

**EVALUATION OF THE PUBLIC DEFENDER
SERVICE IN ENGLAND AND WALES**

by

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with the assistance of

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Table of Contents

	Page
Table of Tables	vii
Table of Figures	xv
Preface	xvii
Outline of Contents of Report	xix
 Chapter	
1	1
The Context of the Public Defender Service in England and Wales and Research Methodology	
The Policy Context of the PDS	<i>1</i>
The Setting up of the PDS	<i>4</i>
Development of the Research	<i>21</i>
Conclusions	<i>28</i>
2	31
The Nature of Clients and Caseloads	
Social Characteristics of Clients	<i>32</i>
Source of Clients	<i>40</i>
Criminal Histories of Clients	<i>42</i>
Offence Characteristics and Profiles	<i>63</i>
<i>Conclusions</i>	<i>82</i>
3	85
Case Processing and Outcomes	
Case Processing in Investigation Cases	<i>85</i>
Outcomes of Investigation Stage	<i>91</i>
<i>Case Processing in Court Proceedings</i>	<i>96</i>
<i>Outcomes in Proceedings Cases</i>	<i>106</i>
<i>Conclusions</i>	<i>117</i>
4	119
Evaluation of Quality through Peer Review	
<i>Methodology and Presentation</i>	<i>119</i>

	<i>Overall Performance</i>	123
	<i>Performance on Specific Criteria</i>	127
	<i>The File</i>	127
	<i>Communication and Timeliness</i>	137
	<i>Fact Gathering</i>	145
	<i>Advice and Assistance</i>	154
	<i>The Work/Assistance</i>	162
	<i>Efficiency</i>	173
	<i>Ethics</i>	176
	Conclusions	178
5	Costs of Public Defender Offices	181
	<i>Time Spent on Cases</i>	183
	<i>Staffing and Utilisation of Staff Time in PDOs</i>	188
	<i>Costs of the Public Defender Offices</i>	195
	<i>The Cost of PDO Time</i>	204
	<i>Comparison of Costs between PDOs and Private Practice</i>	211
	Conclusions	228
6	Perceptions of the PDS outside the Service	231
	Survey of Criminal Justice Professionals	231
	Survey of Client Views	247
	Conclusions	259
7	PDS Staff Perceptions of the Service	261
	<i>Sample and Method</i>	261
	<i>Working for the PDS</i>	262
	<i>Differences between Working for the PDS and Private Practice</i>	267
	<i>Quality and Effectiveness</i>	270
	<i>Independence and Professional Ethics</i>	274
	<i>The Creation and Development of the PDS</i>	278
	<i>Perceptions of the Impact of the PDS</i>	283
	<i>How should the PDS Develop in the Future?</i>	285
	Conclusions	288
8	Conclusions	291
	<i>Patterns of Case Conduct and Outcomes</i>	291
	<i>Quality and Independence</i>	293
	<i>Cost Effectiveness</i>	295
	<i>Management</i>	296
	<i>Future Development of the PDS</i>	298

Appendix

2.1	Offence Categories used in Case File Analysis	303
3.1	Multivariate Analysis of Outcomes at the Investigation Stage	307
4.1	Peer Review of Police Station Files Guidance and Gradings	315
4.2	Criteria and Definitions for Second Stage Peer Review of Crime Files	323
5.1	Multivariate Analysis of Estimated Costs in Police Stations and Magistrates' Courts of PDS and Private Practice	333
5.2	Multivariate Analysis of PDS Notional and Private Practice Costs as Recorded on SPOCC	343
5.3	Regression Analysis of Estimated PDS and Private Practice Crown Court Costs	349

Table of Tables

<u>No.</u>		Page
2.1a	Gender of Client Base (Investigation Stage file data)	32
2.1b	Gender of Client Base (Magistrates' Court file data)	33
2.1c	Gender of Client Base (Crown Court file data)	33
2.2a	Ethnicity of Clients (Magistrates' Court file data)	34
2.2b	Ethnicity of Clients (Crown Court file data)	35
2.3a	Client Vulnerability (Magistrates' Court file data)	36
2.3b	Client Vulnerability (Crown Court file data)	36
2.4a	Youth Work in Investigation Cases (SPOCC)	37
2.4b	Client's Age at Arrest in Investigation Cases (file data)	38
2.4c	Youth Court Work in Magistrates' Court (SPOCC)	39
2.5	Proportion of Investigation Cases that are Duty Solicitor Cases (SPOCC)	41
2.6a	PNC Printout on File? (Magistrates' Court file data)	43
2.6b	PNC Printout on File? (Crown Court file data)	43
2.7a	Clients with Previous Convictions (Investigation Stage file data)	44
2.7b	Previous Convictions (Magistrates' Court file data)	45
2.7c	Previous Convictions (Crown Court file data)	45
2.8a	Number of Previous Cautions, Reprimands or Warnings (Magistrates' Court file data)	46
2.8b	Number of Previous Cautions (Crown Court file data)	47
2.9a	Clients with Previous Convictions by Number of Actual and Sets of Convictions (Investigation Stage file data)	48
2.9b	Clients' Previous Sentences by Length of Sentence (Investigation Stage file data)	49
2.9c	Previous Convictions by Actual and Sets of Convictions (Magistrates' Court file data)	50
2.9d	Previous Convictions by Actual and Sets of Convictions (Crown Court file data)	51
2.10a	Number of Sets of Convictions in Past Two Years for Clients with Previous Convictions (Magistrates' Court file data)	53
2.10b	Number of Sets of Convictions in Past Two Years for Clients with Previous Convictions (Crown Court file data)	53
2.11a	Do clients with previous convictions have similar previous	54

	convictions? (Magistrates' Court file data)	
2.11b	Do clients with previous convictions have a similar previous conviction? (Crown Court file data)	55
2.12a	Proportion of Clients with Previous Convictions with one or more Previous Custodial Sentences (Magistrates' Court file data)	56
2.12b	Proportion of Clients with Previous Convictions with one or more Previous Custodial Sentences (Crown Court file data)	56
2.12c	Mean Number of Custodial Sentences for Clients with Previous Sentences (Magistrates' Court file data)	57
2.12d	Mean Number of Custodial Sentences for Clients with Previous Sentences (Magistrates' Court file data)	57
2.12e	Average Number of Custodial Sentences by Length of Sentence for Clients with Previous Sentences (Magistrates' Court file data)	59-60
2.12f	Average Number of Custodial Sentences by Length of Sentence for Clients with Previous Convictions (Crown Court file data)	61-62
2.13a	How the Case Started (Magistrates' Court file data)	64
2.13b	How the Case Started (Crown Court file data)	65
2.14	Proportion of Free-standing Advice and Assistance within Proceedings Claims (SPOCC)	66
2.15a	Number of Clients on Investigation Claims (SPOCC)	67
2.15b	Number of Clients on Proceedings Claims (SPOCC)	68
2.16a	Crown Court Sample by How Case reached the Crown Court	69
2.16b	Either way Cases - Direction or election (Crown Court file data)?	69
2.17a	Most Serious Offence (Investigation Cases, SPOCC)	70
2.17b	Most Serious Charge (Magistrates' Court Cases, SPOCC)	71
2.17c	Magistrates' Court, Lead Charge (file data)	73
2.17d	Crown Court, Lead Charge (file data)	74
2.18a	Detailed Lead Charges: Offences Against the person	76
2.18b	Detailed Lead Charges: Burglary	77
2.18c	Detailed Lead Charges: Criminal Damage	77
2.18d	Detailed lead charges: Drugs offences	78
2.18e	Detailed Lead Charges (magistrates' Court file data): Driving Offences	78
2.19a	Peer Reviewer Assessment of Case Seriousness	79

	(Magistrates' Court and Crown Court)	
2.19b	Peer Reviewer Assessment of Case Complexity (Magistrates' Court and Crown Court)	80
3.1	PDS and Private Practice Investigation Stage Claims on SPOCC: Percentage of Police Station Cases involving Telephone Only Advice	86
3.2	PDS and Private Practice Investigation Stage File Analysis: Status of Legal Adviser in Case	88
3.3a	Average Time Spent on Police Station Cases for Duty and Own Solicitor Clients (Attendance Cases Only, Investigation Stage File Analysis)	89
3.3b	Average Time Spent on Police Station Attendance Cases by Area (PDS and Private Practice Investigation Stage File Analysis)	90
3.4	PDS and Private Practice Investigation Stage File Analysis: Suspect Comments in Police Interview	91
3.5	PDS and Private Practice Investigation Stage File Analysis Incidence of Bail from Police Station by Offence Type	93
3.6a	PDS and Private Practice Investigation Claims on SPOCC: Outcome at end of Investigation Stage for Retained Clients	94
3.6b	PDO and Private Practice Investigation Stage File Analysis: Outcome at end of Investigation Stage for Retained Clients by Area	95
3.7a	Mean Number of Hearings per Case in Magistrates' Courts (SPOCC)	97
3.7b	Mean Number of Hearings in the Magistrates' Court (Crown Court Files)	97
3.7c	Mean Number of Hearings in the Crown Court (Crown Court Files)	98
3.8a	Adjournments in the Magistrates' Court (Magistrates' Court Files)	99
3.8b	Adjournments in the Magistrates' Court (Crown Court Files)	100
3.8c	Adjournments in the Crown Court (Crown Court Files)	100
3.9a	Length of Case in Days (SPOCC)	101
3.9b	Days per Hearing in the Magistrates' Court (SPOCC)	102
3.10a	Bail Situation after First Hearing (Magistrates' Court Sample)	103
3.10b	Bail Situation after First Hearing (Crown Court Sample)	103

3.11a	Mean Time Spent on Cases in Magistrates' Court Files (in minutes, PDS Chargeable Time Only)	105
3.11b	Mean Time Spent on Cases in Crown Court Files (in minutes, PDS Chargeable Time Only)	105
3.12a	Outcomes in magistrates' court proceedings cases (SPOCC)	107
3.12b	Summary of outcomes from file data (magistrates' court)	108
3.13a	Proportion of pleas indicated on day of trial (Magistrates' court and Crown Court file samples)	111
3.13b	Benefits to defendants from cracked trials	112
3.14a	Convictions by offence group in Magistrates' court cases (file sample)	112
3.14b	Convictions by offence group in Crown Court cases (file sample)	113
3.15	Potentially aggravating factors for convictions (Magistrates' court and Crown Court file samples)	114
3.16	How did the sentence relate to the PSR recommendation (Magistrates' court file sample)	115
3.17	How did the sentence relate to the PSR recommendation? (Crown Court file sample)	117
4.1a	Level of Service/Performance (Investigation Stage File Analysis)	123
4.1b	General Assessment, Magistrates' Court Sample	125
4.1c	General Assessment, Crown Court Sample	125
4.1d	Comparison of Overall Performance at Investigation Stage (Investigation Stage, Magistrates' Court and Crown Court File Samples)	126
4.2a	Use of Standard Forms at the Investigation Stage (The Investigation File Sample)	127
4.2b	Adequacy of Standard Forms at the Investigation Stage, (The Investigation File Sample)	129
4.2c	Legibility of Files at the Investigation Stage, (The Investigation File Sample)	130
4.2d	Layout of Files at the Investigation Stage, (The Investigation File Sample)	131
4.3a	The File, Magistrates' Court Sample	132
4.3b	The File, Crown Court Sample	132
4.4a	PDO and Private Practice Investigation Stage File Peer Review: Was first contact timely?	138

4.4b	PDO and Private Practice Investigation Stage File Peer Review: Was first attendance timely?	139
4.5a	Communication, Magistrates' Court Sample	140-141
4.5b	Communication, Crown Court Sample	141
4.6a	Level of Information Recorded – Investigation File Sample	146
4.6b	Appropriateness of Attempts to Secure Information from Police (Investigation File Sample)	148
4.6c	Appropriateness of Attempts to Secure Instructions from Client (Investigation File Sample)	149
4.7a	Fact Gathering, Magistrates' Court Sample	150
4.7b	Fact Gathering, Crown Court Sample	151
4.8a	Appropriateness of Advice Regarding Client's Legal Position, (Investigation File Sample)	155
4.8b	Appropriateness of Advice Regarding Strategy in Police Interview (Investigation File Sample)	156
4.8c	Appropriateness of Advice Regarding Strategy in Police Interview (Excluding Files Where it Was Not Applicable or Where There Was Insufficient Information to Make a Judgement) (Investigation File Sample)	157
4.9a	Advice and Assistance, Magistrates' Court Sample	158
4.9b	Advice and Assistance, Crown Court Sample	158
4.10a	The Work/Assistance, Magistrates' Court Sample	164-165
4.10b	The Work/Assistance, Crown Court Sample	166-167
4.11a	Efficiency, Magistrates' Court Sample	174
4.11b	Efficiency, Crown Court Sample	174
4.12a	Ethics, Magistrates' Court Sample	177
4.12b	Ethics, Crown Court Sample	177
5.1	Annual Recorded Chargeable and Non-Chargeable Time in Public Defender Offices, 2001-2005	187
5.2	Annual Staffing Levels and Utilisation of Staff Time in Public Defender Offices, 2001-2005	192-194
5.3	Annual Costs of the Public Defender Offices, 2001-2004	199-202
5.4	Annual Costs of Chargeable Time in Public Defender Offices, 2001-2004	205-207
5.5	Cost of Chargeable Time of PDOs, 2001-2004	209
5.6	Legal Aid Hourly Rates payable to Private Practice, 2003-4	210

5.7a	Cost of Cases in Public Defender Offices ('High' Estimate) and Private Practice Firms by Type of Cases and Year Case Concluded, 2001-4	214
5.7b	Ratio of Average Cost of Cases in Public Defender Offices ('High' Estimate) to Average Costs in Private Practice Firms (=1) by Type of Case and Year Case Concluded, 2001-4	215
5.8a	Costs of Investigation Stage Attendance Cases for PDO ('High' and 'Low' Estimates) and Private Practice in Six Areas, 2001-4	217
5.8b	Costs of Proceedings Stage Cases for PDO ('High' Estimate) and Private Practice in Six Areas, 2001-4	218
5.8c	Ratio of Average Proceedings Stage Cost between PDO ('High' Estimate) and Private Practice (=1) in Six Areas, 2001-4	219
5.8d	Costs of Proceedings Stage Cases for PDO ('Low' Estimate) and Private Practice in Six Areas, 2001-4	220
5.8e	Ratio of Average Proceedings Stage Cost between PDO ('Low' Estimate) and Private Practice (=1) in Six Areas, 2001-4	221
5.9	Distribution of PDO and Private Practice Crown Court Cases in Selected Crown Court Centres by Costs, 2001-2 to 2003-4	224
5.10a	PDO and Private Practice Crown Court Costs analysed by Court, 2001-1 to 2003-4: All Cases	226
5.10b	PDO and Private Practice Crown Court Costs analysed by Court, 2001-2 to 2003-4: Cases up to £100,000	226
6.1	Responses to Surveys of Criminal Justice Professionals	233
6.2	In the past three months, how many times have you had professional experience of private practice lawyers?	234
6.3	In the past three months, how many times have you had professional experience of Public Defender Service lawyers?	234
6.4	In your opinion how do Public Defender Service lawyers compare with private practice lawyers in your area on the quality of their representations/advocacy?	235
6.5	In your opinion how do Public Defender Service lawyers compare with private practice lawyers in your area on their effectiveness in dealing with the prosecution?	237

6.6	In your opinion how do Public Defender Service lawyers compare with private practice lawyers in your area on dealing with other defence lawyers?	239
6.7	In your opinion how do Public Defender Service lawyers compare with private practice lawyers in your area on their effectiveness in dealing with the police?	240
6.8	In your opinion how do Public Defender Service lawyers compare with private practice lawyers in your area on the overall quality of the service they appear to give to their clients?	241
6.9	In your opinion how do Public Defender Service lawyers compare with private practice lawyers with regard to the quality of briefs to counsel?	243
6.10	In your opinion how do Public Defender Service lawyers compare with private practice lawyers with regard to the standard of case preparation?	243
6.11	In your opinion how do Public Defender Service lawyers compare with private practice lawyers with regard to their willingness to challenge the police or prosecution?	244
6.12	In your opinion how do Public Defender Service lawyers compare with private practice lawyers in their willingness to 'stand up' for their clients?	245
6.13	In your opinion how do Public Defender Service lawyers compare with private practice lawyers where a client is advised to plead guilty, in their willingness to advise a client to plead guilty at an early stage of the proceedings?	246
6.14	What impact, if any, do you think the setting up of a Public Defender Office has had in your area?	247
6.15	Responses from Clients in Investigation Stage Sample	249
6.16	Police station clients: Have you ever used these lawyers before?	249
6.17	Police station clients: When interviewed, did your legal adviser say anything to the police?	250
6.18	Police station clients: Did your legal adviser stop the interview to talk to you in private?	250
6.19	Police station clients: If yes to either, do you think this helped your case?	250
6.20	Client Perceptions of Service: Police Station	251
6.21	Future Use of Lawyers (Police Station Survey)	252
6.22	Data on Clients from Magistrates' Court sample	253
6.23	Data on Clients from Crown Court sample	253

6.24	Magistrates' Court: Have you ever used these lawyers before?	254
6.25	Crown Court: Have you ever used these lawyers before?	254
6.26	Client perceptions of service (magistrates' court)	255
6.27	Client perceptions of service (Crown Court)	256
6.28	Magistrates' Court: How many different lawyers from this firm did you see during your case?	257
6.29	Crown Court: How many different lawyers from this firm did you see during your case?	257
6.30	Magistrates' Court: Did your lawyer offer timely advice on when to plead?	258
6.31	Crown Court: Did your lawyer offer timely advice on when to plead?	258
6.32	Magistrates' Court: Would you use the same lawyer again?	258
6.33	Crown Court: Would you use the same lawyer again?	259

Table of Figures

No.		Page
2A	Client's Age at Arrest in Investigation Cases (file data)	38
2B	Age Distribution (Magistrates' Court file data)	40
2C	Age Distribution (Crown Court file data)	40
2D	The Proportion of Investigation Cases that are Duty Solicitor Cases over time (SPOCC)	42
3A	Number of Hearings in Magistrates' Court (SPOCC data)	96

PREFACE

The research reported here was originally commissioned by the Legal Services Commission in 2000 and completed in 2006. It has been co-ordinated throughout by a team of senior researchers consisting of Professors Lee Bridges of the University of Warwick, Ed Cape of the University of the West of England, Richard Moorhead of the University of Cardiff, and Avrom Sherr of the Institute of Advanced Legal Studies, University of London, all of whom were also involved in various aspects of data collection. Anona Mitchell was employed as a Research Fellow on the project from 2001 to 2005 and in particular took overall responsibility for co-ordinating the extensive fieldwork across the six areas studied (Birmingham, Cheltenham, Liverpool, Middlesbrough, Pontypridd and Swansea) and organisation of the resulting data. Ed Cape undertook the peer review of investigation stage cases, and he and Avrom Sherr were responsible for the recruitment and training of the peer reviewers during the proceedings stage of the research. Richard Moorhead and Clair Wilkins conducted the bulk of the statistical analysis of the results of the research, other than the multivariate analysis, which was carried out by Professor Paul Fenn of the University of Nottingham.

