number of duty contracts. This area doesn't need any more than 6.

The area is too large. The travel time will be disproportionate to the rate paid to cover the whole of Hampshire. A better size would be to bid for the current duty contract areas as they stand. The quantity of work for criminal defence practices has significantly reduced. Maintaining other volume of work to sustain the figures set out will require us to have a greater share of work available.

Humberside Humberside is separated by the Humber estuary. This physical barrier means that the procurement area would be better organised into two on a north/south basis

Isle of Wight We have fought hard to keep the Isle of Wight its own procurement area in the consultation process and it must be its own procurement area going forward to ensure that the local courts and police stations are served by local solicitors in a timely manner. There are no night-time ferries and this would severely limit the ability of mainland firms to service the Isle of Wight. The difficulty is that there is not enough volume of work for the local firms to sustain this level of fee cuts. We are asking the government to consider rural areas such as the Isle of Wight as exempt from fee cuts.

Kent It is the right size to allow for extra volume.

Too large. No firms in Kent currently cover the whole county on a daily basis. clients in Sevenoaks will only be able to visit Margate by car or by spending their entire week's benefit on a lengthy train journey. It would be far better to split the county in half (North and South) as this reflects how firms in the county presently work. Otherwise the firms who win a contract will have to move to a more central location. Staff live near work and may be unwilling to move (esp for reduced wages). Covering police station cases 90 minutes (75 miles) away on a fixed fee of £160 is uneconomic. We would be much better able to absorb the cuts if the work was local to our staff and offices.

Too large. Kent should be split into East and West. There are few, if any, "big firms" in Kent. Such a suggested split would allow the merger of perhaps two rather than three smaller firms thus giving the new entity at least some chance of obtaining a duty contract. This observation in any event does not take into account the prospect of large national firms bidding for contracts in Kent against whom solid, established, efficient quality firms in Kent would have no chance of outbidding.

Leicestershire I believe that the Leicestershire CJS area is the right size, if it were smaller then there would not be a sufficient number of duty cases to make it viable. If it were any bigger we as a firm would have to open a second office in order to service it properly and therefore this will be a significant additional cost to the firm.

Liverpool The procurement area is Merseyside. We have concerns that any firm awarded a duty contract would have to provide services across numerous magistrates court in a large geographical area.



Probably about the right size

There is a lack of certainty of the actual size of the current procurement area size. There is an assumption that the procurement area will remain a similar size.

Right size provided that we maintain the ability to deal with cases outside of the area.

London

This will only work for us if we get a duty contract at least as big as what we currently do, circa £3m.

Too large

It entirely depends on the size of the contracts. A solicitor can be utilised at least 33% more productively if there is sufficient work in one court - as opposed to spreading their practice over many courts - and that is obviously the biggest factor in the cost of doing business in terms of managing the payroll.

A better option would be to leave the current regime and make the savings elsewhere in CJS. Costs in the magistrates courts due to prosecution and police deficiencies alone

Based on our understanding of 9 areas in London we would want to be involved in 2 areas if a single area couldn't provide 900K in income.

Just fine

London (City)

Impossible to say with but generally the bigger the better provided that firms are genuinely given an equal opportunity win a contract.

London Central North

WE STRADDLE TWO AREAS AND HAVE OFFICES IN THREE, AND SO WE WILL FACE OFFICE CLOSURES AND A REFOCUS IN ONE AREA

London Central & West

1. The London Local Justice Areas are about the right size and will allow us to focus on particular courts and police stations.

However, we would prefer to keep to the current schemes but limit the number of duty rotas to two courts and their associated police stations. This would produce the same result i.e. greater efficiency, at the same cost, but with more flexibility to suit local requirements.

2. I am also concerned that West London area is unique in being combined with Central London.

We are based in Hammersmith, well west of Central London, yet will be adversely affected by the historic enthusiasm to be included in the Central London catchment.

3. London Local Justice Areas boundaries have changed relatively recently and could do so again. This would not be an issue if the proposal in 1. Above were adopted.

London East

Our procurement area is of small size.

London North

THE RIGHT SIZE.

London North East

Depends what is decided in London, on the basis of the CJS area North East London that is ok. The smaller the better to reduce travelling time - much better than the original suggestion.

London South	<p>It is reasonable perhaps a slightly larger size would allow greater flexibility/profitability.</p> <p>Unless there is confirmation as to what courts and police station will remain open it is difficult to judge however the procurement area is approximately a third of the size of the area that we currently cover under the duty solicitor scheme.</p> <p>I have no idea how big it would be from the consultation document - what is south London covering?</p> <p>Should be along current CJS areas which would allow for a more varied though slightly reduced supplier base.</p> <p>Geographically acceptable in size. Under the current proposal we would intend to make a joint bid with local firms corresponding to the size of the proposed contract.</p> <p>Our procurement area is around the right size, however it would clearly depend on the amount of contracts issued for our area.</p>
London south east	<p>Probably too large in light of how quiet duty work is at present. To cover the area you need staff but cannot afford to have enough staff to create availability when on current evidence you may not get a single call out to certain stations in any 24 hour period. Smaller areas and smaller contracts would allow the medium and smaller firms to take up a contract and stretch themselves...recruiting if they found the work was there but not destroying themselves financially if things remain as quiet as they are at present. 3 years or so down the line the MOJ could review again and firms that cannot make it work will drop/or be forced out and the successful firms will grow and mop up the rest of the work. if we were all making vast profits from duty work I am sure many of us would be willing to take a plunge and expand in order to bid, but that is simply not the reality of what is happening at the moment.</p> <p>London South in the early 2013 proposal was far too wide east to west and is not a natural journey in London (The South Circular road is a concept not a highway and the railways are radial not circumferential) to make an area wide bid viable. Either travels costs and time or establishments costs would get you. London South East and London South together are more practical and equate to most of the rotas we are on in any event. The reality is we managed a contract with a turnover 3 times our present with just less than double the staff. Now the profit in police station work will be too little to subsidise the time intensive litigation where the fees are already a joke.</p>
London South West	The right size
London South/South East	The size is not so much our concern as the inflexibility of the proposals regarding cuts and rota distribution.
Merseyside	<p>Merseyside is a reasonably compact geographical area and about the right size to be properly managed.</p> <p>The procurement area and current contracting levels achieved allow us to service enough clients to allow our excellent client service levels to generate additional and continued workloads. Any reduction in size would make this less achievable. A 17.5% reduction in fees would ultimately mean that the areas would be too small to generate the required level of turnover and so an</p>

increase would be beneficial.

We would favour larger and fewer areas to increase volumes.