Paul Fenn also provided general statistical advice, while Professor Alan Paterson of the University of Strathclyde advised on our findings and their relation to studies of public defenders in other jurisdictions. Peta Sweet conducted the postal surveys of Public Defender Service (PDS) staff (reported in Chapter 7); Simon Thomson assisted in the analysis and writing up of the proceedings stage peer reviews (reported in Chapter 4), and Margaret Robinson analysed and assisted in writing up the results of the surveys of criminal justice professionals and PDS staff. (reported in Chapters 6 and 7).

The final report was compiled and written by the four lead members of the research team, who together are solely responsible for its contents. Lee Bridges was primarily responsible for Chapters 1, 5 and the Conclusions; Richard Moorhead and Ed Cape for Chapters 2, 3, 6 and 7; and Avrom Sherr and Ed Cape for Chapter 4. Paul Fenn wrote up the results of the multivariate and regression analyses reported in Chapters 3 and 5 and in Appendices 3.1, 5.1, 5.2 and 5.3. Lee Bridges was responsible for the final compilation and editing of the whole of the report.

The research would not have been possible without the co-operation and assistance of numerous people working within the Legal Services Commission and the Public Defender Service. We would wish in particular to thank Richard Collins, Jill Saville and other members of the central Criminal Defence Service team based within the London headquarters of the Legal Services Commission; Tony Edwards, the Professional Head of Service of the PDS; the Heads and members of staff of the Public Defender Offices in Birmingham, Cheltenham, Liverpool, Middlesbrough, Pontypridd and Swansea; Gaynor Ogden, latterly Head of Service of the PDS, and Jane Cosgrove of the PDS Central Business Team in Birmingham; and Gary Charlton who provided invaluable assistance in extracting relevant data from the PDS Case Management System. Thanks also go to the many private practice criminal defence solicitors in the six areas on whom we made many demands, not least for access to their case files at various stages of the research.

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Outline of Content of Report

This report presents the findings of the independent evaluation of the Public Defender Service (PDS) in England and Wales. It is based on an extensive analysis of the work of six Public Defender Offices in Birmingham, Liverpool, Middlesbrough, Swansea, Pontypridd and Cheltenham, and of comparative samples of cases drawn from private criminal defence solicitors' firms in the same areas, primarily over the first three years of operation of the PDS, from 2001 to 2004.

Chapter 1 sets out the policy background and context to the establishment of the PDS and analyses the key decisions made during its implementation relating to the service's objectives, scope of service, access to clients, location and staffing of offices, management, and measures to ensure independence and quality of provision. This chapter also describes the development of the research and its methodology.

Chapter 2 presents the findings of the research relating to the source, social background, criminal histories, offence characteristics and profiles of clients, and the seriousness and complexity of cases, of the PDS and private criminal defence firms.

Chapter 3 compares the ways in which these two forms of providers process cases through the different stages of the criminal justice process and the outcomes they achieve.

Chapter 4 reports the findings of the research relating to the quality standards of the PDS and private criminal defence firms. This is based on two separate peer review evaluations of their case files drawn from the investigation and court proceedings stages of the criminal justice process. The findings are reported in respect of overall performance and standards of files, communication and timeliness, fact gathering, advice and assistance, efficiency and ethical conduct of cases.

Chapter 5 analyses the recording of time spent on cases by the PDS, the staffing of its offices and utilisation of staff time, the costs incurred in establishing and running the service over the period of the research, and how these costs compared with those relating to similar criminal cases conducted by private criminal defence firms operating under contracts with the Legal Services Commission.

Chapter 6 reports the findings of a survey of a number of groups of criminal justice professionals relating to the effectiveness, quality, and independence of the PDS, in comparison with private criminal defence providers, and to the impact of the PDS in each of the areas studied. It also presents the findings of a survey of clients of both types of service.

Chapter 7 reports the findings of survey of PDS office heads and other legal professional staff as to their experiences of working within the service and their perceptions of its work.

A summary of the findings of the research is presented in the Conclusions section at the end of each of the above chapters. **Chapter 8** sets out the overall conclusions of

Chapter 1

The Context of the Public Defender Service in England and Wales and Research Methodology

The Public Defender Service (PDS) in England and Wales was launched in May 2001, with the opening of public defender offices (PDOs) in Liverpool, Middlesbrough and Swansea, with further offices opened in Birmingham in July 2001, in Cheltenham in April 2002 and in Pontypridd in September 2002.¹ This was the first salaried criminal defence service in England and Wales. A separate Scottish Public Defender Solicitors' Office (PDSO) had previously been established in 1998 in Edinburgh.²

The Policy Context of the PDS

The plan to establish such a service was first announced in 1998 in the Labour Government's White Paper, *Modernising Justice*:

Evidence from other countries suggests that properly funded salaried defenders can be more cost-effective and provide a better service than lawyers in private practice....

The Government believes that, in the longer term, the best approach will prove to be a mixed system, combining both private and staff lawyers. This will produce better value for money for the taxpayer; because the two systems will, in effect, both complement and compete against one another. The cost of the salaried service will provide a benchmark, which ... can [be] use[d] to assess whether the prices charged by private lawyers are reasonable. Staff lawyers will also give ... flexibility to fill gaps in the system, for example where too few local solicitors' firms and barristers' chambers participate.³

Modernising Justice was the precursor of the Access to Justice Act 1999, which provided for a comprehensive reform of public legal services in England and Wales, including the creation of the Legal Services Commission (LSC).⁴ This body was to be responsible for the provision of both civil and criminal legal aid (now renamed as the Community Legal Service (CLS) and Criminal Defence Service (CDS)) under a new system of contracts with service providers, which in the case of criminal legal aid were exclusively solicitors and barristers in private practice. The contract system was

¹ These six offices were included in the research reported here. Subsequently, two further offices were opened in February 2003 in Chester in North Wales and in Darlington in northeast England.

² Established under Scottish legislation, this service was also separately evaluated in T. Goriely, et al, *The Public Defence Solicitors' Office in Edinburgh: An Independent Evaluation*, Edinburgh, Scottish Executive Central Research Unit, 2001.

³ Cm 4155, *Modernising Justice*, London, HMSO, 1998, paras. 6.18-6.19.

⁴ This body replaced the Legal Aid Board, which had originally been created in 1988 to take over the administration of civil and criminal legal aid from the professional body of the solicitors' branch of the legal profession, the Law Society.

to replace the previous provision of these services under a 'judicare' model, in which solicitors and barristers were remunerated primarily on the basis of their inputs into individual cases. At the same time, the Access to Justice Act for the first time allowed for the direct employment of solicitors and barristers, through the LSC or other bodies maintained by it, to provide legal aid services to the public.

The implementation of the PDS was not the only change in the provision of criminal defence services that flowed from the Access to Justice Act. The LSC officially came into operation in April 2000 and was given the target of implementing the new contract system within a year.⁵ As regards criminal legal aid, this would mean devising a contract and administrative systems to deliver what had developed, over the previous half century, as the most extensive system of publicly-funded criminal defence services in the world.⁶ In particular, the contract would cover the provision of legal representation to around half a million defendants in magistrates' courts each year, at an annual cost of £280m.⁷ Perhaps more important, the criminal legal aid system in England and Wales encompassed a right of all suspects to receive legal advice whilst in police custody prior to being formally charged with a criminal offence and for this to be paid for by the state. By 2001, over three-quarters of a million suspects each year were availing themselves of this service, at an annual cost of £116m.⁸ As will be seen, the fact that police station legal advice had become such an integral and significant part of public criminal defence provision was to have important implications for the PDS, especially in terms of the staffing of its offices. Prior to the introduction of criminal contracts, in excess of 6,000 solicitors' offices throughout the country were engaged in the provision of these services, although this was subsequently reduced by half under contracting.⁹ It is also notable that the same administrative team within the new Criminal Defence Service was responsible during this period for the implementation of both criminal contracts and the PDS, and it was not until after the PDS was set up that a specifically-designated central support team was created to administer it.

The then head of the Criminal Defence Service described his role at the time as one of starting:

⁵ It is significant that the Labour Government, having originally been elected in May 1997, was widely anticipated as likely to face a further General Election during 2001.

⁶ For a description of development and scope of the criminal legal system in England and Wales, see L. Bridges, 'The Right to Representation and Legal Aid' in M. McConville and G. Wilson (eds), *The Handbook of The Criminal Justice Process*, Oxford, Oxford University Press, 2002, pp. 137-148.

⁷ Based on expenditure on magistrate's court representation and court duty solicitors in 2000-01. A further £26m was spent on advice and assistance under the 'Green Form' scheme in criminal matters and £27m on the criminal contracting pilot, some of which would have involved defendants in magistrates' courts. See *Legal Services Commission Annual Report 2000/01*, p. 37. The contracts did not cover legal aid in the Crown Court, where a further 100,000 of the most serious criminal cases are tried each year, almost all involving publicly-funded representation at an annual cost of an additional £422m. The system of Crown Court legal aid, again involving case-by-case payments to solicitors and barristers, was at the time administered separately from the LSC by the Lord Chancellor's Department (now the Department of Constitutional Affairs). Although Crown Court legal aid has now been brought within the remit of the LSC, it has not yet been made subject generally to contracting.

⁸ *Legal Services Commission Annual Report 2000-01*, p. 37.

⁹ The evidence suggests that this was primarily as a result of the consolidation of solicitors into a smaller number of firms, rather than of an overall reduction in the number of individual solicitors providing criminal legal aid services.

from scratch, devising how we might introduce the system, what the focus of it would be, how we might do it, how you can test it, so the whole package really.¹⁰

He also pointed to the LSC lack of experience in establishing or running a service of this type:

This was an organisation that had no direct experience of any form of directly employed legal aid provision, and no experience of running a criminal legal aid practice.¹¹

In June 2000 the LSC produced, on behalf of the Government, a consultation paper on *Establishing a Salaried Defence Service and Draft Code of Conduct for Salaried Defenders Employed by the Legal Services Commission*.¹² Whereas the Government in *Modernising Justice* had seen salaried defence services primarily in terms of potential cost savings and as a 'benchmark' for private suppliers operating under contracts, the likely benefits of such a service were now defined more widely to include:

- providing good or better quality services than private practice at equal or lower costs;
- because salaried defenders would not be motivated by profit to maximise the price paid for their services, there would be a better alignment in objectives between the LSC and the PDS than would be possible with private practitioners;
- to provide the LSC with access to management information on the supply of criminal defence services that would not otherwise be available to it through contracting;
- to provide a test or benchmark for the cost and quality of the criminal defence services provided by private practitioners under contracts;
- to give the LSC greater flexibility in managing the CDS as a whole, including having a means to fill geographical gaps in provision under contracting and to test out new methods of delivery.¹³

Subsequently, in the second annual report on the PDS, the objectives of the service were further refined as:

- To provide independent, high quality and value-for-money criminal defence services to the public.
- Nationally and locally, to provide examples of excellence in the provision of criminal defence services.
- To provide us with benchmarking information to be used to improve the performance of the contracting regime with private practice suppliers.

¹⁰ Interview with Richard Collins, then Head of the Criminal Defence Service.

¹¹ *Ibid.*

¹² *Criminal Defence Services: Establishing a Salaried Defence Service and Draft Code of Conduct for Salaried Defenders employed by the Legal Services Commission*, London, Lord Chancellor's Department, June 2000.

¹³ *Ibid.*, paras. 55-67.

- To raise the level of understanding within Government and the Lord Chancellor's Department (LCD), (now the Department for Constitutional Affairs), and all levels and areas of the Legal Services Commission (the Commission), of the issues facing criminal defence lawyers in providing high quality services to the public.
- To provide us with an additional option for ensuring the provision of quality criminal defence services where existing provision is low or of a poor standard.
- To recruit, train and develop people to provide high quality criminal defence services – in accordance with the PDS's own business needs – which will add to the body of such people available to provide criminal defence services generally.
- To share with private practice suppliers the best practice, in terms of forms, systems, etc., developed within the PDS to assist in the overall improvement of Criminal Defence Service (CDS) provision.¹⁴

It will be seen that the objectives of the PDS had thus moved considerably beyond the original Government emphasis on cost comparisons with, and benchmarking for, private practice provision of criminal defence services.

The Setting Up of the PDS

(i) Scope of service and establishing a client base

The consultation paper for the first time set out details of how a salaried defence service in England and Wales might be established and operate for a pilot period. In a number of respects it is interesting to contrast this with the earlier Scottish experiment with such a service. It was decided that the pilot would be based on offices in six locations (rather than only one as in Scotland), primarily in large conurbations in order to access a relatively large supply of work, but with at least one office in a smaller town. There would also be the option of expanding the service out from the initial offices to serve suburban or rural areas and also of opening offices in further locations. Unlike in Scotland, where the PDSO was limited to handling summary (i.e. less serious) cases only (and where police station advice generally does not form such a significant part of defence work generally), the PDOs in England and Wales were to provide a comprehensive service able to represent clients from the police station through to both the magistrates' courts and the Crown Court.¹⁵ This would include advocacy in the magistrates' courts and possibly, through the employment of barristers or solicitors with higher court rights of audience, in the Crown Court as well.

A key issue at this stage was how the PDS would relate to contracted defence services in terms of client recruitment. In Scotland, there was an attempt to guarantee the PDSO a client base from the outset by directing a group of clients to it, with those who sought assistance through criminal legal aid who were born in certain months

¹⁴*Public Defender Service: review of the second year of operation*, London, Legal Services Commission, 2003, para. 2.1.

¹⁵ The one exception to this was that the PDS was initially restricted from handling very high cost cases and serious fraud.

being required to use the PDSO rather than another solicitor of their own choice.¹⁶ This option of directing criminal legal aid clients to the PDS in England and Wales had been rejected by the Government, in favour of continuing to allow a choice of representative, during the Parliamentary debates on the Access to Justice Bill.¹⁷ However, the consultation paper stated that salaried defenders would be allocated 'slots' on both police station and magistrates' court duty solicitor schemes,¹⁸ so long as they individually met the requirements for joining such schemes. This may have led to a suspicion among some private practitioners that the PDOs would still be given preference in terms of the number of duty solicitor 'slots' they would be allocated in order to assist in their build up of a client base. Although it appears that it was never the intention of the LSC that this should happen, it was not until the Government's conclusions following responses to the consultation paper were published in April 2001 that this was made explicit:

The individual [public defender] offices will operate and run crime files as they would if they were in the private sector. They will have to take their turn on the duty solicitor rotas and compete on a "level playing field" with private suppliers in that area. ... Each public defender office will be allocated slots on the duty solicitor rota in the same way as any other supplier.¹⁹

This decision, not to artificially stimulate the potential for the PDS to recruit clients, when combined with the large number of competitor private practice suppliers that existed in most urban areas and the other risks associated with the establishment of the PDS, was to have a number of important implications for the way the service operated during the pilot. As the then head of the CDS explained:

We were forced ... to open criminal practices in a way which no commercial organisation would have done, which was just go completely cold into an area and try to create something from scratch. Any other criminal practice usually forms on the basis of, often, splits from existing firms, with a following body of work. ... We didn't have that sort of luxury. Also, we made some policy decisions that, because we couldn't be seen to fail, we had to open in a way which would enable us to provide 24 hour a day coverage, seven days a week.

¹⁶ This policy was subsequently abandoned as it proved unpopular both with clients and private practice solicitors in Scotland. However, it was replaced by an agreement that the PDSO would be given priority in the provision of duty solicitor services in the lower courts, thus giving them greater access to clients who appeared unrepresented at their initial court appearance.

¹⁷ Section 15(4) of the Act prohibited the Government from requiring that "only a person employed by the Commission, or by a body established and maintained by the Commission" could be selected as a legal representative by a person receiving criminal legal aid.

¹⁸ Duty solicitor schemes for both police stations and magistrates' courts are run by the LSC. Police station duty schemes involve solicitors within an area who normally provide criminal defence services taking it in turn to be on call to attend local police stations when a suspect requires legal advice and either does not know of another solicitor or his or her 'own' solicitor is unable to attend. Court duty schemes similarly involve local criminal defence solicitors attending or being on call at magistrates' courts in order to advise and represent defendants who are otherwise unrepresented. In both types of schemes, duty solicitors receive payment from the LSC for acting in this capacity, but participation in such schemes is also seen as a means of obtaining additional clients.

¹⁹ Lord Chancellor's Department, *Criminal Defence Service: Establishing a Salaried Defence Service: The Government's conclusions*, London, April 2001.

So we employed more people than we obviously would have work to fill their time.²⁰

The same point was made in the initial consultation paper on setting up the PDS:

The structure and number of staff in each office will be developed with the researchers and the pilot site heads. Given that the offices will be starting from scratch with no clients, these plans will be based on the need to phase the growth of the offices in line with the growth of the business until they reach planned capacity. However, we will wish the offices to be able to offer a comprehensive, 24 hour service from day one of their operation, and therefore, each office will have some over-capacity in its early days. ...

This approach will mean that the number of defendants being represented by salaried defenders should grow relatively slowly. This will impact on the length of the start-up phase in order to produce sufficient research data. It will also mean that the offices will be relatively expensive to establish in terms of average costs per case, and this will need to be taken account of when comparing such information with cost per case data from private practice lawyers.²¹

For this reason, it was decided that the pilot and associated research should run for four years, which was seen as "a sufficient period of time to effectively compare the salaried and private systems and evaluate any benefits of a mixed system of provision."²² However, the then head of the Criminal Defence Service, when asked in 2005 what he may have done differently when setting up the PDS, said that

I wouldn't have introduced [the] research into it until we had been up and running for a few years. ... I would have had a much longer review time.²³

(ii) *The location of the PDOs*

In fact, the initial consultation paper on the setting up of the PDS committed the LSC to opening at least three of the six pilot offices within less than a year, by April 2001. As noted, the intention was that most of these would be in major urban areas in order to assist in the process of client recruitment. The consultation paper also stated that the LSC would work with the researchers in order to "identify the cities and towns in which to establish the first salaried defence service offices" and, further, that once having recruited professional lawyers to head each of the offices, the researchers would also be involved in decisions on "the identification and acquisition of offices and the recruitment of staff."²⁴ In the event, the Government's timetable for opening the initial offices meant that the selection of their locations was determined largely without consultation with or analytical input from the researchers. Instead, the CDS team within the LSC, in consultation with their regional offices, drew up a list of nine

²⁰ Interview with Richard Collins, *op. cit.*

²¹ *Establishing a Salaried Defence Service*, June 2000, *op. cit.* In fact, the research team was not appointed until late 2000 and was not involved in the decisions on the staffing of the initial PDOs.

²² *The Government's conclusions*, *op. cit.*

²³ Interview with Richard Collins, *op. cit.*

²⁴ *Establishing a Salaried Defence Service*, June 2000, *op. cit.*

potential locations,²⁵ including both larger cities and smaller towns, where it was considered there might be potential problems with the supplier-base of private criminal defence firms operating under contracts. Such problems included possible shortages of criminal defence firms in relation to the local market; the concentration of the market on a small number of such firms; doubts over the quality of local criminal defence services; and a perceived history of difficult relations with the local profession over earlier policy initiatives to reform criminal legal aid.

The next step was to advertise nationally for professional lawyers to head offices in these locations, and as explained by the then head of the CDS, eventually the decision on which would be chosen as the sites of the initial PDOs was determined by the ability to recruit suitably experienced, senior criminal defence practitioners to take on this role:

The offices would be opened on the basis of where we could find people who we thought would make good heads. We saw the head of each office as being key to the success of the project.²⁶

In the event, the first round of recruitment held in December 2000 succeeded in identifying office heads for Birmingham, Liverpool, Middlesbrough and Swansea.²⁷ These four areas certainly presented different local contexts in which the PDOs would operate. Birmingham is the largest centre of population outside of London, with well in excess of 100 private criminal defence firms represented on the local duty solicitor rota with whom the PDO would be competing. Liverpool is another large city but one that had experienced a significant loss of population over recent time, again with a considerable number of competing local criminal defence firms. It is also an area long noted for having a distinct local criminal defence culture. Middlesbrough in north-east England is a smaller city, where it appeared that the local ‘market’ for defence services was becoming concentrated in a relatively small number of firms. Finally, Swansea in South Wales is an even smaller city, where again there were a limited number of competing firms, although no specific indications of an overall shortage of supply of criminal defence services.

On the other hand, in none of these areas could it be said that there was a gap in the market for criminal defence services that the PDOs might exploit in order to build their client base. As the then head of the CDS stated:

The issue we struggled with, and continue to struggle with, is just the volume of work.... [It] has been tough because you have very well established local professions...[and] an incredibly competitive market for clients.²⁸

His views were echoed by a number of the original office heads who questioned the “business reasons” for opening PDOs in their areas in terms of whether “there was actually any demand there [and] what private practice was doing in the area.”

²⁵ These were Birmingham, Carlisle, Dover, Oxford, Gloucester/Cheltenham, Liverpool, Middlesbrough, Sheffield and Swansea.

²⁶ Interview with Richard Collins, *op. cit*

²⁷ Two of these four original PDO heads, from Swansea and Middlesbrough, eventually left the service.

²⁸ Interview with Richard Collins, *op. cit*.

At this stage, the possibility of targeting a PDO on a specific group of potential clients, such as ethnic minorities or youth cases, had not been considered, although the Government response to the initial consultation paper stated that

individual offices may develop specialisms in such areas as Youth work. This will be a natural development based on the location of the particular office and, at least initially, the skills of the people recruited.²⁹

Further consideration was subsequently given to developing a PDO with a youth specialism, but analysis appeared to show that there was a linkage between youth and adult criminal representation, in particular in police stations, and that such an office would have to operate across a very wide geographical area to obtain sufficient work.

It is notable that London, which accounts for approximately a quarter of all criminal defence work in the country, was not included on the shortlist of potential locations for the initial PDOs. This was largely because there was perceived to be an over-supply of criminal defence firms in London,³⁰ so that any PDO would face even greater competition for clients than in other areas of the country. In its response to the initial consultation, the Government stated that London would be considered as a possible location for a further PDO, but eventually in consultation with the researchers this was rejected on grounds that there was sufficient contracted supply in London; that as criminal defence work in London is spread across a large number of courts, one office would not be able to reflect the market as a whole; and that the office established in Birmingham would provide a test for the PDS operating in a highly competitive local market.³¹

One option that may have been relevant in the context of London was for the LSC to negotiate with an existing private supplier to take their practice into the PDS, bringing with it an established client base. This possibility was raised by respondents to the initial consultation but did not elicit a response from the Government. The then head of the CDS was asked why this option was not pursued:

Partially time, partially couldn't work out how to do it. Also, I think we felt we could successfully build a PDS culture, and bringing in someone else would have made life more difficult.³²

Apart from London, the possibility of opening further PDOs was investigated in rural areas, including East Anglia and mid-Wales; in 'county' towns with rural hinterlands; and in towns in close proximity to the original four PDOs. The rural option was not pursued primarily because of concerns over recruitment of a sufficient client base, the risk of undermining the viability of existing suppliers, and the restrictions associated with duty solicitor schemes which require members to have offices within a certain

²⁹ *Government's conclusions, op. cit.*

³⁰ So much so that the LSC has subsequently considered introducing competitive tendering for duty solicitor work in London, with the aim of reducing the number of suppliers. See Legal Services Commission, *Improving Value for Money for Public Funded Criminal Defense Services in London*, January 2005.

³¹ Legal Services Commission, *Public Defender Service: Review of the first year of operation 2001/02*, London, August 2002, para. 4.3.

³² Interview with Richard Collins, *op.cit.*

travelling time of the police stations and courts served. However, it was eventually decided to open a further PDO in Cheltenham, a large town in Gloucestershire with a substantial rural hinterland. This was the one location chosen for a PDO where there was a clear 'gap' in the local market, which arose from the fact that one of the major private practice criminal defence firms in the area had shut down following the conviction of its founding partner (and several of its staff) for defrauding legal aid. Three further PDOs were eventually opened as branches of the initial offices. The first of these was in Pontypridd in South Wales as an offshoot of the Swansea PDO, followed by offices in Chester in North Wales which was associated with the Liverpool PDO, and Darlington as a branch of the Middlesbrough PDO.

Another issue to be resolved was where the PDOs would be located in each of these areas and what sort of office accommodation they would have. Each of the original four PDOs was located within the relevant city centre in fairly close proximity of the local magistrates' court. This decision was explained by the then head of the CDS as follows:

We went for a pretty standard approach, which was city centre, near the magistrates' court, and because we are a public sector organisation, we provided accommodation that was consistent with the rest of this organisation. On reflection, I think we probably should have tested going out to an estate or something, moving out to where the punters are really, although a large number of firms don't do that, they do currently locate near a magistrates' court or police stations. ... Also, we opened them in a way which pretty much replicated private practice. Again, I am not sure that we had the experience or were in a position where we could take a risk of trying different models. Also, I think we were very much focussed on delivering something which was very easily comparable with private practice for research and benchmarking purposes.³³

However, there were at least two important respects in which the accommodation of the initial PDOs differed significantly from most private firms in this field. First, they were provided with prominent, shopfront locations as part of a strategy of giving them a public presence in the areas, for purposes of enhancing both client recruitment and general public perceptions of the new service. Secondly, the standard of the PDOs accommodation was undoubtedly higher than most private criminal defence firms. Of course, both of these factors could be said to have added to the costs of the PDOs, a matter on which several of the PDO office heads commented adversely to us:

It was an incredibly expensive way of doing it, but if they had settled for more traditional type of office to open with, I feel we would have been criticised on quality I am not content that we needed a ground floor frontage ... The offices are not swish, they are simply modern offices.³⁴

The accommodation of the Cheltenham PDO followed the same pattern, but the Pontypridd PDO went without a groundfloor, shopfront location.

³³ *Ibid.*

³⁴ Interview with PDO office head, 2005.

Commenting on the type of office accommodation provided to the PDOs, the then head of the CDS stated:

In the early days ... we were more focussed on making this work It would have been wrong to cut things to the extent where we would increase the risk of failing in some areas. ... We now have, with varied degrees of success, established businesses. As with any other business, as well as trying to improve your volumes of work and do individual cases more effectively, we need to really now attack the cost base. I think there is a lot more we could do to attack our cost base. And certainly the starting point would be to take a different approach to premises, which are ... costly.... I would like to explore moving to different parts of town ... but also look to whether we should even be so office based ... looking at other models of delivery. Because going back to the start, we've modelled it on private practice and have gone for a particular kind of office, but can we actually deliver it in a completely different way which attacks very significantly our cost base.³⁵

More generally, he admitted that in retrospect he would have

put a lot more analysis and research into where we should have placed the offices, a lot more research into where in those towns we should have placed them, what sort of offices we should have gone for.³⁶

(iii) Staffing of the PDOs

As noted, a policy decision was taken early on that each PDO should be staffed in such a way as to enable it to provide a 24-hour a day, seven day a week service both to local courts and to police stations from within its own resources, without for example relying on the local duty solicitor scheme to provide out-of-hours coverage for its clients. It was recognised both by the Government and the LSC that this would add considerably to the initial costs of the PDS and in particularly greatly inflate the average cost per case of the new service. There were a number of reasons behind this decision, including the need to avoid the risk of a service failure, hostility from private practice suppliers in the areas in which the PDOs were being established which might prevent them cooperating with the PDOs in servicing clients, and the need to be seen to provide a comprehensive service to assist in recruiting and retaining clients. The staffing model adopted as the basis for initial recruitment for most of the offices was to have for each PDO an office head, two or three additional solicitors, and three accredited police station representatives.

All the office heads recruited for the PDOs have been experienced solicitors drawn from private criminal defence practices. Two of the heads of the initial four offices, in Liverpool and Swansea, were recruited from the same general geographical areas in the which the offices were located and therefore were able to draw to some extent on local knowledge and personal reputations to assist in initial client recruitment. The office head in Birmingham was recruited from another town in the West Midlands, while the office heads in Middlesbrough and eventually Cheltenham were drawn from

³⁵ Interview with Richard Collins, *op.cit.*

³⁶ *Ibid.*

well outside these locations. The final office to be included in the research, in Pontypridd, was initially staffed out of the Swansea PDO, although staff originally at Swansea had strong ties with the Pontypridd area.

Not all the office were able immediately to recruit a full complement of staff according to the above model. In particular, there were initial difficulties in recruiting solicitor staff in Birmingham and Cheltenham, which were attributed to hostility and uncertainty among the local legal professions and to the fact that the salaries offered by the PDS were not seen as so competitive in these areas as in the other locations. In Liverpool, on the other hand, the office head decided to focus initially on recruiting non-solicitor police station representatives, although additional solicitors were also recruited within the first year of operation.³⁷ Several of the initial office heads complained that the staff recruitment process, which was handled through the LSC's central human resources team, was time-consuming and did not allow them to use local knowledge and contacts to obtain staff in a similar way as would private practice solicitors' firms.

As noted, initially the setting up of the service was handled through the same administrative team in LSC national headquarters as was responsible for the implementation of the CDS and criminal contracting as a whole, drawing on other sections of the central LSC administration, particularly in respect of office procurement and staff recruitment. However, once the service became operational, a central PDS Business Manager was appointed, reporting directly to the Head of the CDS. Each PDO was also staffed from the outset with a Practice Manager (later retitled as the Quality Manager) and two administrators.

(iv) Management of the PDS

A key decision to be made at the start of the PDS was whether its members would be directly employed and administered by the LSC or through an 'arms length' body created and funded by LSC for this purpose. The initial consultation paper gave a number of reasons why the LSC considered the 'directly employed' model to be most appropriate for the pilot:

- we believe this "directly employed" approach will simplify the establishment of the service, in that the Commission will not also have to establish arms length bodies as a part of the process;
- we believe the "directly employed" model will be more flexible to develop in the early stages of the service, as the Commission will almost certainly need to make detailed changes within the arrangements as its knowledge and experience, and that of the salaried defenders and researchers, grows;
- we believe that the "directly employed" model will provide easier information flows for the Commission and the research programme during the start-up phase of the service;
- at the same that the service is being established, the Commission will be learning in detail about the implications and issues arising from the provision of criminal defence services through contracts with private practice lawyers.

³⁷ Data on the staffing of the PDOs is discussed in Chapter 5.

Many of these lessons will be of direct relevance to the establishment and maintenance of wholly funded arms' length bodies.³⁸

Given this decision, further questions were raised as to how the service would be managed within the LSC and, in particular, how the independence of the PDOs would be guaranteed. A distinction was drawn in the initial consultation paper between the professional and administrative lines of responsibility of the PDOs. The paper stated:

The individual salaried service office heads will be personally and professionally responsible for the services they, and their offices, provide to clients, and for managing and supervising the work of the staff within their offices. In this professional role the office heads will report to a professional head of the service Within this management structure no individual other than the office heads and the staff employed in their offices (and, where necessary, the professional head of the service) will make decisions or have a role in the conduct of individual cases.³⁹

In addition, the office heads would be responsible for the day-to-day running of each PDO "in terms of management, supervision, budgetary control, training, assessment and appraisals"⁴⁰ and, specifically for:

Managing their own budgets from which they will cover direct costs (staff, accommodation, etc.) and purchase services from others (advocates, experts and disbursements). Budgets will be reviewed regularly during the start-up phase. In particular, it will be important for the Commission to ensure that the nature and scope of services is not unnecessarily constrained during the pilot period because of budgetary estimates which prove to be inaccurate in operation.⁴¹

On the other hand, for general management purposes it was decided, as previously noted, that "responsibility for ... the salaried service project within the Legal Services Commission will lie initially with the Commission's Head of Criminal Defence Services" and in particular that:

the individual office heads will report, for administrative purposes and for the purposes of their participation in the research programme, to the Commission's Head of Criminal Defence Services. During the start-up phase of this new undertaking, it will be important for all the management strands of the project to develop and implement the new service to report to one individual. However, it is probable that the Commission will, thereafter, appoint a dedicated salaried service operations manager (to whom the office heads will report) who will report directly to the Commission's Chief Executive.⁴²

Further, the PDOs would have no direct line management relationship with the LSC's network of regional offices.