Newcastle upon Tyne	<p>Right Size</p> <p>OUR PROCUREMENT AREA IS TOO SMALL. IT SHOULD BE MADE BIGGER IN ORDER TO ALLOW FIRMS MORE OF A CHANCE TO OBTAIN WORK IN A WIDER AREA.</p>
NEWPORT (GWENT)	<p>A Gwent wide procurement area would be appropriate and is the current recommendation. Gwent is currently split into three areas. Each of these would be too small on their own.</p>
NORFOLK	<p>Used to working across Norfolk &amp; Suffolk. Difficult to get an appropriate area in the more rural parts of the country.</p> <p>Divide Norfolk into 2 or 3 areas. One area servicing Kings Lynn MC. One area servicing Norwich MC. One area servicing Gt Yarmouth and Lowestoft.</p>
North London	<p>London is different from other areas as the amount of work is higher in a smaller area. An area covering two courts and 10 police stations would be about right.</p>
NORTH WEST	<p>A procurement area covering entire north west not viable for any firm. Our current duty sol scheme of blackburn/accrington is perfect size - courts and police stations easily accessible so no delays.</p>
Northampton	<p>Our procurement size is not too bad</p>
Northumbria	<p>Too large. Should be divided more geographically. Northumberland is a large county geographically and it will be a large unnecessary burden covering Berwick in the north to Sunderland in the south. South East Northumberland should be included with Berwick and Alnwick</p> <p>It is far too big The majority of firms exist around the 5 local police stations and courts in the Northumberland procurement area. It is so much more efficient to travel to one local court or police station or the more local ones than travel to the margins of the proposed procurement area. The current duty arrangements work very well and are the most efficient and cost effective way to deliver the service.</p> <p>Too large. Area covers wide geographical area with River Tyne running through the middle. Using North/South divide of the River Tyne would be more logical</p> <p>The proposed procurement area has some geographical difficulties. However, due to the historical limited reliance on duty work in this area we consider that, if the two tier system is to come into operation and there are to be 17.5% cuts, any smaller area would not offer sufficient workload for a firm of our current size.</p> <p>Remove SE Northumberland would be more manageable. The geographic nature of SE Northumberland and the road network will lead to considerable time spent in travel.</p> <p>I think we would manage it but it would need the cooperation of courts etc with regard to duty days.</p>

	Too large with our current staff. We occasionally do the outlying courts and police stations. Now we will be expected to service them daily.
South east Northumberland	We should not be in the area proposed. We have been put in Northumbria 1 is the tyneside conurbation and should be in Northumbria 2 which is the county area where we have always been
NORWICH 1	THE PROPOSED AREA (NORWICH 1) IS THE RIGHT SIZE HOWEVER THE LOSS OF FEES FOR TRAVEL WILL SEVERLY AFFECT PROFITABILITY BECAUSE OF THE NEED TO COVER OUTLYING POLICE STATIONS AND COURTS.
Nottingham	Too large. Subject to supervisor to caseworker radio permitting I think I have enough qualified staff but would need more accredited reps and support staff. Nevertheless the burden of covering the area (without using agents) will not be offset by enough extra work/clients. Moreover in Notts the court work and police station work is already concentrated in bespoke larger buildings. Also the large bid areas don't assist in bidding in additional areas. Capital cost too high, risk too great, and likely spread too thin.
	Fine- right size
	Notts is a big county but is coverable from the city.
NOTTINGHAMSHIRE	TOO LARGE BECAUSE THE MAJORITY OF WORK I.E. THE PRINCIPAL JUSTICE CENTRES ARE AT ONE END OF THE AREA RATHER THAN THE MIDDLE. A BETTER SIZE WOULD BE ONE WHERE NOTHING WAS MORE THAN A 30 MINUTE DRIVE FROM THE OFFICE SERVICING IT.
Nottinghamshire North	The procurement area of Mansfield cannot support the number of duty solicitors currently operating within the town. The proposed procurement area of Nottinghamshire may provide additional opportunities but would also allow the larger firms access to the Mansfield area.
PLYMOUTH	Devon far too big, distances impossible
	Devon is definitely too big for a firm in one part of it to sensibly cover it all. Torquay and Exeter are at least 1 hour from Plymouth and public transport to Torquay is useless. Barnstaple is 2 hours from Plymouth. The only way a firm could achieve the geographical cover is for that firm to have arrangements with other local firms - so agreements with a firm in each of the 4 large cities Devon - with an umbrella company contracted to the LAA. But surely that completely defeats the point of the consolidation plans as ultimately the same problems will persist. It would be better to at least halve Devon into two areas - South and West (so, Plymouth and Torquay) and North, Central and East (Exeter, Barnstaple). Even then, when the police ring you to say they are ready for interview in Torquay, they'll still have to wait over an hour before you can get there. Seems ludicrous in the middle of the night.
Slough East Berks	Current procurement area too small and restricted by postcode. Should be larger to reflect the closeness of conurbations in the South East and mobility of the population.
South Cumbria	The procurement area is too large for our rural area. If the number of the providers are reduced those left with duty contracts would have to cover a large area which would increase overheads, office and staff, when the increase of remuneration would not make it viable. There is not enough work. The amount of work the firm would pick up from other contact providers

	would still not make it viable.
South East Surrey	To travel from one side of Sussex to the other or from one side of Surrey to the other could be anything up to a three hour journey. In which there are multiple police stations and courts.
South Wales	<p>too large duty area to remain as now</p> <p>Too large. It needs to be reduced to ensure access to legal advice and ready availability of offices for clients. Currently the area is too widespread with poor transport links between the communities serviced and the court centres and police stations proposed. The area needs to be divided in accordance with the current schemes.</p>
South Yorkshire	<p>The procurement area is the right size, but is likely to require more than 8 firms to fulfil the requirements of the area</p> <p>To cover an urban area expansion where we have no client base would be far too risky which our bank would not support. We have experienced difficult negotiations with our banks who are aware of the risks we as criminal lawyers (and family lawyers receiving public funding) due to the cuts already made and threatened further reductions. No further borrowings will be allowed</p> <p>Too large: The loss of travel costs would be prohibitive servicing the whole area. The procurement area should be limited to the nearest courts.</p> <p>South Yorkshire is about right</p>
Staffordshire	<p>Staffordshire divides naturally into Stoke-On-Trent - served by Newcastle magistrates' court/Stoke crown court/Northern Area Custody suite - and the rest - served by Cannock and Burton courts, Burton and Watling Street Custody suites and Stafford crown court. Stoke on Trent is a highly populated area, the remainder of the county is predominantly rural. The best arrangement is the current one - 1. Stoke, 2. Cannock and Stafford and 3. Burton (including Lichfield and Tamworth). A split between Stoke and the rest is the next best alternative.</p> <p>Procurement area is right size</p>
Stoke-on-Trent	Right Size
Sunderland	Too large. Fulfilling police station duty attendances will require attending on clients non local to the current location of our firm. This does not create a problem for the police station attendance, but the client is unlikely to retain a non-local solicitor for court proceedings if charged. This would reduce the number of potential own client requests for court proceedings. Would also impact on ability to attend a police station within 45 minutes from time of request to attend.
Surrey	Surrey-the right size: Hampshire-a split should be considered between the north and south of the county: North-Aldershot/Basingstoke/Winchester---South-Portsmouth/Southampton
Sussex 2	The procurement area is the wrong shape rather than the wrong size. Crawley and Chichester are separated by lots of countryside and poor transport links. It means we would need two offices in one area which is unnecessarily expensive.

Teesside	<p>The areas are too big. Teesside and Durham are our two areas at present. To cover all of the police stations in those areas, which would be a requirement as the proposals currently stand, would mean increasing our number of staff significantly. That outlay at a 17.5% reduced income does not seem to me to be sustainable. I would prefer an area which took into account our current duty rota commitments at Hartlepool and Easington. Sadly i know this won't happen because the two stations are in two different procurement areas, despite the fact that they are only 10 miles apart.</p> <p>Too large with too many police stations and courts included.</p>
Telford	<p>Size is fine given the geography. Problem is need to pay staff a living wage including fees for out of hours work against the fees we would receive.</p>
Thames Valley	<p>Too big. A smaller area would be more manageable.</p> <p>For us otherwise than as part of an umbrella organisation too large. Oxfordshire plus Reading and Aylesbury would be better because we could cover it without additional premises.</p> <p>4 contracts for Thames valley is unworkable and the returns prohibitive</p> <p>Right size.</p> <p>Too large, needs to be smaller like county areas such as Buckinghamshire otherwise the travel time erodes the opportunities for efficiencies and also undermines the client contact which is so important in smaller firms to maintain own client base.</p> <p>To have only four firms in the Thames Valley is absurd. It should be four to six firms in each town not the whole of the Thames Valley to properly service the clients.</p> <p>The area is too large. A combination of towns would be better, but no bigger than 3 towns per area. This is because firms could then grow to the required size in a viable way within the prescribed time limit.</p>
Trafford	<p>My court is Trafford and there is one police station at present. If it went to Greater Manchester it could be too big - I could expand which I would or merge . The ideal area would be 1 court and 1-police station. This allows freedom of choice for client, ability for client too travel to sol offices for instructions. If the area is too big the firms have the same old problems in that their overheads become too big - so no profit - this problem is caused by a firm being too big.</p>
Waltham Forest	<p>Too large. Stick to the London Boroughs and limit duty work to home Borough and one other adjoined</p>
Warwickshire	<p>If it is just Warwickshire then it would be but the original proposals include West Mercia</p>
West Dorset	<p>Current Dorset is split into two procurement areas - West Dorset and Poole &amp; Bournemouth. The plan is to merge these two areas. Dorset needs to be split up into 2 areas as is now to create areas that one can bid for with less risk and investment for properly set up firms. An alternative would be to allow 1 or 2 extra firms to join the bid and to bid for parcels of work at Bournemouth and Weymouth with a minimum bid to allow say 2 firms to bid say just for Weymouth or to split the volume of work bid at each police station unevenly</p>

and conflicts could be covered by Weymouth or Bournemouth firms.

West Mercia

Too large, just Hereford, as more manageable

West Midlands

Too large - and it is one of the smallest! It would be better to have larger contracts and a smaller size - e.g. city of Birmingham rather than West Midlands. By making it the West Midlands what we will gain in volume, we may well lose in the extra time it takes to travel to the various places we have to serve

About right

Too large. A better size for us would be Coventry. We could also compete for a contract in Warwickshire. This would be easier to manage than West Midlands which according to MoJ statistics has more police station cases than any other procurement area. We would prefer Coventry to be included in Warwickshire than West Midlands. There is currently a separate local consultation about combining Coventry, Leamington and Nuneaton court sittings so, if the MoJ will not reduce the size of the procurement area, a combined Coventry and Warwickshire area would make sense.

West Yorkshire

The procurement area is the right size

Halifax is the right size area for the needs of my firm.

Correct size as it is West Yorkshire

Should be based on town, city of main practice. This would assist with economies of scale eg for West Yorkshire, if based in Leeds, cover Leeds not Huddersfield.

The right size as we already offer a service within the West Yorkshire area.

TOO LARGE - THE AREA TO REMAIN AS IT IS NOW. IT WOULD TAKE LONGER TO GET TO THE CLIENT, TRAVELLING EXPENSES WOULD INCREASE DRAMATICALLY, DUTY SOLICITORS COULD END UP IN ONE POLICE STATION LEAVING ANOTHER CLIENT WAITING 30 MILES AWAY WITH NO-ONE ABLE TO COVER.

I think Humberside is about the right size.

Wiltshire

Wiltshire is about right as distance is the most difficult factor

Rural Procurement Areas should be treated differently from City Centres due to the distance one needs to travel, Wiltshire is 1300 sq miles and has 3 designated police stations

It is illogical and with own client work taken out of the equation far too small - a better area would take in Andover, Southampton, Lyndhurst, Ringwood, Bournemouth, Shaftesbury all using the 19 million pound combined court centre built recently in Salisbury.

## **Appendix IV – Participant feedback on the main problems achieving the size of firm required to achieve a viable contract consisting of duty and own client work?**

### **London firms**

Initial outlay in recruitment when duty work seems to produce so little work in last 6-12 months. In current climate reluctant to obtain borrowing for this and the cost of staffing etc prior to seeing any return, if duty work remains limited will scupper the firm. This is made extremely difficult to assess because of the current lack of work that duties are producing. If work level increased then we would be happy to increase staff levels for a sensible bid, but as things currently stand it would be a real risk to take on staff to provide cover to a large number of stations as they are likely to be being paid to sit idle in the office. Freelance reps who are only paid if they attend might be an answer but this lacks certainty and reliability, and must effect quality. We are in an excellent location and have office space available to recruit more staff but we would not want to merely be the hub feeding freelance reps to police stations as this style of providing a service means we cannot exercise the degree of quality control that we pride ourselves on. There is not enough confidence in the amount of work duty rotas are producing to approach dramatic expansion with confidence.

The reluctance of lenders to provide finance in an area the government are determined to destroy means expansion is impossible.

### **THE PROPOSED CUTS**

USE OF CONSULTANTS IS A FRAGILE MODEL AND DOESN'T ALLOW CONTINUITY OF REPRESENTATION; REMOVING DUTY SLOTS AND REPLACING WITH ALLOCATIONS AND REDUCING FEES PAID WILL RESULT IN A REDUCTION IN RENUMERATION OF CONSULTANTS AND LAYING-OFF OF STAFF, AND SO THE ONLY VIABLE MODEL IS A SHORT TERM CONSULTANT HEAVY APPROACH, WHICH INCREASES JOB INSECURITY AND REMOVES CAREER PROGRESSION OPPORTUNITIES FOR YOUNGER MEMBERS OF PROFESSION

It will not be possible for us. The "duty client today/own client tomorrow" fact of life means that we know that we would be dealing with a diminishing pool of work. It will not really be possible to downsize our business in a one off manner to be viable in any event, and there is little point in even trying to do this, just for the purpose of extending the period of time it will take to close the business.

To remain viable and profitable it will be necessary to persuade fee earning staff to accept 17.5% paycut. If not accepted business will not be economically viable.

The size is not an issue for us but the rate cuts are such that in London they equate to 35% on police stations and 35% on magistrates court fixed fees. They also heavily incentivise guilty pleas. We would have to lose qualified staff and increase the less qualified or non qualified staff to deal with the volume. The above figures are estimates (it is an impossible calculation) and are based on trying to manage roughly the same income with a re-jigged work force. I am very doubtful that we would survive on the rates to be paid for very long.

WE HAVE A LONG LEASE AND NO BREAK CLAUSE. SURRENDER OF THE LEASE WILL BE A COSTLY EXERCISE AND THEN WE WILL HAVE TO FIND NEW PREMISES WHICH INEVITABLY WILL RESULT IN LOSS OF GOODWILL AND OTHER EXPENSES IN MOVING. STAFF LEVELS NEED TO BE MAINTAINED AS THE WORK LEVELS ARE THE SAME BUT HISTORIC SALARIES WILL NOT BE JUSTIFIED IN LIGHT OF THE CUTS. THE ONLY OPTIONS ARE TO MAKE EVERYONE CONSULTANTS ON A PROFIT SHARE, REDUCE SALARIES TO A VIABLE LEVEL OR MAKE REDUNDANCIES AND USE MORE AGENTS AS LONG AS AGENCY COSTS REMAIN COMPETITIVE.