³⁸ *Establishing a Salaried Defence Service*, June 2000, *op. cit.*, para. 46.

³⁹ *Ibid.*, paras. 49 and 53.

⁴⁰ *Ibid.*, para. 19.

⁴¹ *Ibid.*, para. 42.

⁴² *Ibid.*, para. 52. Although a PDS Business Manager was subsequently appointed, this person continued to report to the head of the CDS and not to the LSC Chief Executive.

The role of the professional head of service was to become closely linked with the *Code of Conduct for Salaried Defenders Employed by the Legal Services Commission*, which the LSC was required under s. 16 of the Access to Justice Act to prepare and to submit to Parliament for approval. A draft of this code was also issued for consultation in June 2000 at the same time as the paper on establishing the PDS, although interestingly the draft code itself made no reference to the professional head of service. However, by the time the Government responded to the consultation on the code in March 2001, it had been amended to provide that:

The Commission shall appoint a professional head of the salaried service ("the professional head of service") who shall be responsible for the interpretation of this Code in practice and providing advice and guidance upon it.⁴³

The code also required heads of the PDOs to report to the professional head of service on any complaints received and on staff refusals to accept instructions under the Code's provisions relating to avoidance of excessive workloads.⁴⁴

The intention from the outset was that the role of professional head of the PDS would be performed on a part-time basis by a member of Legal Services Commission who would be "an experienced criminal practitioner of high professional standing",⁴⁵ rather than appointing a full time person to this position. The then head of the CDS saw this decision as having "been a huge advantage, especially in the early days, in terms of both internal and external credibility" of the PDS,⁴⁶ a view echoed by a number of the PDO heads. In addition to his various roles under the Code of Conduct, the professional head of service was able to provide office heads and their staff with advice on the handling of specific cases, to assist in interviewing for and training of staff, to undertake some quality checks on the casework of the PDOs, and to act as a spokesperson for the LSC (perhaps especially to the legal profession) on issues relating to the PDS. The professional head of service also chaired the PDS Management Committee, which was intended to provide the link between local and central management of the service. All the office heads of the PDOs sat on this committee, along with the head of the CDS, representatives of the research team, and eventually the PDS Business Manager.⁴⁷

As set up originally, therefore, there was a dual division of responsibility built into the management structure of the PDS, on the one hand between the PDO heads and the professional head of service for professional matters, and on the other between the PDO heads and the head of the CDS for budgetary and administrative matters. It would be true to say that this management structure created some tensions between the individual office heads, with their responsibility for managing each PDO, and the

⁴³ *Criminal Defence Service: Code of Conduct for Salaried Defenders employed by the Legal Services Commission: Responses to the Consultation Paper*, London, Lord Chancellor's Department, March 2001, Annex A.

⁴⁴ The general provisions of the Code are discussed further below.

⁴⁵ *Ibid.*, para. 49. This person was subsequently identified as Mr. Tony Edwards, the senior partner of a large private practice firm of solicitors in East London with an extensive criminal practice.

⁴⁶ Interview with Richard Collins, *op. cit.*

⁴⁷ The initial consultation paper had indicated that the Chief Executive and the Policy and Legal Director of the LSC would be members of the PDS Management Committee, but in practice they did not play a role in it. See *Establishing a Salaried Defence Service*, June 2000, *op. cit.*, para. 51.

central CDS/LSC administration. For example, the then head of the CDS commented that the office heads

all had their own ways of doing things.... I was managing them, but because I am not a criminal legal aid lawyer, it did give the heads quite a lot of [latitude] ... to run things We spent a lot of time trying to achieve consensus. And in some ways that goes right back to the initial policy decision, when ministers asked us to set it up, I think they reacted to some of the professional pressures from external organisations to sort of play up the role that the office heads would have in the running of the organisation and its development - you know, the way we set up the management committee, with [the Professional Head of Service] as chair and the heads as members, we spend a lot of time working around that trying to achieve a degree of consensus.⁴⁸

In 2004, a major change in the management structure of the PDS took place, with the appointment of one of the PDO office heads (from the Cheltenham PDO) as the overall head of the PDS, with direct line management responsibility for the PDS central business team.⁴⁹ Responsibility for the management of the service was also subsequently transferred, as part of a more general re-organisation of the LSC, to a newly created Director of Service Delivery,⁵⁰ and the membership of the PDS Management Committee was changed so that, while all the office heads were represented by one of their number, not all were members of the Management Committee. However, while some of the roles performed by the professional head of service have also now been assumed by the head of the PDS, such as providing advice to staff and undertaking quality monitoring of the PDOs, the professional head of service remains responsible for the interpretation of and reporting on the operation of the Code of Conduct.

The original head of the CDS explained these management changes as follows:

I think the direct line management by someone who is both a very good lawyer and a very good manager has been the most important change that we have made in the structure. I think it was the right thing [for the office heads] to have been line managed by me at the outset because we were in such a difficult political environment, and I felt maybe they would want protection from me But in terms of a real ability to performance manage the offices, performance management in this environment is strictly linked with the understanding that the line manager has of undertaking criminal case work.⁵¹

He went on to express the view that:

on reflection, we maybe should have recruited [a full-time professional head of the PDS] from the outset. Again, it comes down to time, because we had to have it set up for April 2001. I think what we would have done [otherwise] was appointed someone like that, given them some staff, and worked closely

⁴⁸ Interview with Richard Collins.

⁴⁹ Consisting of five members of central administrative staff. The PDS central business team operates out of the Birmingham PDO office and not the LSC central office in London.

⁵⁰ The previous Head of the CDS became Executive Director, Policy and Planning of the LSC.

⁵¹ Interview with Richard Collins.

between them and my policy team, to actually build and establish the PDS. So that we would have got better some of the things which we didn't get right at the outset⁵²

(v) *Independence of the PDS*

The original Government consultation paper on the setting of the PDS identified independence as a key point of potential criticism of a salaried defence service and noted that there were three elements to this issue.⁵³ These were "system pressure by the funder", "lack of independence of mind", and "individual case interference". The paper itself argued that "system pressure" could be applied through restrictions on funding to either a salaried service or to contracted private practice providers, and also cited research evidence that in the past private criminal defence lawyers in Britain provided a service that was "segmented and made routine, with many solicitors and their staff tending to assume their clients were guilty." As regards the question of interference with the conduct of individual cases, the paper cited the management measures outlined above (professional control of casework residing solely with PDO heads, access of staff to the professional head of service) as providing the necessary safeguards, along with a commitment that:

No individual case information passes outside the salaried service into the operational units of the Commission other than that strictly necessary for the proper performance of the Commission's functions (in particular quality assurance) and equivalent to that provided by contracted private practice lawyers.⁵⁴

In response to various concerns raised in respect of independence during the consultation process, the Government placed greater emphasis on the role of the professional head of service and the Code of Conduct outlined above. As well as requiring such a Code to be prepared, the Access to Justice Act had identified a number of issues to be covered by it, including duties to avoid discrimination, to protect the interests of clients, to the courts, to avoid conflicts of interest, and of confidentiality. In addition, the draft Code issued for consultation in June 2000 included provisions on duties to act with integrity and independence, not to offer or accept payments, and relating to relationships with other members of the legal profession; and on change or withdrawal of legal representation, public interest disclosure, excessive caseload, general standards of conduct, and complaints.

In contrast with the general consultation on setting up the PDS, the Government accepted many of the criticisms made of the draft Code and introduced several amendments to strengthen it.⁵⁵ In addition to making provision for the professional head of service to interpret and monitor the Code (and to do so as far as possible "in a way that is compatible with other professional codes"⁵⁶), the other changes made included:

⁵² *Ibid.*

⁵³ *Establishing a Salaried Defence Service*, June 2000, *op. cit.*, paras. 72-83.

⁵⁴ *Ibid.*, para. 81.

⁵⁵ See *Code of Conduct, Responses to the Consultation Paper*, *op. cit.*

⁵⁶ *Code of Conduct for Employees of the Legal Services Commission who provide services as part of the Criminal Defence Service*, London, Legal Services Commission, para. 1.3.

- strengthening the duty to protect the client and "to provide ... fearless, vigorous and effective defence and ... use all proper and lawful means to secure the best outcome for the client", specifically by adding a requirement that a professional employee "shall not put a client under pressure to plead guilty, and in particular, shall not advise a client that it is in his or her interests to plead guilty unless satisfied that the prosecution is able to discharge the burden of proof"⁵⁷;
- adding a duty to maintain professional independence from "the Commission" as well as from the prosecuting authorities, the courts, clients and any other sources⁵⁸;
- removing a mandatory requirement to accept instructions from clients who are otherwise unrepresented and adding a proviso that instructions should be accepted only where the professional employee "can discharge those instructions effectively having regard to other professional obligations" (i.e. to avoid case overload)⁵⁹;
- making a duty "to ensure that in the public interest they discharge their duties in a way which is consistent with the proper and efficient administration of justice" specifically subject to the proviso that this must be consistent with other provisions of the Code and "any other rules of professional conduct"⁶⁰
- widening the definition of conflicts of interest where the professional employee must cease to act to include not only those between clients but also with the any employee of the salaried service or any third party,⁶¹ and requiring the professional employee to refer a client for whom representation is withdrawn to another representative as appropriate⁶²;
- amending a prohibition on professional employees not to offer or accept "any fee, commission, inducement, gratuity, gift, benefit or other form of compensation" to allow the provision of "refreshments or cigarettes for the client's immediate consumption in the employee's presence"⁶³;
- amending a provision to make it clear that where a professional employee is required to act "by the Commission" (not a client) in a way which is "illegal, improper or unethical"; "in breach of professional rules"; "may involve maladministration, fraud or misuse of public funds"; "or otherwise inconsistent with this Code or the Commission's Staff Code of Conduct", the matter must be brought to the attention of the PDO head and notified to the Professional Head of Service to investigate and report to the Commission⁶⁴;
- adding a positive duty on professional employees to decline instructions if they consider "that acceptance of any further instructions is reasonably likely to lead to inadequate representation of existing clients", as well as bringing this to the attention of the professional head of office "who shall notify the professional head of service"⁶⁵;

⁵⁷ *Ibid.*, paras. 2.1 and 2.2.

⁵⁸ *Ibid.*, para. 3.2.

⁵⁹ *Ibid.*, para. 4.2.

⁶⁰ *Ibid.*, para. 6.2.

⁶¹ *Ibid.*, para. 7.2.

⁶² *Ibid.*, para. 7.5.

⁶³ *Ibid.*, para. 8.

⁶⁴ *Ibid.*, para. 12.1.

⁶⁵ *Ibid.*, para. 13.

- while retaining a provision that a professional employee "shall not do anything to bring the salaried service into disrepute", removing similar references to "diminishing public confidence in the criminal justice system", and making this requirement subject to other provision of the Code and professional rules of conduct⁶⁶;
- removing a provision regarding adherence to professional rules or guidance "approved by the Commission" relating to the treatment of victims or witnesses, and to the Commission's Personnel Manual;
- removing reference to the Commission's complaints procedure and placing the responsibility to investigate complaints relating the PDS on the professional head of office in conjunction with the professional head of service.⁶⁷

In the first year the professional head of service issued further guidance on the position of salaried defenders in advising a client to plead guilty and their obligations to act on instructions from clients to seek adjournments, given the Code's requirement to discharge their duties in a way consistent with the "proper and efficient administration of justice".⁶⁸ As the professional head of service explained:

There was great uncertainty in the profession about what proper pressure [on the client to plead guilty] was or was not. And that I think was a helpful exercise. It concentrated minds elsewhere than here, about how barristers go about to get on to the next case. And, because I could see that it was a danger area, I included applications for adjournments. I wanted to make it very clear that ... whether you are employed by the government or not, you do what your client advises within the law and within the professional rules. If the client asks for an adjournment, you apply for an adjournment. You can't mislead the court ..., you can't put before the court a reason for an adjournment you know to be wrong, but [otherwise] you follow your client's instructions. There has never been any resistance [in the LSC to that advice]. That in a sense has become more relevant as government initiatives have gone on.⁶⁹

Two subsequent notes of guidance have been prepared by the professional head of service. One relates to the objectives set for the CDS⁷⁰, which are to

- provide legal advice and representation to individuals under investigation or charged with criminal offences;
- facilitate the fair, efficient and effective operation of the Criminal Justice System and influence positive improvements in it;
- help individuals address the causes of their offending behaviour and reduce re-offending through effective links with other Criminal Justice System initiatives and the Community Legal Service.⁷¹

⁶⁶ *Ibid.*, para. 14.1.

⁶⁷ *Ibid.*, para. 15.

⁶⁸ This guidance was published as an annex to the *Public Defender Service: Review of the first year of operation 2001/02*, London, Legal Services Commission, August 2002 and is also available under the title 'Guidance on Code of Conduct' at http://www.legalservices.gov.uk/criminal/pds/doc_library.asp.

⁶⁹ Interview with Tony Edwards, 2005.

⁷⁰ 'Guidance on CDS Objectives' at http://www.legalservices.gov.uk/criminal/pds/doc_library.asp

⁷¹ *Legal Services Commission Annual Report 2004-5*, London, 2005, p. 39.

The professional head of the PDS appears to have been requested by members of the CDS legal team to advise on the priorities between these objectives:

I took the view that I could get a handle on it because if anyone was going to be required to apply the CDS objectives it was going to be lawyers employed directly by the Commission. And there was very real concern that there had been no prioritisation between the three objectives and in particular encouraging people not to commit further crime I was very clear in my own mind ... that objective one is the absolutely overriding and primary objective. . . . We're not here to make the criminal justice system work efficiently if our clients tell us to make the criminal justice system work inefficiently. ... I was very determined that the prime objective was the client's instructions, and the Bar said in response to the consultation, you should stop there. I don't think that's right. If a client is ... provably and indisputably guilty and admits it, it seems to me perfectly proper to say to a client, "wouldn't it be a good idea to go on this programme" or "are you aware of this" or "are you actually claiming all your benefits so you don't need to go stealing". And I think it is good advice in the client's interest. It's for the client to decide whether to follow it, but it seems perfectly proper, and I think a solicitor who has a client provably guilty who does not follow that action does not do everything the CDS pays a lot of public money to achieve, as long as the client makes the final decision. And similarly ... some suppliers ... drag it out or its taken to Crown Court when it needn't have been and the client is put at greater risk as a result, that doesn't seem to be good work or proper use of public funds.⁷²

The third guidance note relates to the position of legal advisers in police stations where it is known that a client is providing a false name and seeking to pass information to another suspect.⁷³

(vi) Quality monitoring within the PDS

A key objective of the PDS from the outset was to "provide good or better quality of service" as private practice, and to this end the consultation paper on the setting up of the service made the commitment that as "a minimum requirement, salaried defence offices would have to meet the quality and performance standards set for private practice contracted firms operating under the general CDS contract."⁷⁴ However, the consultation paper went on to state that

We would wish to see salaried offices move further than this minimum requirement and seek to improve quality standards and assurance mechanisms which can feed back into the development of the standards set for contracted private firms. This will be an important objective for the salaried service and for the individual office heads.⁷⁵

⁷² Interview with Tony Edwards, 2005.

⁷³ 'Guidance on Police Station Advice' at http://www.legalservices.gov.uk/criminal/pds/doc_library.asp

⁷⁴ *Establishing a Salaried Defence Service*, June 2000, *op. cit.*, para. 33.

⁷⁵ *Ibid.*, para. 34.

In line with private practice firms operating under the General Criminal Contract, PDOs have been subject to two types of quality audit. The first of these is a one-off⁷⁶ audit of a sample of casework files evaluated against Transaction Criteria, to which each of the PDOs was subject during its first year of operation. The audit results in a score out of 100, with 70 being the pass mark, and the PDOs achieved scores ranging between 76 for the Birmingham PDO to 93 for the Cheltenham PDO.⁷⁷

The second form of audit is the Cost Compliance Audit, in which a sample of cases is assessed for the costs incurred against criteria set out in the General Criminal Contract. Of course, the PDOs are not funded on a case-by-case basis but rather receive a block grant from the LSC. Nevertheless, for both audit and research purposes, they have been required during the pilot to complete cost claim report forms on their police station and magistrates' court cases in the same way as private practice suppliers operating under contracts.⁷⁸ In fact, what has been scrutinised under the Cost Compliance Audits is the inputs, in terms of time and other factors, that the PDOs have made into cases. This form of audit results in suppliers being placed in one of three categories based on the level of variation between their reported costs in a sample of files and the auditors' assessments of costs, with 1 representing less than 10% variance; 2 between 10% and 20% variance; and 3 more than 20% variance. In the first year of the PDS, three of the four offices (Liverpool, Middlesbrough and Swansea) achieved category 1 status, while the Birmingham PDO was category 2. However, there was a decline in the second year, when the Liverpool PDO achieved only a category 2 and the Swansea PDO a category 3 (with 43% of cases at variance), and the Pontypridd PDO in its first year only a category 2. In the third year, all the PDOs achieved category 1 in the standard LSC audit, although the Liverpool office achieved only category 2 in a specifically developed internal audit that was being piloted there that year.⁷⁹

The PDOs have been subject to two further forms of quality monitoring. As noted, first the professional head of service and latterly the head of the PDS have been responsible for carrying out spot-check file reviews of the PDOs at various points. These reviews confirmed some variations between offices, as explained by the head of the PDS:

I think people were doing their best to ensure that there were systems and that they had checks on quality, but they weren't necessarily doing it in the same way. I think the role ... of the quality manager was absolutely key. ... Where the relationship between the quality manager and the head of office ... wasn't good ... for whatever reason, it showed in terms of the quality of the office and what was reflected in audit results. Now that may have been for a whole variety

⁷⁶ The audit may be repeated where there are grounds of concern over the quality of service of a particular provider.

⁷⁷ *Public Defender Service Third Annual Report 2003-4*, London, Legal Services Commission, 2004, p. 14.

⁷⁸ For reasons explained in Chapter 5, the cost claimed are notional, based on the payments that would have been due to the PDOs had they been working under the General Criminal Contract.

⁷⁹ *Public Defender Service Second Annual Report 2002-3*, p. 19 and *Third Annual Report, 2003-4*, p. 15.

of reasons, but I saw vast differences in quality of files at least, and in some cases there was a lack of systems [being implemented].⁸⁰

Secondly, as part of the research evaluation of the PDS, a process of independent peer review has been carried out on a sample of files drawn from each of the PDOs and from private practice suppliers in their areas relating to three stages: police station advice cases, magistrates' court cases and Crown Court cases. The results of this peer review are reported in Chapter 4.

More recently, the PDS has been moving to strengthen its internal audit systems, in conjunction with the establishment of the post of head of service and the central business team and the placing of the service under the new LSC Director of Service Delivery. Thus, the Third Annual Report of the PDS stated that:

In our fourth year, we are moving towards a balanced scorecard approach in line with the rest of the LSC.⁸¹

Reference was also made by the professional head of service to the PDS developing a 'safe audit' system:

Because the PDS has had time to develop it ... they have their own auditor now who is routinely just working around the offices doing SAFE audits, that's a wonderful facility.⁸²

(vii) Case management systems in the PDS

One of the most important tasks for the PDS at the outset was to develop its case management systems, including both standards forms and guidance and computerised information on the handling of cases. The latter involved the development of both hardware and software. Initially a decision was taken that each PDO should have its own separate computer system and not be integrated into the LSC's systems, in order to avoid any risk of other parts of the LSC having access to information about individual clients and cases. This decision was subsequently changed⁸³ so that the PDOs would be integrated into the LSC wider systems for the provision of such services as word processing, financial management and e mail, but with the PDS case management system operating in each PDO on a separate, non-networked basis.

A commercial software company with experience of providing systems for solicitors was engaged to develop the PDS computerised case management system (CMS). This was important both for the day-to-day operation of the PDOs and for the research, as the latter would draw heavily on data recorded on CMS relating to cases for its analysis. Both the original PDO heads and members of the research team were involved in drawing up the initial specification and eventual testing of the system. As a result of this and EU requirements relating to procurement in the public sector, there was a delay in the installation of the system well beyond the opening of the initial

⁸⁰ Interview with Gaynor Ogden, 2005.

⁸¹ *PDS Third Annual Report, op. cit.*, p. 14.

⁸² Interview with Tony Edwards.

⁸³ This did result in some 'wasted costs' in terms of initial expenditure on IT, as is discussed further in Chapter 5.

offices, and even then considerable further development work was required in order further to adapt the system to the specific requirements of the PDS and the research.

CMS therefore did not become fully operational until the second year of the pilot, and during the first year much of the recording of time and other inputs into cases was done by hand on paper records. As noted previously, a decision was made that the PDOs, even though they were directly funded by the LCS and not on the basis of case-by-case payments, should complete the standard contract report forms for each police station and magistrates' court case⁸⁴, including the notional costs they might have been entitled to had they been operating under the General Criminal Contract. However, under contracting these report forms do not include a record of the time and other inputs into cases, but only a record of costs, so the research was dependent on the paper records and eventually CMS for these additional data.

An issue throughout the pilot has also been the accuracy of time recording by the PDOs, since unlike private practice this does not directly influence the amount of funding they receive from the LSC. As the professional head of service explained:

A criminal lawyer is a lawyer - it doesn't matter actually how you employ them. They are much of a muchness, trying to get them to do time recording is like hitting your head against a brick wall. ... And actually, I think [the PDS] has achieved extraordinary outcomes in terms of getting them onto a paperless time recording system, and _____ is achieving remarkable results in terms of seeing recording standards go up.⁸⁵

There was a similar iterative process, involving both the PDO heads and the researchers⁸⁶, in designing the various forms used to record information on cases, and many of these forms went through a number of versions before they were finalised. The forms were eventually all published on the LSC website⁸⁷ so that private practice firms could also access and make use of them if they wished.

Development of the Research

An important factor in the general context in which the PDS has developed and operated is the fact that it has been subject to an independent research evaluation from the outset. The research began in December 2000, shortly before the first four PDO heads were appointed, but data collection did not start until the second year of the PDS, in April 2002. There were two reasons for this delay. First, it was necessary to allow the initial PDOs a period of time to start their operations and to build up an initial client base and body of casework that could be evaluated. Secondly, there was considerable development work to be done in respect of the research itself, as well as

⁸⁴ Costs in Crown Court cases are claimed separately from the General Criminal Contract and often with private practice firms involve the use of cost draftsmen to draw up the bill. Discussions were held as to whether the PDOs should draw up Crown Court bills, but it was eventually decided that this would not be done.

⁸⁵ Interview with Tony Edwards.

⁸⁶ The researchers took the view that they might be involved in advising on the initial design of forms, but that once the actual evaluation of the service in comparison to private practice suppliers had begun, they should withdraw from this.

⁸⁷ At http://www.legalservices.gov.uk/criminal/pds/doc_library.asp.

with the LSC in designing recording and case management systems that would be utilised for data collection purposes.

A consultation paper on the methods to be employed in the research evaluation of the PDS was published in February 2002 and circulated to academics, legal professional bodies, legal interest groups, and all private practice firms with criminal defence contracts within the regions where PDOs had by then been established. A further version of this paper, taking account of the comments received, was also published in August 2002. Both versions were also made available on the LSC website.⁸⁸

(i) Research objectives

The following objectives for the research were identified:

- A full analysis of **cost effectiveness**, compared with contracted provision, for different work types. Changes over time, percentage utilisation of office capacity, and additional costs of the development process will be considered.
- A full analysis of **quality** in absolute terms and relative to contracted provision.
- A comparative analysis of **patterns of case conduct**.
- Information on **how PDOs attract clients, why clients choose the public defender and client satisfaction and retention**.
- Qualitative and quantitative information on the vital requirement of **independence of thought and behaviour**, including information on actual advice, case outcomes, the operation of the Code of Conduct, attitudes and experience of PDS staff to their work, and the perception of PDOs amongst clients and others within the criminal defence system.
- An examination of the **effectiveness, efficiency and accountability of management structures** for the service.
- Information on the PDO's **impact on local patterns of supply**.
- **Recommendations on future models** for PDOs of appropriate quality, cost and independence both during the course of the pilot and, beyond this, an assessment of the future potential of the PDS and the balance between it and the private sector in different types of area.

As the paper explained:

⁸⁸ L. Bridges, et. al., *Methods for Researching and Evaluating the Public Defender Service*, Legal Research Institute (University of Warwick) and Institute of Advanced Legal Studies (London), February and August 2002 (http://www.legalservices.gov.uk/docs/pds/methodology_paper.pdf).

a key aspect of the evaluation of the PDS will be a comparison between its services and those provided by private criminal defence solicitors operating under contracts.⁸⁹

This applied not only to the issue of cost effectiveness but also those of quality of service and patterns of case conduct and outcomes. Much of the consultation paper was devoted to considering ways in which these comparisons might be carried out.

(ii) Sampling and data sources

In this respect, an important consideration was whether comparisons would be made on the basis of national or local case samples. Given that the research was to be based on just six PDOs operating within fairly limited localities likely each to handle only several hundred cases each year, compared to in excess of 3,000 private practice firms with criminal contracts spread throughout the country handling in total several hundreds of thousands of cases annually, it was decided that a comparison based solely on national data would be unrealistic. There was also the fact that previous research had tended to show considerable local variations across the country in the pattern of delivery and costs of criminal defence services.⁹⁰ For these reasons it was decided to base the research on a comparison between each PDO and a sample of cases drawn from firms holding criminal contracts within their localities. There was a further possibility of comparing the PDOs only with a selected group of private practice firms in each area, but this option was rejected for two reasons. First, it was not clear on what basis such a selective sample of local firms should be drawn and whether, for example, it should include only firms of a similar size to the PDOs or a random group.⁹¹ In the end, it was decided to draw the sample of private practice cases from all contracted firms within the local areas of the PDOs. The cases were drawn from all contracted firms in each area that reported cases under the General Criminal Contract as having been completed in the relevant periods in the main police stations or magistrates' courts which the PDO also served, while the sample of Crown Court cases was drawn from those reported as being completed by the main Crown Court centres served by each PDO. The findings throughout this report are therefore reported on the basis of a PDO/private practice comparison in each of five or six areas⁹² and additionally on these six areas combined (all offices or areas), but not on a national basis. As has been the case in this chapter, we refer throughout the report to the Public Defender Service as a collective entity as the PDS, to each of its offices as a PDO, and to the six offices taken together as the PDOs.

As the above discussion implies, another decision made at an early stage was to divide the data collection into stages, covering work done in respect of police station advice cases (criminal investigations), magistrates' court cases, and Crown Court cases, rather than attempt to draw a single sample of cases from each PDO and their private

⁸⁹ *Ibid.*, p. 2.

⁹⁰ Lee Bridges and Asif Abubaker, *Work Pattern and Costs under Criminal Contracting*, London, Legal Services Commission, August 2000.

⁹¹ Another possibility considered was to compare PDOs with other new 'start up' firms in their areas. However, it did not prove possible to identify a sufficient number of such firms in any one area.

⁹² Although the original intention was to base the research on six areas, two of those included were Swansea PDO and its branch office in Pontypridd, and some data, especially relating to costs, on these two offices was combined on the LSC systems throughout the period of much of this research. It has therefore been necessary to report on the Swansea/Pontypridd offices as a single unit in these instances.

practice comparators covering all stages of the criminal justice process. Two factors lay behind this decision. First, it was likely that a single sample of cases would, unless it was so large as to be unmanageable, result in too few Crown Court cases on which to draw meaningful conclusions. Secondly, there were the limitations placed on the research by the need for the PDOs to build up their client bases. In doing so, it would be expected that each PDO would have completed the police station or criminal investigation stage of sufficient cases far sooner than would be the case for either magistrates' court or Crown Court proceedings. The original intention was therefore to begin data collection in respect of police station cases in the second year of operation of the PDS and to follow this by separate data collection exercises in later years on magistrates' court and Crown Court cases. In the event, it was subsequently decided to combine the data collection, but not the samples, for the latter two stages.

Therefore, in addition to reporting results for each of five or six areas, the analysis is divided between the three stages or samples of police stations, magistrates' courts and the Crown Court cases. It is important to note the size of the samples drawn at each of these stages was related to the number of cases required in order to draw meaningful conclusions and were not representative of the proportion of the overall caseloads of either the PDOs or private practice firms completed in police stations, magistrates' courts or Crown Courts. For this reason, the findings relating to each of these stages or samples cannot be combined to produce an overall finding, for example, on average case costs or quality of performance as between the PDOs and their private practice comparators.

In fact, a number of samples were drawn at different stages of the research based on the various data sources. These included:

- The LSC's contract reporting system known as SPOCC covering all police station and magistrates' court cases completed by private practice contractors and the PDOs during the relevant periods. Although this source therefore covered a large number of cases, it contains only limited information on such factors as client and case characteristics, outcomes, costs (but not time or other inputs into cases), and the police station or court where the cases was conducted.⁹³ These data were therefore used to draw broad comparisons of types of clients served and cases undertaken (Chapter 2) and case processes and outcomes (Chapter 3); as a source of data on private practice case costs (Chapter 5); and a basis for drawing smaller samples of case files for more detailed analysis. We refer to this sample throughout the report as the SPOCC dataset.
- The PDS Case Management System. This has been a the primary source of data on time spent by PDOs on cases, which has formed the basis of an analysis of case costs (Chapter 5), and for some more detailed information on case types and outcomes in this sector.
- Data on completed cases drawn from Crown Courts. This information formed the basis for an analysis of Crown Court costs for private sector providers (Chapter 5) and a basis for sampling private practice Crown Court cases for more detailed analysis.

⁹³ For a full list of the information included on SPOCC, see Bridges, et. al., *op. cit.*, p. 16.

- Case files drawn from both the PDOs and private practice. Using SPOCC data as a basis for sampling, a sample of 50 case files was drawn from each PDO and group of private practice comparators in each stage of the research, covering police station investigations and magistrates' court representation. SPOCC does not cover cases completed in the Crown Court, and therefore similar samples of 50 Crown Court case files for each PDO and private practice comparators in each area were drawn from either the PDS Case Management System or from lists of cases concluded by private practice firms in the same Crown Courts. Therefore, in total 600 files were sampled at each of the three stages across the six PDOs. These files provided more detailed comparative information on client and case types (Chapter 2) and case processes and outcomes (Chapter 3). We refer to these cases as the case file sample. Half of these files at each stage were also subject to peer review to evaluate the quality of service provided by each sector (Chapter 4), and this is referred to as the peer review data. The case file sample also provided a basis for surveying clients (Chapter 6).
- Samples of various criminal justice professionals (private practice solicitors, barristers, District Judges (Magistrates' Courts), Crown Prosecution Service lawyers, and police) were drawn as a basis for surveying their opinions on the standards of service provided by both PDOs and private practice defence solicitors (Chapter 6). In addition, all PDS legal staff and senior figures involved in the PDS administration were surveyed (Chapter 7).

(iii) Comparison of costs

On the issue of costs, the initial consultation paper canvassed two methods of comparison. The first was referred to as the 'cost to the public purse', which would compare the cost paid by the Legal Services Commission to private practice firms for criminal cases completed under the General Criminal Contract with the cost of completing similar cases undertaken by the PDS. The cost paid to private practice could be derived directly from data recorded on the LSC computer and taken from the report forms which these firms were required to lodge with the LSC in respect of each completed case under the contract. On the other hand, as discussed above, although the PDOs were required also to complete these forms, the costs claimed were notional ones, and in order to calculate the actual costs of PDS cases it was necessary to take account of the full costs paid directly by the LSC to maintain the service and to divide this among the cases completed according to time spent on each case. The full method by which this was done is set out in Chapter 5.

A second possible basis of cost comparison that was canvassed in the consultation paper was that of 'cost to the provider'. Under this method, the comparison would be between the actual costs of the PDS as calculated above and how much it costs private practice firms to carry out cases under contract taking account of such factors as staff salaries, office accommodation and overheads, etc. Such a comparison might have been considered essential to meet on the stated objectives for the PDS, to serve as a 'benchmark' for the amount that should be paid to private practice firms for criminal cases under contracts. However, as the consultation paper noted:

despite considerable research on criminal defence services over recent years, there is still much that we simply do not know about the working of private

practitioners operating in this field. This lack of knowledge is perhaps most acute in respect of the economics of private criminal defence firms and financial aspects of their decision-making in relation to such matters as capital costs, deployment and utilisation of staff, and the opening of new offices....

Very little objective information is available on the cost base of private criminal defence services, and this is likely to vary widely from one area of the country to another and even between individual firms. Private practitioners may be reluctant to reveal information on the cost of offices, equipment, salaries, etc., or on the amounts of non-chargeable work that they undertake, nor have the researchers been commissioned to carry out a detailed evaluation of the economics of private criminal defence firms operating under contracts.⁹⁴

During the course of the research an attempt was made to pilot a questionnaire to private criminal defence firms to obtain more information on their background costs, but this did not prove successful. As a result, it was eventually decided to focus the cost comparison in this research (as was done in the earlier evaluation of the Scottish PDSO⁹⁵) on a comparison of the 'cost to the public purse' of the two different forms of service.