No clear idea of projected volumes unable to determine level of investment. Existing contractual requirements proving onerous and not sit well with proposed reduction in fees. Overheads already a burden despite best attempts to minimise and be self sufficient. Increasing size bound to mean increased overheads.

Location – suitable premises and expanding management team given nature of the sector

INITIAL CAPITAL FUNDING COST - COST OF RECRUITMENT AND ADDITIONAL SALARIES.

We will be able to survive.

In our view the government cannot deliver the size of contract required to make our businesses sustainable. In our



view the contract would have to reduce to at most say 300 for the UK.

Staff wages in context of the reduction in rates.

Redundancies to part with un needed duty solicitors. There would need to be considerable IT changes including the CPS actually providing disclosure in digital form. Chambers would have to provide 2 young counsel at very low or no cost for extra court coverage.

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Quality of advice would be compromised as there would be a dilution of the ability to properly supervise and control the standard of work as the organisation would have to work on a 'factory/tick box' basis.

Merger/consortium. We have no plans to expand organically.

Ensuring the volume is sufficient at the reduced levels of payment. On current volumes not sure we can survive the 8.75% cut in February so not completed the section on 17.5% cut contract for own client work!

We would have to make a joint application with probably 3 other firms to provide the staff numbers for supposed quality the LAA/MoJ would require, the firms banding together to gain some access to duty work (say a quarter each of a tenth of the work over 2 procurement areas) to begin to make up the devaluing of own client work. The figures given in the duty bid above represent 4 similar sized firms banding together.

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The main problem is that the rates are so low the practice could only consist of non salaried personnel.

In order for the lower fees to be viable, one fee earner would need to deal with multiple cases at each police station or court visit. This means that the duty system would have to be set up to cover a particular police station or court for a particular time period to ensure that the fee earner would be likely to deal with more than one case in each visit. If a fee earner was only dealing with one case per visit it would not be viable with the lower fess.

Anticipating correctly the number of staff required; solicitors to other fee earner ratios; fee earner to support staff ratios; market rate for fee earners; whether to employ fee earners or rely on agents and freelancers; the market rate for fee earners, agents and freelancers. 2. Funding changes necessary whilst facing 17.5% cuts. 3. Organising a joint bid including agreeing working arrangements and profitshare.

The low rates payable for the bulk criminal work, the decreasing availability of work at the police station stage (in part due to unchecked police tactics in dissuading detainees from accessing lawyers.) The uncertainty of any decent remuneration for those case that historically might have been profitable to the whole 'swings-and -roundabouts' argument, the certainty that the MOJ will never increase funding but is likely to fund further false reason to cut it again in the next few years, the challenge of other firms all seeking to do the same thing. The overriding thing however is the suggestion that any successful bidder for duty contracts needs to show experience of delivering these volumes already. No small firm can do this, nor can any collection or merging of small firms. You will note that there is no mention of things within our control causing problems (e.g. staffing, sources premises and equipment, etc.)

In reality we see merging / forming a consortium of firms as the only option since it is apparent we would not receive a contract at our current size.

We would need to plan for potentially an increase in volume without being given figures as to current arrest rates and size of the contracts. We are not given certainty as to which police stations and courts will remain open once the contract commences. We would need to form coalitions with other firms which would involve regulatory and operational risk.

## Urban firms

AREA TOO LARGE TO MANAGE, WOULD REQUIRE TOO MANY STAFF IN AT LEAST 3 LOCATIONS, INCREASED OVERHEADS AND MANAGEMENT COSTS, EXPENSIVE TRAVEL COSTS

Expense of rapid expansion for a small firm with no history of working in that way. Risk of financial liability for

partners during an unstable economic time. Inability to covers additional salaries etc without substantial borrowing. Lack of specialist business knowledge to support that change to practice without professional help and further expense

Due to the limited information provided by the MOJ in respect of the duty requirements, it is impossible to establish exactly if any expansion is required to fulfil the duty element.

The firm is able to manage both own and duty contracts if made available in its current status without the loss of employment. As a result, we do not envisage any problems as such

Maintaining out of date standards from the legal aid contract. Neither the courts nor the CPS make any pretence now of maintaining the high standards of 5-6 years ago. Defence practices are the only part of the criminal justice system still required to maintain standards and to demonstrate that maintenance. The financial consequences of the reduction will make it virtually impossible to pay a reasonable salary to senior practitioners and pay a profit to the business owners.

Uncertainty regarding volume of work to be fulfilled, even before knowing how to fulfil it. Securing appropriate staffing levels. Would have to rely heavily on agency attendances to fulfil duty police station attendances resulting in fees going 'out of house'. Obtaining additional premises and linking up IT systems.

Could not meet realistic salary levels

This firm adopted a hosted IT system which has inherent flexibility and therefore the only difficulty we would face in up scaling is the one of costs and the cash flow implications of a much increased salary bill. This could be managed by only using freelance staff although the partners embrace flexible working they are opposed to the uncertainty of zero hours contracts on ethical grounds.

The high cost of wages and premises.

The figure suggested only relates to cover for the main city in the region and not outlining townships. We do not think that a viable contract is achievable without substantial investment which we are unlikely to secure. We cannot currently work in criminal defence without a steady stream of own and duty clients being seen within the court area we service , travel is uneconomic and wasteful . The cost of entering a consortia is unlikely to be practical due to the cost involved.

THE MAIN PROBLEMS ACHIEVING THE SIZE OF FIRM REQUIRED TO ACHIEVE A VIABLE CONTRACT CONSISTING OF DUTY AND OWN CLIENT WORK IS ACTUALLY HAVING ENOUGH WORK AVAILABLE TO THEN PAY THE WAGES OF CONSULTANTS ETC WHO IS PART OF THE FIRM. IF THERE WERE CUTS OF 17.5% THIS WOULD THEN MAKE IT HARDER TO PAY THE WAGES OF CONSULTANTS AND THEREFORE, WILL MEAN THAT THE CONSULTANT IS LESS LIKELY TO BECOME A PART OF THE FIRM.

The problem is the big firms who want all the work . They are too big . Their overheads are too great. The size of my contract is viable. I make a profit because I am lean, my overheads are not too great. If a contract was too have a size on it it should be about £500,000 - this allows me to expand and even if it went higher i can still expand . It is unfair to give the big firms a substantial contract over £1 m say because it does not address the problems thy created which is that they have not managed there business properly - their profit margins are too small 5-10% - this is not economically viable nor will it be under a new contract. The system should be built soundly from the bottom up.

WE HAVE ALREADY MADE CHANGES BY REDUCING STAFFING LEVELS AND PAY AS A REACTION TO DECREASING LEVELS OF WORK AND ANTICIPATED FEE CUTS. THE BIGGEST PROBLEM IS THAT OVERHEADS REMAIN BROADLY THE SAME AND WHILST WE HAVE DOWNSIZED AND NEED LESS OFFICE SPACE, WE ARE LOCKED INTO LEASES UNTIL 2017.

Not knowing the number of duty solicitors required to service the contract. Whether this would necessitate some form of merger with another firm. Not understanding the bidding process. The government seems to think we can just hire and fire at will to be flexible.

Main problem is ensuring sufficient work is available.

The problem is that the volume does not exist. Any fool will know that the more work you have, the lower the price that you can do it. However, without fixing the amount of work you cannot know the price it will remain viable at.

The current system is viable. The proposed system is a reckless gamble that will in all probability destroy the criminal justice system.

We cannot remain viable with this cut. We have insufficient areas that can be reduced to achieve the cut required.

If a firm has to increase in size to cover the duty procurement area then own client will be lost - a large firm and a own client "friendly" firm are not compatible but most own client friendly friends cannot survive with the "top up" of LOCAL duty solicitor work.

We would have to grow - immediately and overnight - by 250% to put enough staff in to get and run a contract. I can't borrow that much salary not even for month one, not even with a contract (who trusts this government to keep its promises?) and I don't have the time or staff or expertise to recruit, induct, train, and supervise that many staff. I don't have any offices in which to sit them to do the work and I can't afford the IT investment needed.

The main issue would be how much work you would actually get as it is so dependent on the police actually arresting people, those defendants being charged and then those defendants being eligible for legal aid. At the moment work is decreasing year on year and so it's very difficult to say how much will come in across the next financial year. So you cannot employ solicitors to anticipate the amount of work, the best you can do is estimate what the increase in work might be once you know how many contracts will be awarded. So if you get a contract, you would know how many other firms will exist, and you can try and calculate whether that would entail an increase in fee earning staff. The problems in achieving the size of firm needed therefore are 1) unable to say how much work will come through, so cannot determine size 2) the bank would not lend money if it were needed, as you would be unable to produce a detailed business plan and 3) the contract is only 4 years long, so long term expansion (i.e. bigger offices, longer leases, more employment contracts) is risky.

Impossible to plan forward on any front - too many uncertainties. No one wants to take on more staff to increase size when they have no idea what is around the corner. No doubt the results of this survey will be skewed as the large firms have in house accountants and business analysts who can answer all these questions, whereas we are 3 solicitors who run our own firm providing high quality legal representation to clients but we have no formal training in projecting figures in the way this survey requires, and can't afford to employ an analyst!

On present figures we already need a minimum of 4 duty solicitors on the rota before the 17.5% cut. We cannot reduce overheads anymore and cannot afford to take on more fee earners. Furthermore the amount of work in the court and police stations has dramatically reduced in this area perhaps by 40%. The proposed fixed fees for police stations already represent a 26% cut for Southampton (not 17.5%). The proposed fixed fee for court work is inherently unviable being the same for guilty and not guilty pleas meaning it would not be possible to prepare Trials properly. There is a real risk there will be loss of public confidence in Solicitors and the public would be less likely to accept advice to plead guilty where appropriate leading to increased costs for the legal aid budget. There is an inherent contradiction in squeezing down charging rates and requiring firms to expand in order to have sufficient capacity to tender for duty solicitor work. Effectively small and medium sized firms would be driven out of the market within a very short time scale leaving only the largest firms or consortia which would certainly reduce quality as they would be profit driven only particularly if they are Alternative Business Structures. The prospects for the younger generation of solicitors are extremely poor leading to loss of intake and quality.

To lose the duty solicitor work reduces the available work by 40 per cent or more and so any reduction in fees is a reduction in only 60 per cent of the available work meaning that the overall fee income will be reduced by in the region of about 60-70 per cent which would have a major impact on a small to medium sized firm. This would make it unviable causing the closure of any firm that failed to achieve a duty contract.

Financial - need to employ more staff but less income. Merging with other firms. Being pushed out of the market by larger firms who are not necessarily better. Size is not everything.

The changes will mean us reducing our size.

We are already 'slimmed' as far as is possible and further slimming of costs (even if that is achievable) will be

detrimental to the viability of the firm. The only other option is to increase income which is not possible unless the firm amalgamates with another firm or joins a consortium where economies of scale may be available. This is of course on the basis of maintaining a quality of service at existing high levels.

We would not need to expand our staff or premises and can handle a contract size up to 1 million as we stand. We did that in 2008-2009 (1178 mags cases and 1051 police station call outs.)

Procurement area, recruitment, offices

I don't see a particular problem achieving the size we need if we got a big enough contract, there are plenty of people out there who need work

Details of the duty solicitor contract is so vague in the consultation it is impossible to answer question. But if successful I would expect to see an increase of workload by up to 25%

Our firm is probably the right size in order to achieve a viable duty and own client contract in the Leicestershire CJS area.

Certainty over case volumes and you need a contract of a medium size - not a supersize contract. If contract is medium size it's much easier to scale up or down. If contracts are large and volumes are not delivered, the business has very high overheads which are not sustainable.

Increased management time, recruitment of staff and IT costs

None we are the right size

Delivering the service without combining with other firms

We have attained the size required. This has taken over a decade of planning. Our issue is whether the contracts will be large enough to make it sustainable.

The inclusion of VAT making it a 40 % reduction in fee's - no time to plan effectively

Moving the offices. Re-investing in IT in the new offices. Laying off certain staff.

In truth no real obstacles at all to simply achieve sufficient size via adequate caseworker numbers.

I cannot envisage any circumstances in which we could bid for a contract for duty work under the model proposed

If the procurement area were to be Thames Valley we would have to be part of an umbrella organisation eg consortium.

There isn't enough duty work to go round and the smaller firms will suffer?

Need to cover large distance which would require additional interview facilities, supervision. Additional IT hardware

No problem

The proposals take no account whatsoever of the fact that firms like ours, of which I believe there will be hundreds around the country, are multi disciplined firms providing a service to people in all areas of law, with the Partners of those firms spread throughout those different areas of activity. This makes the practicality of merging etc extremely difficult, if not impossible. I also see recruitment in our geographical area as a major headache.

Staffing levels - unpredictable volumes of work (reduced by 30% in last 3 years)

(1)The need for complete renegotiation of employment contracts with existing staff. Staff being unwilling to accept the cuts to their wages that the fees necessitate and instead opting for expensive redundancy payments. (2) We are

based at one end of a very large county and it will be difficult to cover the whole CJS area from our present base. Our present base is ideal for our own client work so we can foresee having a higher cost base (maybe a second office) at a time of massively cut fees.

The size of the contracts mean that the opportunity for growth is limited.

Adapting our Business Plans to encourage our Bank to continue financial support. To re-evaluate forecasts Income & Expenditure. To consider self reporting the possible regulatory risks in accepting a reduction in fees, to the SRA via our COFA annual report as to whether we are placing the business in a financial risk.

It would be difficult to fund the investment required. There have not been sufficient profits in recent years to fund investment. Bank finance is difficult to obtain and the climate for increasing borrowing and risk taking is not attractive. Nor is the climate for using own capital (assuming partners have any after a difficult few years )

Too many suppliers in the market, consolidation required.

Cost of merging/acquisition and finding suitable partners. Balancing increasing size to achieve best possible reach across the procurement area without limiting ability to grow or acquire too much additional overhead which would be difficult or costly to shed.

#### LOW LEGAL AID RATES AND INSUFFICIENT NUMBER OF CLIENTS

The number of contracts awarded in our procurement area relative to the take from the fund, i.e. if the number of contracts is similar to the previous consultation our contract income would reduce by at least 50%. We do not see significant problems in the event that the number of contracts is such that our contract increases in value.

Our firm is probably in a reasonable position in terms of size but there is a general reluctance to invest time money and effort in infrastructure when many think the profession is not worth the effort and we would be wise to re-train in other areas whilst we can.

We can probably cover the work utilising the existing personnel but we are likely to need the occasional use of free lancers. The lessening fees will make it difficult to attract new personnel.