(iv) Comparison of quality

The main basis of the comparison of quality between PDOs and private practice have been two separate exercises involving peer review of case files. As noted above, this covered a sample of 25 files drawn from each PDO and group of private practice comparators at the three different stages of the research, i.e. a total of 900 files across the two sectors. The peer review for police station cases was carried out by a solicitor member of the research team, Professor Ed Cape, who is a nationally-recognised expert in the provision of custodial legal advice.⁹⁶ Peer review of magistrates' court and Crown Court cases was conducted by a team of specially-recruited and trained experienced criminal defence solicitors, drawn from both private practice and the PDS. Further details of the peer review methodology and its results are reported in Chapter 4.

During the initial consultation the possibility of including observations of legal advisers from both the PDS and private practice in police stations or magistrates' courts was considered. Observation in police stations was eventually rejected primarily on cost grounds, as experienced showed this to be extremely resource-intensive. Following the consultation, further pilot work on possible observation of advocacy in magistrates' courts was undertaken, but this tended to demonstrate that to implement such observation on a wider scale would be impracticable. Further details are provided in Chapter 4.

Surveys of client opinion and those of various criminal justice professionals were also

⁹⁴ *Ibid.*, pp. 2 and 10

⁹⁵ See Goriely, *op. cit.*

⁹⁶ Consideration was originally given to using experienced non-solicitor police station representatives as peer reviewers of police station cases, but following the consultation on methods this was rejected on the grounds that such an exercise would carry less credibility with the legal profession than one utilising experienced defence solicitors only.

relevant to the issue of quality, although none of these proved highly fruitful in this regard (see Chapter 6), either because of poor response rates and/or the limited experience of respondent with the work of defence solicitors.

(v) A note on use of statistics and significance testing

Throughout this report we have used statistical tests to determine the significance of differences found between the PDOs and private practice. Two statistical tests have been utilised: the Mann Whitney test and Chi Square. The Mann Whitney test is appropriate where the data have been obtained from two independent samples – here the PDO and PP – and where the data can be considered non-parametric. In both studies the data are ordinal and take the form of ratings, which satisfies these requirements. The Mann Whitney test can tell if the two samples are significantly different by analysing the difference in their mean ranks.

Chi Square is used only where the Mann Whitney test is inappropriate for the data. Chi Square can be used if the data are nominal (i.e. names rather than numbers) as it utilises the frequency of a particular response to measure the strength of association between variables. It is used to test associations by comparing the distribution of actual numbers in each group (e.g. the number of times a response of ‘no’ appeared) with those that would be expected according to theory or simply by chance.

Throughout the report, we use the symbols ‘*’ and ‘**’ to denote different degrees of statistical significance. A p of ≤ 0.05 indicates a probability of 5 in 100 that the difference shown occurred by chance, which is the normal threshold for significance in the social sciences. Where relevant, this denoted by a * in the tables and referred to in the text as a ‘significant’ finding.⁹⁷ Where $p \leq 0.01$, the probability of the difference occurring by chance drops to less than 1 in 100. These are characteristically referred to as “highly significant differences” and are denoted by ** in the tables.

It should be remembered in interpreting the findings that a difference which is small in numerical terms (e.g. 2%) can still be highly significant in statistical terms. It is thus important to bear in mind not only whether differences are ‘significant’ but also whether the size of the difference is objectively important (e.g. a difference of 20% which is also statistically significant is probably more important than a difference of 2% that is also statistically significant). Furthermore, statistical differences might be attributed to differences in the work or performance of PDOs and PP, when in fact they are explained by another factor (such as the type of case, for example). Where it has been feasible to do so, we have also used multivariate analysis in order to attempt to control for such additional factors (known as ‘independent variables’) that may have influenced the particular difference being examined, although it must be remembered that it is only possible to control for those independent variables for which data are available.

⁹⁷ Significance here refers to statistical significance only.

(vi) Impact of research on PDOs

One issue that has arisen from interviews with PDS personnel is the extent to which the fact of the research evaluation, and in particular the comparison between the PDS and private practice which has been central to it, may itself have influenced the development of the service. While the sampling methods employed in respect of private practice were intended to minimise the demands of the research on individual firms,⁹⁸ it is undoubtedly the case that a much heavier burden from the research fell on the PDOs and that their staff often felt to be under particular scrutiny, and this may have influenced their behaviour in certain respects. Indeed, it has been suggested that the fact of the research may have led staff of the PDS to be more cautious in their approach to casework than might otherwise have been the case and the service as a whole to be less innovative than it might have been, both in its inception and operation. As previously noted, the head of the CDS cited the need to deliver "something which was easily comparable to private practice" for research and benchmarking purposes, as one of a number of factors influencing the risk adverse approach taken to developing the service at the beginning, and he went on to comment that:

We have felt ... the need to produce data for research. I think now we are moving out of the research phase, I would expect us to be more innovative.⁹⁹

Apart from these general effects, the main demand made by the research on the PDS was in the requirement to complete General Criminal Contract reports on cases. Some of the PDO heads also saw other data collection demands made on them, for example in terms of time recording, as research led, although as more recent developments in the management of the service demonstrate, such demands are likely to continue and even to intensify in future.

Conclusions

This chapter has examined the context to the establishment and development of the Public Defender Service in England and Wales. The original impetus for establishing the PDS, and in particular the tight timetable for its implementation (coinciding with the introduction of the General Criminal Contract) undoubtedly came from the Government of the day. However, this was not accompanied with by clear directions as to the objectives or purposes of the new service, beyond a general view that it could provide a basis for cost savings and exert pressure, through 'benchmarking', on private practice providers to reduce costs and possibly to improve the quality of their services.

The lack of clarity about the policy objectives the PDS was designed to meet, the hostility of many private practice lawyers (both solicitors and barristers) to the idea of such a service, and the LSC's complete lack of experience in directly employing lawyers to provide legal services to the public, all contributed to a highly risk adverse approach to the setting up of the PDS. It is also significant that, unlike the

⁹⁸ The demands on private practice firms were heavier in those areas with fewer contracted suppliers, but in only one instance did a s (small) firm complain about the number of files they were asked to provide for research purposes.

⁹⁹ Interview with Richard Collins.

introduction of public defender services in most other jurisdictions, there already existed in England and Wales both a fully comprehensive system of criminal legal aid provision, encompassing mass representation of both suspects under investigation in police stations and defendants in magistrates' courts and the Crown Court, and a highly developed network of private practice lawyers delivering these services in all parts of the country. There were therefore virtually no 'gaps' in provision, either in terms of new types of service that might be offered or areas of the country to be served, on which the PDS could be focussed, not least in attempting to build a client base.¹⁰⁰ The decision first of the Government in Parliament to provide a statutory guarantee of client choice of representative, and subsequently by the LSC not to give the PDS any preference in the allocation of duty solicitor 'slots', further served to marginalise the PDS in terms of client recruitment from the outset.

A number of other key decisions were made in the process of setting up the service which were to have very significant implications for the way the PDS operated, particularly in respect of its costs. These included the decisions that the PDOs should be fully staffed at the outset in order to provide a full, comprehensive service covering police stations and courts on a 24-hour a day basis; and those relating to the types of offices in which the PDOs would be accommodated. As the professional head of service commented:

I was a party to those decisions, and I am entirely satisfied that the management that now runs [the LSC] would not have made those decisions. ... I am entirely satisfied that the present management group would not have staffed them as they were staffed, guaranteeing 24-hour cover of good quality.... Obviously, that was hugely costly in terms of what one was getting by way of return. In terms of quality of layout of offices, God I would like to work in that sort of place, and again the positioning of the offices¹⁰¹

As this comment indicates, there have been further developments in the PDS, including the setting up of additional offices on a somewhat different model to that followed initially and particularly in the management structure of the service. However, many of the innovations which might, with further consideration and time for investigation and implementation, have been considered at the outset are only now being discussed and set in motion. The service as it develops in the future (if allowed to do so) may be very different from the one that has been subject to the research evaluation presented in this report.

¹⁰⁰ The one exception, in terms of the PDOs included in the research, was Cheltenham, as discussed above.

¹⁰¹ Interview with Tony Edwards.

Chapter 2

The Nature of Clients and Caseloads

A matter of considerable interest in itself, but also an important element in interpreting the other findings in the study, is an investigation of the nature of caseloads in private practice and the Public Defender Service (PDS). There are a number of reasons for thinking that Public Defender Offices (PDOs) might have different caseloads from private practice. Principal amongst these is the fact that the PDOs were ‘cold starts’, offices created from scratch, often (though not always) without office heads or other solicitors who had strong local followings. As a result, PDOs began without an established client base. Furthermore, the PDOs were required to recruit clients in the same way as private firms. They did not have the benefit of formal direction of clients to them, as was the case in Scotland for the early part of the Edinburgh PDSO experiment.¹⁰² Nor did they receive preferential treatment on duty schemes, the most obvious way in which client recruitment could have been boosted, as continues to happen in Scotland.

There may be other factors which would influence caseloads. The absence of an established client base might lead to a less serious caseload, at least initially. More regular offenders may be more likely to have established relationships with particular firms (or solicitors within them), and existing firms might have stronger reputations amongst regular criminal defendants, which would lead them to have more of those types of client. Similarly, if there were perceived differences in approaches to criminal defence work by the two sectors, this might be picked up by prospective clients and reflected in the nature of clients choosing the PDS rather than private practice.

More importantly for our purposes, the nature of caseloads are likely to affect the ways in which cases are handled, the outcomes that could be achieved and the costs that would be incurred. If, as we hypothesised, PDOs had caseloads which were less serious or had clients with fewer previous convictions, then all things being equal it would be expected that the PDS would spend less time on cases and for their clients to receive lighter sentences.

Thus in this chapter we first look at the characteristics of the client base of the two sectors, including demographic data and the criminal histories of clients. We then go on to examine the characteristics and profiles of the offences of which clients were suspected or charged, before looking at the seriousness and complexity of the cases dealt with by the PDS and private practice.

We have a number of data sets relevant to understanding the nature of criminal defence caseloads. Principal amongst these are the SPOCC data and case file samples. There is also relevant information from the peer review data set concerning complexity and seriousness of cases.¹⁰³

¹⁰² As discussed in Chapter 1.

¹⁰³ For details of the respective data sets see Chapter 1.

Social Characteristics of Clients

In this section we look at comparative demographic and socio-economic data on the clients of private practice and the PDS, and then examine in some detail their previous criminal histories.

(i) Gender

Our data on gender were derived from the case file samples. The gender pattern in the investigation stage sample can be seen in Table 2.1a, and those for the magistrates' court and Crown Court samples in Tables 2.1b and 2.1c. At the all areas level, there were no significant differences between the PDS and private practice with regard to the gender of clients, either in the investigation stage sample or in the court stage samples. At the local level, the gender pattern of clients often differed as between PDOs and private practice, but such differences were normally not consistent as between the different stages (i.e. investigation, magistrates' court and Crown Court). Thus, for example, Birmingham PDO clients in the investigation stage sample were more frequently female (31% female compared with 11% for private practice). Whereas, in the magistrates' court sample only 7.7% of their clients were female (compared with 12.2% for private practice). In the Crown Court sample 13% were female (compared with 6% for private practice). The only PDO with a consistent pattern was Liverpool, with proportionately more female clients than their private practice counterparts in all three samples, although overall the differences were not significant.

Table 2.1a: Gender of Client Base (Investigation Stage file data)

		Female %	Male %	N
Birmingham*	PDO	31.3	68.8	48
	PP	10.6	89.4	47
Cheltenham	PDO	13.7	86.3	51
	PP	22.2	77.8	45
Liverpool	PDO	18.0	82.0	50
	PP	14.6	85.4	48
Middlesbrough	PDO	26.0	74.0	50
	PP	16.0	84.0	50
Pontypridd	PDO	24.5	75.5	49
	PP	16.7	83.3	48
Swansea	PDO	12.0	88.0	50
	PP	11.1	88.9	45
All areas	PDOs	20.8	79.2	298
	PP	15.2	84.8	283

Table 2.1b: Gender of Client Base (Magistrates' Court file data)

		Female %	Male %	N
Birmingham	PDO	7.7	92.3	52
	PP	12.2	87.8	49
Cheltenham	PDO	10.4	89.6	48
	PP	22.0	78.0	48
Liverpool	PDO	27.5	72.5	51
	PP	14.0	86.0	50
Middlesbrough	PDO	7.7	92.3	52
	PP	17.6	82.4	51
Pontypridd	PDO	22.4	77.6	49
	PP	14.0	86.0	50
Swansea	PDO	20.0	80.0	50
	PP	14.0	86.0	50
All areas	PDOs	15.9	84.1	302
	PP	15.3	84.7	300

Table 2.1c: Gender of Client Base (Crown Court file data)

		Female %	Male %	N
Birmingham	PDS	13.0	87.0	46
	PP	6.0	94.0	50
Cheltenham	PDS	10.9	89.1	46
	PP	3.4	96.6	29
Liverpool	PDS	20.0	80.0	50
	PP	15.4	84.6	52
Middlesbrough	PDS	12.8	87.2	47
	PP	4.1	95.9	49
Pontypridd	PDS	15.0	85.0	40
	PP	20.0	80.0	50
Swansea	PDS	2.9	97.1	35
	PP	12.0	88.0	50
All areas	PDS	12.9	87.1	264
	PP	10.7	89.3	280

(ii) *Ethnicity*

We collected data on the ethnicity of clients from case files. The categories used in our data collection mirrored those categories used by the Criminal Defence Service. Under-recording on files of ethnicity of clients has hampered our findings. Private practitioners were much less likely to record this information on their files than the PDS. In the investigation stage sample, data on ethnicity was missing in 60% of private practice files, compared with 12% of PDS files. Recording of ethnicity was higher in court stage files, although relevant data was still missing in about one third of private practice files, compared to less than 5% in PDS files. The statistics below are based only on cases where ethnicity was identified.

At the investigation stage, the only areas showing notable ethnic minority representation among the clients of either sector were Birmingham and Liverpool. In Birmingham, 4% of the PDO clients were black, 10% Asian or Chinese, and 6% recorded as ‘other’. However, the indications were that private practice in Birmingham had higher proportions of their clients drawn from ethnic minorities, with 15% recorded as black, 15% Asian or Chinese, and 2% as ‘other’. Put another way, in 29% of PDO cases but 50% of private practice cases in Birmingham *where ethnicity was recorded* the client was from one of these minority groupings. In Liverpool, by contrast, 12% of the PDO clients but only 2% of private practice clients were recorded as being black, Asian, Chinese or ‘other’, and a further 6% of PDO clients and 2% of private practice clients were noted as being Irish.

Looking at the two court stage samples (see Tables 2.2a and 2.2b), there were no significant differences in client ethnicity between the PDS and private practice in magistrates’ court cases, either at the all areas level or at the local level. This was also true in respect of Crown Court cases except that in Birmingham private practice had significantly more ethnic minority clients than the PDO in the same area.

Table 2.2a: Ethnicity of Clients (Magistrates’ Court file data)

		Ethnic Minority %	White %	Don’t know %	N
Birmingham	PDO	44.3	53.8	1.9	52
	PP	38.6	57.1	14.3	49
Cheltenham	PDO	6.2	83.8	0	48
	PP	4.0	60.0	36.0	50
Liverpool	PDO	11.8	84.3	3.9	51
	PP	4.0	46.0	50.0	50
Middlesbrough	PDO	7.7	84.6	7.7	52
	PP	0.0	47.1	52.9	51
Pontypridd	PDO	2.1	95.9	2.0	49
	PP	4.0	68.0	28.0	50
Swansea	PDO	0.0	100.0	0.0	50
	PP	6.0	78.0	16.0	50
All areas	PDO	12.3	85.1	2.6	302
	PP	7.7	59.3	33.0	300

Table 2.2b: Ethnicity of Clients (Crown Court file data)

		Ethnic Minority %	White %	Don't know %	N
Birmingham*	PDO	34.8	65.2	0.0	46
	PP	56.0	34.0	10.0	50
Cheltenham	PDO	2.2	97.8	0	46
	PP	3.4	75.9	20.7	29
Liverpool	PDO	14.0	80.0	6.0	50
	PP	9.6	32.7	57.7	52
Middlesbrough	PDO	8.5	74.5	17.0	47
	PP	4.0	32.7	63.3	49
Pontypridd	PDO	5.0	95.0	0	40
	PP	2.0	72.0	26.0	50
Swansea	PDO	14.5	85.6	2.9	35
	PP	6.0	84.0	10.0	50
All areas*	PDOs	12.9	82.6	4.5	264
	PP	14.3	53.6	32.1	280

(iii) *Vulnerability*

There were three main indicators of client vulnerability potentially available from case files: mental disorder/vulnerability; physical disability; and drug/alcohol/substance abuse or addiction. It is worthy of note that at the all areas level between a fifth and a quarter of clients in the court samples were vulnerable in one of the ways specified above, a finding that is likely to be an under-estimate given that we had to rely on relevant information being recorded in the case files.¹⁰⁴ As a result, these data only provide a tentative indication of clients' vulnerability.