This depends on the eventual size of the procurement area. We could have a perfectly viable contract if the procurement area was Coventry with, say, 4 contracts (there are currently 11 firms on the Coventry duty rota). We would only have to upscale slightly to almost double our current turnover from Crime but could upscale further if necessary. However, if the procurement area remains West Midlands (as proposed) this would be very difficult due to Coventry being out on a limb of the county and the travel times involved.

HAVING ENOUGH STAFF TO SERVICE A DUTY CONTRACT AND THEN KEEPING THEM OCCUPIED WHEN WE ARE NOT DUTY SOLICITOR. USING FREELANCERS COULD LEAD TO DUTY CLIENTS BEING TOUTED UNDER THEIR OWN CLIENT CONTRACTS THUS DEPLETING DUTY CLIENT CONTRACT WORK.

The Law society suggests that small firms growing will be deemed a greater risk than a few firms merging. I would disagree with this. When firms merge there are cultural, and financial issues that can easily destabilise. Among these are debt levels, historic liabilities, duplication of staff roles, resistance to outside management. Also there is the SRA bureaucracy to contend with when forming new organisations. In fact to suggest many firms can easily band together is quite naive, and shows the law society have actually analysed this issue in quite a shallow manner. It also belies the Law Societies prejudice towards bigger firms. That is not to say upsizing is easy either.

The size of the contract being so high as to force us to recruit across the board and upgrade IT. Sizable investment or amalgamation would be needed.

The uncertainty as to the precise requirements, the short time scale and the difficulty in amalgamating or associating the criminal department with other firms without also affecting the civil departments.

Time and cost - and risk of setting up and then not getting a contract.

We feel that we are the right size at present.

The impossibility of acquiring funding in a context of diminishing returns and limited contract life.

Logistics of trying to merge firms together, economically and at short notice. Working in a small town there would be insufficient number of firms to address the conflict of interest issues.

We will be forced to make an unholy alliance with firms who, but for the new model, we would not have entered into business arrangements with.

Lack of data to predict workloads, time to monitor quality of agents work (and means to resolve and penalise agents if their work is substandard), IT is not a problem, systems are not a problem. Finding agents to cover work in parts of nominated CJS area is potential problem. Restructuring fee earners remuneration and hours to be available for work will be challenge.

We are in a strong position in terms of being able to meet the requirements of the contract, however, a 17.5% reduction in fees would more than eliminate any profit margin that would allow continued investment to enable growth, development and modernisation.

No guarantee as to the volumes. Existing contracts have resulted in lower than predicted volumes. Therefore gearing up the firm to cater for non-guaranteed work now that client choice has been retained will hamper improving efficiency as volumes will be unknown.

Capital outlay

Cashflow - for 12 months I billed higher than my SMP - I billed in excess of £200k above the amount received in SMP... I had to enter a CVA before the LAA agreed to increase my SMP... I was not prepared to rescind the advantages of the 92.5% Reconciliation Pull Forward... Hence, increase in business size but no increase in cashflow for extensive period... Expanding Practices such as mine get strangled by cashflow, inefficiency in the CPS and LAA, and gargantuan delays in settling matters - NTT take 3 to 4 months - add to that little predictability - I have a case starting Monday - additional 2000 pages served today, taking the LF1 from £109k to £136k - I have 2 in house led juniors - Total Bill £209k - No guarantee of such high paying cases in any given 12 month period...

Size of firm/Recruitment

Profitability

## **Rural firms**

None. Current size, sole practitioner with full time police station rep and 2 part time duty solicitors, and a part time administrator, plus freelancer, is ideal. Very viable, and suits us all.

Area of procurement

IT WOULD NEED TO BE LARGER TO COVER THE INCREASED AREA/WORK BUT WOULD NEED TO REDUCE COSTS SIGNIFICANTLY TO REMAIN VIABLE

The level of drawings of the partners would reduce by 17.5% in the event of achieving the same level of crime work as is currently achieved. If there were no duty client work, the firm would not be viable and would close.

The proposed national police station fee represents a minor reduction in our procurement area. On the basis of the arithmetic, only a modest reduction in staffing levels would be necessary if a contract comprised both duty and own client work.

In the rural area where we are, the main problem is the actual amount of criminal work available. There is no ability to expand.

Covering the whole county and having to increase staff to do.

The cost and risk . I am a small firm in Dorset with 1 of 12 slots on my local scheme. I could easily cope with up to half the slots locally however managing one quarter of the slots at Bournemouth would be impossible without a huge and risky investment. The distances involved are about 40 miles each way with parking 10 mins away and a driving time of up to 1.5 hours and traffic jams due to rush hour and holiday traffic and would have to invest in staff and overheads.

I have already pared myself to the bone. I work from home, and I have no staff, both to reduce overheads. There would inevitably be a dramatic reduction in my fees in addition to the 17.5 % cut. I would almost certainly not be viable. I am aged 53 and am, therefore, not an attractive proposition for any would-be employers. However, I have far too many personal commitments to be able to consider early retirement.

We will have to merge in a very short time frame with other firms.

Insufficient volumes of work to achieve viable income and procurement area too large. Concerns over the level of service required; number of premises to see clients, cost of premises and additional staff unlikely to be met by sufficient additional work

Two major problems - 1) geographical coverage. It is easier to get to Bristol from our office than it is to Barnstaple in North Devon. Travel times are exacerbated in summer by tourist influx. 2) Assuming a contract of £1,000,000 we would have to merge with other firms or expand exponentially. There is not a large reserve pool of unemployed talented criminal practitioners, any merger will require due diligence, compatibility of systems, etc.

Reduction in charging by police etc thus smaller pool of work to generate the fees necessary. Due to our geographical area it would not be feasible for staff from this firm in its location to work in neighbouring procurement areas.

We are a local partnership with a lengthy history and are efficiently run. We will either have to end the firm, with all the attendant costs and confusion, or form some kind of bidding consortium with economic rivals whom we have (and will still on own client work) traditionally been pitted against. We have grown sensibly and slowly, cautiously, but now have to risk everything to try to keep the paymasters happy when in the next breath they could move the goalposts for political expediency. We will have to plough all our resources in and risk failure. And a bigger firm does not make it more efficient or cost effective-it creates more bureaucracy.

Relative to the private client work that the firm does ,criminal legal aid work is poorly paid and anti-social in it's hours .At present it is profitable because it runs on a shoestring compared to other Departments in the firm .To require the existing level of monitoring and reporting and client service but cut the fees by 17.5% is to require a Rolls Royce service for Robin Reliant fees .It is difficult to see how a contract would be viable in those circumstances .

There is a gross misunderstanding as to how much duty work exists in Gwent and probably other rural areas. We would not need increase in size a great deal to service a quarter of the duty slots Gwent wide. However, smaller firms would have substantial cost in obtaining IT, office space and staff. Many smaller firms rely on the duty slots too much and cant exist without them. 80% of our work is own client.

Cultural difficulties. Ceding "control". Management abilities to bring such entities together into a larger concern and make a new business work.

Whilst we are probably of a size to cover Wiltshire already, as we already cover all courts and police stations, the real problem will be guaranteeing the volume of work at the proposed price cuts to ensure viability. If firms continue to undertake own client work, only one duty contract can be offered in some areas causing conflict issues etc. Whilst we have expanded into Bristol to grow the team and undertake greater volumes of work, we will not be able to compete on the time frame for a duty contract in Bristol and will have to close those offices and make redundancies.

We simply cannot cover the area concerned (whole of Devon) and cannot justify any expansion given the cuts in



fees. Without a duty contract we will not survive on own client fees alone. The firm will deploy staff to more lucrative income streams or make them redundant. WE WILL NOT DO CRIME.

Getting appropriate staff especially duty solicitors or indeed any solicitors.

Not possible

We believe that to achieve a viable contract we would need to increase the numbers of staff considerably. This would be a costly exercise and is unlikely to be achieved quickly.

Uncertainty of work, low fees.

We are dealing with unknown quantities, work has reduced, overheads have increased, profitability is down, we do not know what the procurement area will be, frankly, depending on the procurement area we are probably the optimum size due to the current economic climate

Current size is considered to be suitable

The volume and value to the work available in Cornwall is insufficient to support more than 4 firms.

Merging High street practices with equity partners in the respective crime departments. Sufficient number of qualified duty solicitors to cover the distances involved in rural Norfolk.

We are an Isle of Wight firm and have serviced the Isle of Wight for over 30 years. It is not possible for our firm to start servicing the rest of Hampshire

Main Problem is that the rate of remuneration had not increase since 2000 despite inflation and it is about 20% of the private sector is charges for work undertaken.

The geographic area requires substantial expansion in terms of staff and offices, such that the cost of taking the necessary steps is prohibitive. Coverage and quality of work could not be guaranteed given the size of the procurement area unless that expansion took place. Further there would be an inability to recruit the necessary levels of staff at the relevant salaries and still be profitable.

There are no issues in relation to increasing the work as we are fully equipped to do and have capacity.

Capital investment - whilst we have offices in at least two court centres in the proposed area the geographical spread of the proposed area means that at least one further base would be likely to be needed. Investment in staff - particularly solicitors. Uncertainty as to how the proposed duty system is to work. If with another organisation - SRA requirements if consortia not allowed. All of this exaggerated by short timescales and uncertainty about prospect of obtaining contract - it is inconceivable that we would wish to invest in any significant manner in advance of knowing the precise mechanics of the system will work or whether we would be successful in obtaining a contract. At the moment there are too many unknowns.

Admin/cost/complication of merging or joining forces in some way with other firm(s) and/or recruitment of additional staff without fully knowing how profitable undertaking the work will end up being

Salaries , redundancy payments and overheads

We would not be able to survive a 17.5% fee cut so this is the main problem. The size of firm is not the answer as no matter how big or small the firm the fee cut means nobody currently providing criminal work will survive. If qualified Solicitors are needed to do Criminal work then they need to be properly remunerated if the government does not want qualified Solicitors doing the work then they should say so and work can be done by unqualified people who would have to be paid £10k-£15k just to break even.

The fall off in case volume is a big worry and any expansion to achieve the bigger procurement area may not manifest in actual work



The geographical dimensions of Wiltshire make the task of fulfilling a contract virtually impossible e.g. travel time between North and South of the Country 1.5 hours each way.

We recruited a senior solicitor from a local firm that stopped doing legal aid work. We have employed him at a level reflecting his senior status and the fact that he has a strong following. Our firm demonstrates that firms are consolidating and would be viable but cannot sustain the combination of both unjustified pay cuts and loss of duty work. We would survive if we retained our duty contract, it is the loss of that combined with such severe pay cuts which destroys our viability. I think this is likely to be true of all firms whether they merge or form a ABS. Further our firm is a mixed high street practice like so many and it is a question of time when the partnership has to stop doing legal aid forcing our criminal and family department to close down. The fact is that we had been developing and expanding our legal aid dept in difficult times anyway and investing in it financially and now risk losing it completely. Further the strength of a mixed practice is that other departments bolster each other -in our firm our criminal department and its ability to finance change is strengthened by the viability of its other departments.

There would be no change

Limited time available. Not knowing the size of the task or what it involves. What we can promise for the future when recruiting, given the volume of work is not guaranteed.

There must be a huge risk of firms growing too quick and failing to manage the growth, and failing

Covering large geographical area with limited staff.

Not knowing the full criteria of the proposal in relation to size of contract and likely payments it is impossible to make an informed guess in relation to the proposed contract. We cannot formulate with any reliability the likely extra work we would receive without knowing how many duty contracts are to be offered in the procurement area. This figure is crucial to knowing how large the contracts are likely to be. In those circumstances it is impossible to answer question 8. We currently have roughly 20% of the current duty rotas. If more than 4 firms were to be given a contract in Essex then our share of the work would decrease in our current area. Without that information no answers can be given.

Employing the right number of staff with the right qualifications.

## **Appendix V – Participant feedback on any support or measures that would help their firm to operate under the new proposals**

Leave well alone in a Rural area where there is insufficient work over a wide geographical spread to accomplish any of the Govt. Consultation models. With a price reduction alone market forces will sift out those that wont survive - probably about 50% which will reduce the number of suppliers in Cornwall from 11 to 6 over 3 years. For support we would need:- 1. help with Redundancy payments to help prevent the total collapse of the firm and the other departments. 2. We also need training in the Secure email system and 3. Training for Managing case work "On Screen" instead of via paper. 4. Also need help with capital cost buying the Govt preferred PCs/laptops with their over complicated security software and operating software.

We would welcome support to form bid consortia from accountants/lawyers who are experts in such fields, as per the LSC workshops 4/5 years ago hosted by Big 6 accountants, to help us get ready for what was then BVT. More time would also be helpful. Grants to help expansion?

We can manage ourselves but with such a significant cut in income and uncertainty about how this will all operate makes life "difficult". The LAA are NOT the people to help firms in this situation. Similarly the culture of crime practices is such that just crashing together firms to create bigger entities is not the best way forward. If firms have to fold as a result of these reductions - who's going to pick up the costs both financially and socially?

No cuts until the duty contracts are awarded so we know how we have to change our business model No criminal firm has profit over 17.5% so the cuts make every firm losing money

It would be helpful if the MOJ when considering tenders look more favourably on those tenders made by established local firms who have the infrastructure in place and history of delivering a good quality service ahead of those large law firms who will be making speculative bids in many CJS areas based on what they may be able to deliver if they were to be given a duty contract.

Long term certainty would be necessary to assist with future plans to expand.

Compensation to deal with the downsizing.

Time is the biggest issue and plenty of notice together with the full requirements. For instance we don't know how many staff we would need to cover duty in our courts as we don't know if we would have to cover all courts in South Wales as duty on the same day or one day one court another day another court and so on in which fewer staff are needed. The same goes for police stations. We therefore can't plan or indeed prepare a proper delivery plan if we don't know basic information like that. Plus what are the access requirements do we need just one office in an area or office space in each town to deliver the plan?

Assistance with IT costs and no cut in fees in the period before the new contract come into place when further costs will be incurred to (prepare to upscale the firm

No support is needed if the number of contracts in each area are limited so that each contract has a significant share of the market. Should we not retain a duty contract, it is unlikely we could cover the redundancy costs. Financial assistance would then be required.

A reduction in the quality standards and their demonstration to the legal aid agency. Having to comply with accounts system devised by the law society for very different types of work to

crime without a client account the need for scrutiny and compliance is far less. This is not recognised by our regulators.

A guarantee in volume of work. An increase in the standard monthly payment to assist the firm up scaling to the size required to fulfil the contract. The 'overpayment' could be taken from the SMP after 12 months. This would assist in the initial costs required to upscale.