Approximately 90% of investigation stage files contained no indication that the client suffered from particular disabilities or vulnerabilities, although Liverpool and Middlesbrough PDO files recorded notably high rates of vulnerability amongst their clients (20% in Liverpool, including 18% involved in substance abuse, and 18% in Middlesbrough).

In relation to both the magistrates' court and Crown Court samples (see Tables 2.3a and 2.3b), four PDOs appeared to have a smaller proportion of clients with drugs, alcohol and similar problems than private practice (Birmingham, Middlesbrough, Pontypridd and Swansea), but the difference is only significant in the case of Middlesbrough (for both court samples). In Pontypridd, in Crown Court cases the PDO had significantly more clients evidencing mental disorder than private practice. Otherwise the profiles of clients for the PDS and private practice were broadly similar.

¹⁰⁴ In some cases such factors were noted on case pro-forma, and in others we extracted the information from client instructions, pre-sentence reports, etc.

Table 2.3a: Client Vulnerability (Magistrates' Court file data)

		Any indication of Mental Disorder? %	N	Any indication of Physical Disability? %	N	Any Indication of drug/alcohol etc addiction? %	N
Birmingham	PDO	1.9	52	0.0	48	15.4	52
	PP	4.1	49	0.0	49	18.4	49
Cheltenham	PDO	8.3	48	0.0	48	16.7	48
	PP	8.0	50	2.0	50	14.0	50
Liverpool	PDO	2.0	51	3.9	51	13.7	51
	PP	4.0	50	2.0	50	8.0	50
Middlesbrough	PDO	3.8	52	0.0	52	3.8	52
	PP	2.0	51	0.0	51	25.5	51
Pontypridd	PDO	2.0	49	4.1	49	22.4	49
	PP	0	50	2.0	50	30.0	50
Swansea	PDO	4.0	50	0	50	12.0	50
	PP	4.0	50	2.0	49	20.0	50
All areas	PDOs	3.6	302	1.3	302	13.9	302
	PP	3.7	300	1.3	300	19.3	300

Table 2.3b: Client Vulnerability (Crown Court file data)

		Any indication of Mental Disorder? %	N	Any indication of Physical Disability? %	N	Any Indication of drug/alcohol etc addiction? %	N
Birmingham	PDO	2.2	46	0.0	46	13.0	46
	PP	6.0	50	0.0	50	24.0	50
Cheltenham	PDO	4.3	46	0.0	46	26.1	46
	PP	10.3	29	0.0	29	20.7	29
Liverpool	PDO	10.0	50	2.0	50	16.0	50
	PP	5.8	52	1.9	52	15.4	52
Middlesbrough	PDO	4.3	47	2.1	47	4.3	47
	PP	10.2	49	2.0	49	20.4	49
Pontypridd	PDO	12.5	40	0.0	40	25.0	40
	PP	0.0	50	4.0	50	32.0	50
Swansea	PDO	5.7	35	0.0	35	17.1	35
	PP	6.0	50	0.0	50	22.0	50
All areas	PDOs	6.4	264	0.8	264	16.7	264
	PP	6.1	280	1.4	280	22.5	280

(iv) Age

SPOCC data do not record the date of birth or age of clients, but do include a field for ‘Youth court’. On the other hand, we were able to record date of birth in our case file samples and to compute clients’ ages at the date of their arrest or charge. Comparing the two sets of data, it appears that SPOCC under-records the numbers of clients who are under 18 years. This is significant because defendants under the age of 18 years are normally dealt with in a youth court, although there are exceptions, where, for example, a youth is jointly charged with an adult. Furthermore, youth clients are generally regarded as more vulnerable than adult clients, and in some ways the law and procedure applicable to youths is more complex than that relating to adults.

Table 2.4a shows SPOCC data on the proportion of youth work in the investigation stage sample in the six areas. Excluding Swansea and Pontypridd, PDOs appeared to do very little youth work in the police station. Middlesbrough, Cheltenham, Liverpool and Birmingham all did significantly less than their private practice counterparts. Swansea PDO was the sole office to do significantly more youth work than private practice in the same area.

Table 2.4a: Youth Work in Investigation Cases (SPOCC)

		%	N
Birmingham*	PDO	0.3	770
	PP	5.8	81893
Cheltenham*	PDO	1.5	871
	PP	4.9	21429
Liverpool*	PDO	1.2	842
	PP	8.0	34096
Middlesbrough*	PDO	0.5	883
	PP	12.4	17047
Pontypridd	PDO	10.2	381
	PP	10.9	4412
Swansea*	PDO	3.6	752
	PP	0.8	11099
All areas*	PDOs	2.1	4499
	PP	6.6	169976

However, these data may be unreliable, especially in respect of investigation stage cases, and particularly in PDS cases. The CDS 6 and its guidance may reinforce this.¹⁰⁵ The likelihood that youth cases are under-recorded in investigation stage SPOCC data is demonstrated by a comparison between the SPOCC data and the age profile of clients drawn from our investigation stage case file analysis. While SPOCC

¹⁰⁵ SPOCC data is derived from CDS 6 claim forms, which contains a box entitled ‘Youth court’ but which do not include a prompt for age of the client. The contract guidance on the completion of Form CDS 6 states that the box must be completed with a ‘Y’ where the client ‘was a youth’. It is possible, however, that given the title of the box, that some solicitors only indicate a ‘Y’ where the case involved work in the youth court, which will not normally be the case at the investigation stage. This approach may be reinforced by the guidance which states that where a youth is jointly charged with an adult and the case is not remitted to a youth court, that this box should not be completed. This may lead some solicitors to only complete the box if the case, at the stage when a claim is made, has actually involved an appearance in a youth court.

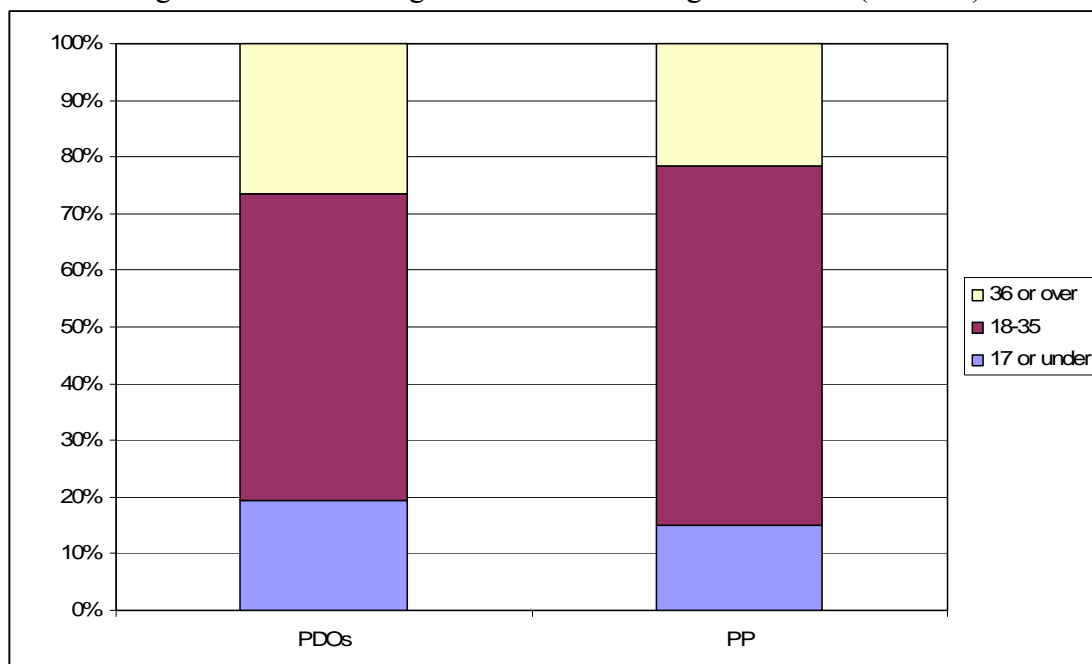
data indicate that only 5% of PDS and 6% of those private practice clients that were included in our file data analysis were youths, the calculation of clients' ages using their date of birth showed around 18% of PDS and 14% of private practice clients in these cases were 17 years old or under at the date of their arrest (Table 2.4b). The latter data also indicate that four of the six PDOs (Cheltenham, Liverpool, Middlesbrough, and Swansea) actually dealt with higher proportions of clients aged 17 or under than private practice in their areas, and Pontypridd PDO handled a similar proportion of such clients. There were notably high proportions of youth clients in Pontypridd (for both the PDO and private practice) and in Swansea (for the PDO).

Table 2.4b: Client's Age at Arrest in Investigation Cases (file data)

		17 or under	18-35	36 or over	Not ascertained	N
Birmingham*	PDO	16.7	31.3	45.8	6.3	48
	PP	19.1	46.8	31.9	2.1	47
Cheltenham	PDO	15.7	68.6	13.7	2.0	51
	PP	11.1	55.6	28.9	4.4	45
Liverpool	PDO	14.0	50.0	26.0	10.0	50
	PP	6.3	64.6	25.0	4.2	48
Middlesbrough	PDO	18.0	46.0	28.0	8.0	50
	PP	12.0	78.0	10.0	0	50
Pontypridd	PDO	22.4	67.3	10.2	0	49
	PP	22.9	58.3	8.3	10.4	48
Swansea	PDO	24.0	46.0	28.0	2.0	50
	PP	15.6	62.2	22.2	0	45
All areas	PDOs	18.5	51.7	25.2	4.7	298
	PP	14.5	61.1	20.8	3.5	283

The information is shown graphically in Figure 2A.

Figure 2A: Client's Age at Arrest in Investigation Cases (file data)



In our file data set relating to the two court samples, we recorded clients' dates of birth. These data show no significant differences in the age profiles of private practice and PDS clients, although private practice Crown Court clients were an average 18 months younger than PDS Crown Court clients.

The SPOCC data for the magistrates' court proceedings stage show a higher level of youth court work compared to the investigation stage sample, and again indicate that private practice has a greater proportion of youth court work compared to the PDS (Table 2.4c), in all offices except Middlesbrough (although this difference was not significant). The differences reached statistical significance in Birmingham and Liverpool and at the all areas level.

Table 2.4c: Youth Court Work in Magistrates' Court (SPOCC)

		Proportion of Youth Court Work %	Total
Birmingham*	PDO	7.3	548
	PP	12.4	91531
Cheltenham	PDO	8.6	454
	PP	10.0	14550
Liverpool*	PDO	7.6	1057
	PP	10.9	37610
Middlesbrough	PDO	13.8	509
	PP	12.2	15358
Pontypridd	PDO	11.4	307
	PP	13.7	5152
Swansea	PDO	11.9	413
	PP	14.2	6086
All areas*	PDOs	9.5	3288
	PP	12.0	170287

However, our file data show that the proportion of clients under 18 years in magistrates' courts was identical for the PDS and private practice. Figure 2B shows the age distribution of the magistrates' court sample, and Figure 2C for the Crown Court sample. The distributions were not significantly different. As would be expected, the proportion of clients under 18 years was higher in the magistrates' court sample (19% for both the PDS and private practice) than in the Crown Court sample (7% for the PDS and 6% for private practice).

Figure 2B: Age Distribution (Magistrates' Court file data)

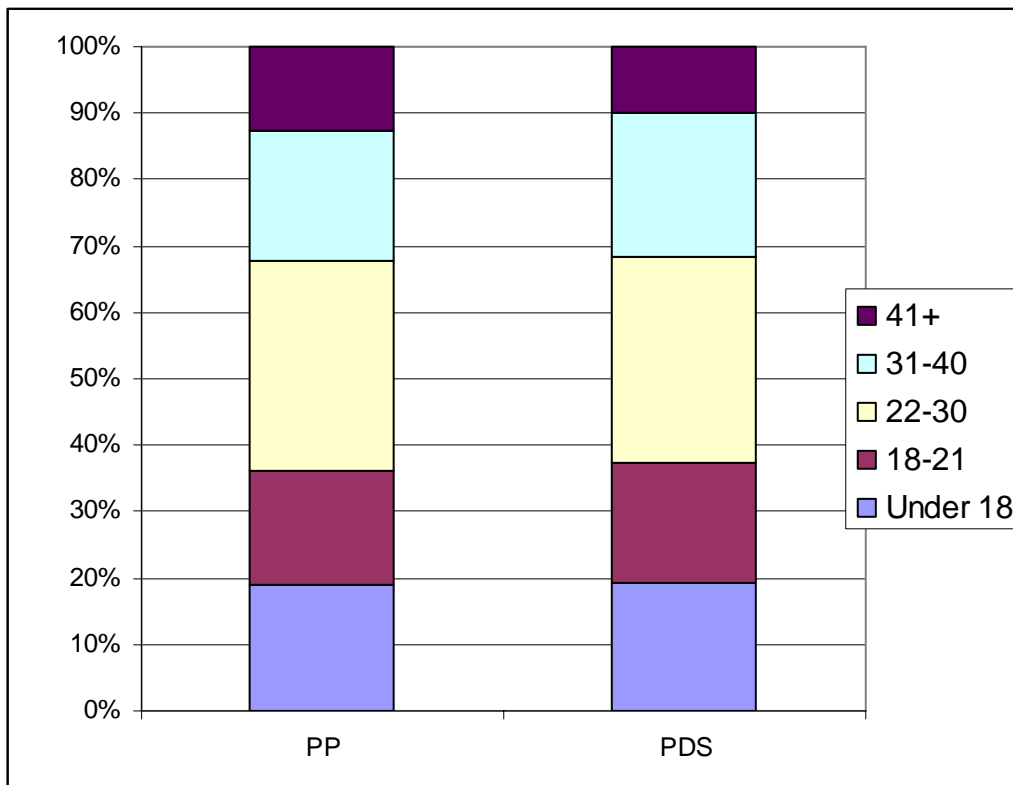
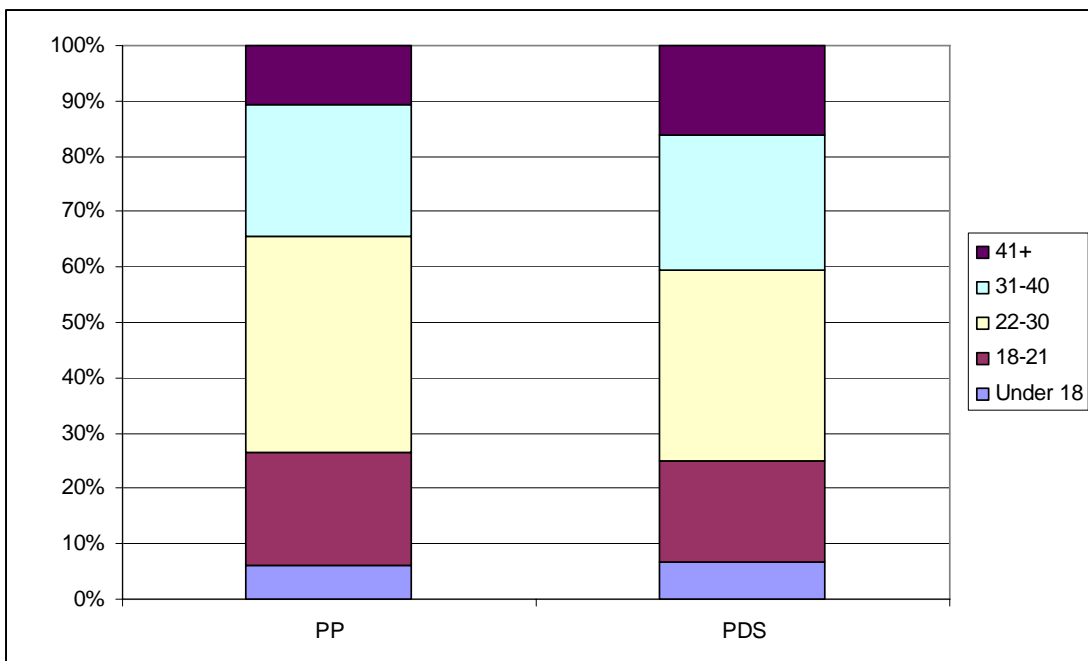


Figure 2C: Age Distribution (Crown Court file data)



Source of Clients

One factor likely to have influenced the types of clients and cases attracted to the PDS during its initial stages of operations was that it was more heavily dependent

on duty solicitor schemes as a source of clients. SPOCC data relating to investigation cases indicate that 38% of the PDS investigation cases over the course of our research began as duty solicitor cases. This compares with 25% of private practice cases in the same areas, a difference that is highly significant at the all areas level as well as five out of six of the areas looked at.