Less audits etc - concentrate on duty firms as own client repeat business speaks for itself

1. Interim payments. 2 Sufficient volume of work. 3 Allow us to change the ratio of fully qualified to non-qualified staff. 4 An interest free loan to help fund the movement of offices, IT and the redundancy of staff. 5 Quicker payment of bills.

DRAFT COLLABORATION CONTRACTS, FUNDING FOR IT. SPECIAL EXCEPTIONS FOR RURAL AREAS I.E. NO DECREASE IN FEES.

The contracts need to be of a decent size. Cuts need to be deferred as long as possible to facilitate the restructuring. In any event current volume trends need to be factored into the size of any cut.

Relaxation of the time/travel limits for attendance at court/police station e.g. we could attend Reading and Aylesbury within times just outside the current limits.

A reduction in the amount of bureaucracy, auditing, and management. An indefinite contract length. A contract that would be difficult for the LAA to terminate. Irrespective of the debate over numbers of suppliers and rates, it is very difficult to make a sustainable business case for the current and proposed contracting arrangements. Far too much time is spent on management / admin / contracting and too little on fee earning. Oftentimes now practitioners say they have no time left for the clients. Instead of thinking about the clients we spend too much time thinking about our regulators and the LAA. It is often said it is as though 'they' (MOJ, et al ) don't want us to do any work. If rates and volumes are to stay low there has to be a radical ( and probably politically unpalatable ) rethink on how the legal aid industry works / is managed to avoid a collapse of the supplier base.

Assistance in funding and setting up more digital solutions to issues.

The only practical support I can see that might assist is the possibility of the Law Society (or other suitable professional body) assisting contact between firms to arrange/discuss possible mergers or consortia that would increase the possibility of achieving a contract for duty solicitor work. duty solicitor work is the lifeblood of criminal work - where do the overwhelming majority of own clients come from in the first instance? client choice is an illusion if those that would wish to provide the choice cannot do so.

The proposed required for electronic working will necessitate significant investment in technology for which financial institutions are unlikely to loan against the proposed contract term. The support of the MOJ with funding for investment in technology should be made.

Changing the LAA requirements that firms have to store files for 6 years when the LS/SRA only requires us to store for 3 years (thereby doubling our storage costs). Payment of indemnity insurance run off cover on termination of the contract.

More co-operaton from police Departments regarding planned action at 'Bail Backs' to police stations. Low interest loans for I.T. Investment. More Centralisation of courts.

Guarantees for the finance needed to fund redundancies and investment

Less onerous contractual regulations, longer period for transition and if required to enter a joint venture need enough time to prepare.

Certainty of contracts. Greater flexibility and autonomy with much less bureaucracy

No cuts prior to new contracts, and stepped in cuts thereafter. We need capital to achieve growth, either organically or via acquisition/merger. There is a 6-12 month lead in time to recoup capital invested from fees paid by LAA. At current suggested cuts we will not have enough money to be able to afford or sustain required growth.

Grants but we envisage no financial support from the MoJ in the form of grants to fund expansion, there will be an expectancy that those awarded contracts will have considered any investment or working capital implications when submitting tenders and delivery plans and resource accordingly

We believe that we have support in place to manage a contract. Greater certainty would help to manage contracts and lease arrangements.

Investment in IT Infrastructure. Financial contributions toward training contracts (if we are to continue to train people). Staged payments on bigger cases to assist with cashflow.

Rural areas such as the Isle of Wight must be made exempt from the fee cuts as it would be impossible for such areas to achieve the economies of scale talked about by the government.

If the government allow the police to do their job the volume of crime will increase. Serious offences are either under charged or given cautions and the defendant then goes on to commit a more serious offence of attempted murder and Rape.

More logical and supportive listing in courts would assist so avoiding the need for lengthy waiting times.

Greater, more consistent and more efficient use IT/paperless/electronic systems throughout the CJS. Wifi in all Criminal court centres. Greater certainty as to what the proposals actually entail as soon as possible. It is virtually impossible to consider options and plan with the current level of information and unknowns within the proposals.

We will need help with coping with mass redundancies. Under current employment rules the cost of the redundancies jeopardises our viability before we reap the benefits of reduced staff numbers. We desperately need the CPS and the courts to make digital service a reality. We are ready but they are not.

A more sensible setting of fee's. Removal of Ghost duty Solicitors and stricter controls in who actually attends police stations on duties. This will eradicate the practice some firms have of 'buying' duty slots and then manning it by substandard freelance accredited representatives. A complete overhaul the accreditation scheme. The quality of some of the 'accredited reps and duty solicitors' is seriously questionable. A stricter regime would mean good quality organisations would get a more viable numbers in terms of duty slots

A mechanism for firms to make joint bids without having to merge firms and free advice on viability. We need advice and help with regards to appropriate contracts and agreements

between firms.

Computer/ technological support/ training/ equipment. Consistent LAA approach/rules and guidelines. Consistent regular LAA payments. Speedier and more effective responses from LAA

Help identifying suitable partners, guidance for joint operation and consultancy support.

Adequate flexibility to work in a consortium arrangement

Grants for office space and recruitment and management and IT investment.

That firms who are awarded duty contracts have employed duty solicitors on the rota who are from the area and not outside. The scheme should be robust enough to ensure it does not have ghost solicitors.

Less regulation. As contract holders we have more regulation than any other niche area of law and yet get paid the least. This seems incredibly unfair. You don't mind complying with all the contract requirements if you are paid to do so, which we are not. Instead you spend a good proportion of time on compliance which could be used on looking after clients/working more efficiently/office admin/keeping on top of company finances.

Guidance from Law Society on mergers/engaging freelancers/consultants/ alternative forms of working with other practices short of merger.

A system where duty cases were allocated on the previous years police station and magistrates work would be ideal. This would reward firms who attracted more work from own clients with more duty slots the next year and would help to keep quality high as the more work you attracted the more duty slots you would receive. A system where only very large firms got duty contracts would lead to a massive drop in standards as there would be little incentive to do a good job and keep clients happy.

Assistance in formulating a bid. Certainty about projected income under a new contract

Assistance with entering into consortia arrangements.

Better communication and understanding with other criminal justice agencies, so more time given for attendance at police station, interviews arranged with availability of duty solicitor in mind, secure wifi at courts and police stations, more timely and complete advanced info from CPS, in electronic form for us to share with Counsel and streamlined process for securing legal aid so less time wasted at court either awaiting application outcomes or taking risks covering people in custody who if they get bail may or may not get the paperwork for future representation. Grant legal aid to everyone produced to court from police custody.

Payments to assist in cash flow. Being able, within reason, to use staff "across borders". Set rota periods to facilitate the above. Set DS court days etc. Being able to plan rather than be on standby like the emergency services

Longer lead in period

Simplifying the wasted costs regime so that those at fault (usually CPS or police) pay would dramatically reduce one of the main drains on expenditure (not to mention the proper administration of justice). For those who wish to merge or enter consortia, electronic meeting places for these people would be helpful where they could meet people in similar positions and

liaise with the professionals she might need to help them affect the change.

Greater participation of the courts to ensure that efficiency is achieved for example, electronic scanning of documents including legal aid applications. Greater involvement in ensuring the crown comply with directions. More statistical analysis and greater information on the current market from the LAA or the Law Society.