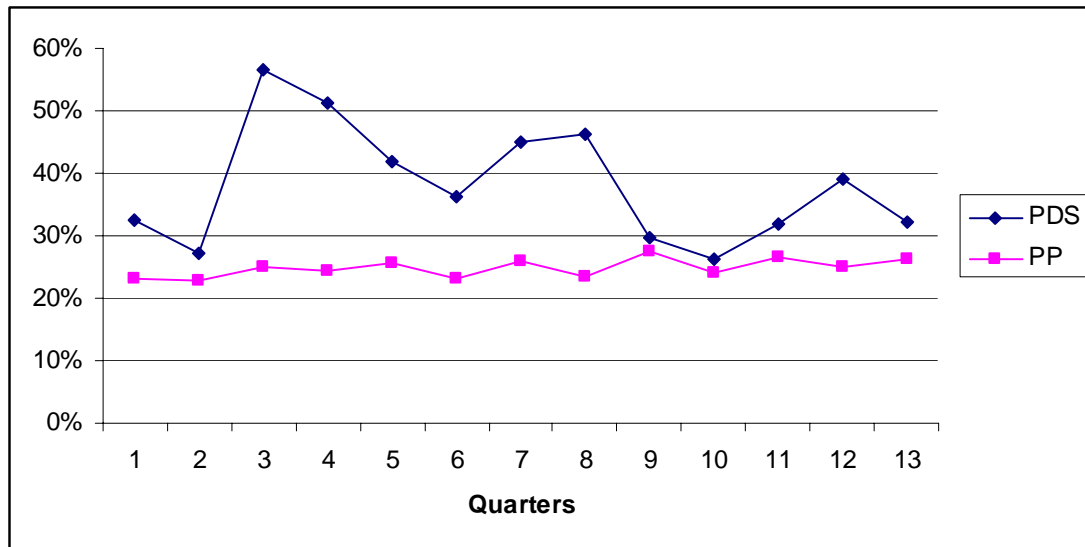
Table 2.5: Proportion of Investigation Cases that are Duty Solicitor Cases (SPOCC)

		Mean	N
Birmingham**	PDS	69%	800
	PP	27%	84860
Middlesbrough**	PDS	52%	922
	PP	19%	17386
Cheltenham**	PDS	19%	886
	PP	34%	21579
Liverpool**	PDS	30%	860
	PP	21%	35519
Pontypridd	PDS	26%	393
	PP	25%	4619
Swansea**	PDS	27%	923
	PP	11%	12954
All areas**	PDS	38%	4784
	PP	25%	176917

However, there was considerable variation between the PDOs in the extent to which they depended on duty solicitor work, with the greatest reliance being in Birmingham where seven out of ten investigation stage clients were recruited through duty solicitor schemes over the three years of our research, more than twice the proportion as for private practice in the area. Similarly, in Middlesbrough the PDO drew just over half of its investigation stage clients from duty solicitor work, compared with only a fifth for private practice. The Liverpool and Swansea PDOs both drew around three in ten of their investigation stage clients from duty solicitor work, compared with 21% and 11% respectively for private practice in each of these areas. The Pontypridd PDO, which opened later as a branch of the Swansea PDO, had a very similar proportion of its investigation stage cases originate in duty solicitor work as local private practice (26% and 25% respectively), a finding that no doubt reflects the fact that when it was opened it drew its staff and some established clients from the Swansea PDO. Finally, the Cheltenham PDO was the only one in the research that was less dependent on duty solicitor work as a source of clients than local private practice firms, a finding that may be explained by the earlier closure of a major local provider and the fact that a number of new private practice firms had also recently been established in the area.

In addition to these geographical variations, the dependence of the PDS on duty solicitor work as a source of clients declined over time, as shown in Figure 2D, although it clearly remained high in some areas.

Figure 2D: The Proportion of Investigation Cases that are Duty Solicitor Cases over time (SPOCC)



Criminal Histories of Clients

The antecedent profile of the client base of the two sectors is important in its own right, but is also relevant both to assessment of caseload seriousness and complexity, and to processes and outcomes. Most obviously, clients with previous convictions will, other things being equal, tend to receive higher sentences, particularly if the previous convictions are recent and/or similar to the offence(s) of which they are now accused. Antecedents may also affect processes, for example, whether an accused elects trial in the Crown Court in either-way cases. Here we examine the profiles of clients in terms of whether they have previous convictions or cautions (or reprimands or warnings). In respect of those that do have previous convictions or cautions, we look at the number of previous convictions, how recent were the convictions, whether they have previous convictions for offences that are similar to the current lead offence, and the history of custodial sentences.

(i) Previous convictions

Given that the PDOs started from scratch, were not in a privileged position compared to private practice in terms of client recruitment, and were more dependent on client recruitment through duty solicitor schemes, we hypothesised that their clients would have fewer and, perhaps, less serious previous convictions than private practice clients. Our information on previous convictions was usually derived from Police National Computer (PNC) printouts contained in the files we examined. This enabled us to collect detailed information on previous convictions, cautions and sentences. Where the file did not include a PNC printout we relied on instructions and other documents indicating the client's antecedent history, although usually these were less detailed.

The investigation stage files that we examined frequently did not have PNC printouts in them. PNC printouts were more likely to be found in files relating to court

proceedings, as is shown in Tables 2.6a and 2.6b. In relation to magistrates' court files, although private practice files had the PNC printout on it more often than the PDOs, there were no significant differences (Table 2.6a). At the Crown Court level, however, as can be seen in Table 2.6b, in Liverpool and Middlesbrough private practice had significantly more clients with PNC records on file than the PDOs. This was also the case at an all areas level.

Table 2.6a: PNC Printout on File? (Magistrates' Court file data)

		Yes %	No %	Missing %	N
Birmingham	PDO	59.6	38.5	1.9	52
	PP	71.4	28.6	0.0	49
Cheltenham	PDO	64.6	33.3	2.1	48
	PP	76.0	24.0	0.0	50
Liverpool	PDO	72.5	27.5	0.0	51
	PP	60.0	40.0	0.0	50
Middlesbrough	PDO	51.9	48.1	0.0	52
	PP	68.6	31.4	0.0	51
Pontypridd	PDO	61.2	38.8	0.0	49
	PP	70.0	30.0	0.0	50
Swansea	PDO	62.0	38.0	0.0	50
	PP	64.0	34.0	2.0	50
All areas	PDOs	61.9	37.4	0.7	302
	PP	68.3	31.3	0.3	300

Table 2.6b: PNC Printout on File? (Crown Court file data)

		Yes %	No %	Missing %	N
Birmingham	PDO	60.9	39.1	0.0	46
	PP	74.0	26.0	0.0	50
Cheltenham	PDO	50.0	39.1	10.9	46
	PP	65.5	34.5	0.0	29
Liverpool*	PDO	40.0	60.0	0.0	50
	PP	63.5	34.6	1.9	52
Middlesbrough**	PDO	48.9	48.9	2.1	47
	PP	79.6	20.4	0.0	49
Pontypridd	PDO	67.5	32.5	0.0	40
	PP	66.0	34.0	0.0	50
Swansea	PDO	74.3	22.9	2.9	35
	PP	84.0	16.0	0.0	50
All areas**	PDOs	55.7	41.7	2.7	264
	PP	72.5	27.1	0.4	280

In investigation stage cases, the frequent absence of the PNC printout meant that it was not always clear from the file whether or not the client had previous convictions, especially where the case did not proceed to charge. As a result, there were large proportions of cases for both the PDS (31%) and private practice (48%) where

information on antecedents was not obtained in the investigation stage sample (see Table 2.7).

Table 2.7a: Clients with Previous Convictions (Investigation Stage file data)

		Missing %	Previous Convictions %		Previous conviction (excluding files with no information) %	No
			Yes	No		
Birmingham	PDO	33.3	33.3	33.3	50	48
	PP	42.6	40.4	17	70	47
Cheltenham	PDO	39.2	47.1	13.7	77	51
	PP	82.2	13.3	4.4	75	45
Liverpool*	PDO	32	50	18	74	50
	PP	39.6	56.3	4.2	93	48
Middlesbrough	PDO	34	42	24	64	50
	PP	42	48	10	83	50
Pontypridd*	PDO	14.3	63.5	12.2	84	49
	PP	45.8	35.4	18.8	65	48
Swansea	PDO	30	44	26	63	50
	PP	35.6	53.3	11.1	83	45
All areas*	PDOs	30.5	48.3	21.1	70	298
	PP	47.7	41.3	11	79	283

More of the PDS files contained evidence regarding clients' previous convictions, and at the all areas level it was clear from the file that the client had no previous convictions in 21% of PDS and 11% of private practice files. This pattern was consistent across five of the six areas, the exception being Pontypridd. Both differences may have been due to the higher number of private practice files lacking information on previous convictions rather than real differences in previous convictions. However, excluding the files which did not contain relevant data, it appears that a greater proportion of private practice clients in the sample had previous convictions compared with the PDS.

In the court samples, files were more likely to contain information about previous convictions. As Tables 2.7b and 2.7c show, data on previous convictions was missing from 14.9% of PDS and 9% of private practice magistrates' court files, and from 8.7% of PDS and 10.7% of private practice Crown Court files. In the magistrates' court sample, in all areas except Swansea, and at the all areas level, private practice clients were more likely to have previous convictions than PDO clients. However, only in Liverpool, and at the all areas level, were the differences significant (Table 2.7b). In the Crown Court sample, in all offices except Pontypridd, and at the all areas level, private practice clients were also more likely to have previous convictions than PDO clients (Table 2.7c). The differences were significant in Birmingham, Liverpool and Middlesbrough and at the all areas level.

Table 2.7b: Previous Convictions (Magistrates' Court file data)

		Client had previous convictions		Missing	N
		Yes	No		
Birmingham	PDO	61.5	17.3	21.2	52
	PP	79.6	14.3	6.1	49
Cheltenham	PDO	70.8	12.5	16.7	48
	PP	82.0	12.0	6.0	50
Liverpool*	PDO	58.8	29.4	11.8	51
	PP	74.0	12.0	14.0	50
Middlesbrough	PDO	61.5	17.3	21.2	52
	PP	76.0	12.0	12.0	50
Pontypridd	PDO	69.4	18.4	12.2	49
	PP	84.0	12.0	4.0	50
Swansea	PDO	68.0	28.0	4.0	50
	PP	64.0	24.0	12.0	50
All areas*	PDOs	64.9	20.5	14.6	302
	PP	76.6	14.4	9.0	299

Table 2.7c: Previous Convictions (Crown Court file data)

		Client had previous convictions		Missing	N
		Y	N		
Birmingham**	PDO	47.8	43.5	8.7	46
	PP	70.0	18.0	12.0	50
Cheltenham	PDO	67.4	30.4	2.2	46
	PP	69.0	20.7	10.3	29
Liverpool*	PDO	56.0	26.0	18.0	50
	PP	76.9	9.6	13.5	52
Middlesbrough**	PDO	57.4	38.3	4.3	47
	PP	80.0	8.0	12.0	50
Pontypridd	PDO	70.0	17.5	12.5	40
	PP	68.0	20.0	12.0	50
Swansea	PDO	62.9	28.6	8.6	35
	PP	76.0	20.0	4.0	50
All areas**	PDOs	59.8	31.1	9.1	264
	PP	73.7	15.7	10.7	281

Thus the data collected would tend to indicate that, at the all areas level, clients of private practice were more likely to have previous convictions than PDO clients. This was also true for most individual PDOs. Although some PDOs did have a greater proportion of clients with previous convictions than private practice in one of the stages, none of them did so over all three stages.

(ii) Number of cautions, reprimands or warnings

Whether clients have previous convictions provides some indication of the respective seriousness of caseloads, but in order to obtain a more in-depth picture we collected data on whether clients had received cautions, reprimands or warnings in the past (and, if so, the number), and on the number and nature of previous convictions.

In the investigation stage sample, only a minority of files from either sector recorded that the client had received a previous caution (17% for PDOs and 10% for private practice). There were particularly high levels of previous cautions recorded for PDO clients in Cheltenham (24%), Pontypridd (27%) and Swansea (20%) and among private practice clients in Swansea (20%) and Middlesbrough (18%).

The position regarding magistrates' court clients is shown in Table 2.8a. There were no significant differences between clients of the PDS or private practice in terms of previous cautions etc., either at the all areas level or for individual offices, although in Cheltenham more PDO clients appear to have at least one caution compared to private practice clients in that area. Overall, about 50% of those clients in respect of which there were relevant data had one or more cautions, reprimands or warnings.

Table 2.8a: Number of Previous Cautions, Reprimands or Warnings (Magistrates' Court file data)

		0	1	2	3	4 or more	N	Missing N
		%	%	%	%	%		
Birmingham	PDO	65.6	18.8	12.5	0.0	3.1	32	20
	PP	62.9	25.7	8.6	2.9	0.0	35	14
Cheltenham	PDO	37.5	37.5	18.8	6.3	0.0	32	16
	PP	55.3	26.3	13.2	2.6	2.6	38	12
Liverpool	PDO	51.4	24.3	18.9	5.4	0.0	37	14
	PP	53.3	33.3	13.3	0.0	0.0	30	20
Middlesbrough	PDO	44.8	37.9	17.2	0.0	0.0	29	23
	PP	40.5	37.8	18.9	0.0	2.7	37	14
Pontypridd	PDO	43.3	30.0	20.0	3.3	3.3	30	19
	PP	57.1	25.7	11.4	2.9	2.9	35	15
Swansea	PDO	43.8	28.1	18.8	9.4	0.0	32	18
	PP	48.6	28.6	17.1	2.9	2.9	35	15
All areas	PDOs	47.9	29.2	17.7	4.2	1.0	192	110
	PP	52.9	29.5	13.8	1.9	1.9	210	90

Table 2.8b: Number of Previous Cautions (Crown Court file data)

		0 %	1 %	2 %	3 %	4 or more %	N	Missing N
Birmingham	PDO	82.8	10.3	3.4	3.4	0.0	29	17
	PP	75.7	18.9	2.7	0.0	2.7	37	13
Cheltenham	PDO	50.0	30.8	15.4	3.8	0.0	26	20
	PP	30.0	45.0	15.0	5.0	5.0	20	9
Liverpool	PDO	61.9	23.8	14.3	0.0	0.0	21	29
	PP	64.7	8.8	20.6	5.9	0.0	34	18
Middlesbrough	PDO	40.0	32.0	24.0	0.0	4.0	25	22
	PP	48.7	33.3	15.4	2.6	0.0	39	10
Pontypridd	PDO	70.4	14.8	14.8	0.0	0.0	27	13
	PP	70.6	17.6	8.8	0.0	2.9	34	16
Swansea	PDO	52.0	28.0	20.0	0.0	0.0	25	10
	PP	47.7	36.4	9.1	2.3	4.5	44	6
All areas	PDOs	60.1	22.9	15.0	1.3	0.7	153	111
	PP	57.7	26.0	11.5	2.4	2.4	208	72

Table 2.8b shows that there were also no significant differences relating to cautioning history between the PDS and private practice in the Crown Court sample. Interestingly, at the all areas level, compared with the magistrates' court sample, a larger proportion of both PDS and private practice clients had no previous cautions.

(iii) Number and sets of previous convictions

Where there was an indication of previous convictions on the file, we recorded the numbers (by individual convictions and by sets of convictions), the date of the most recent conviction prior to the offence(s) forming the subject matter of the file, and also the length of any previous custodial sentences received by the client. A person may be sentenced on one occasion for more than one offence, and thus 'sets of convictions' refers to the number of times that a person has appeared in court to be sentenced, and 'number of convictions' refers to the actual number of offences for which the person has been sentenced. For the sake of convenience, we first present figures for investigation stage files, and then the figures for the two court stages.

Table 2.9a shows the numbers of PDS and private practice clients in the investigation stage sample with previous convictions, divided between those with five or less convictions/sets of convictions and those with six or more.¹⁰⁶

¹⁰⁶ See above regarding the number of files where data on previous convictions was missing.

Table 2.9a: Clients with Previous Convictions by Number of Actual and Sets of Convictions (Investigation Stage file data)

		Convictions			Sets of Convictions		
		No. of clients with			No. of clients with		
		1-5(%)	6+ (%)	N	1-5(%)	6+ (%)	N
Birmingham	PDO	50.0	50.0	8	57.1	42.9	7
	PP	16.7	83.3	12	33.3	66.7	12
Cheltenham	PDO	25.0	75.0	20	35.0	65.0	20
	PP	0	100.0	4	0	100.0	5
Liverpool	PDO**	55.6	44.4	18	66.7	33.3	18
	PP	0	100.0	16	20.0	80.0	15
Middlesbrough	PDO	53.8	46.2	13	45.5	54.5	11
	PP	23.1	76.9	13	35.7	64.3	14
Pontypridd	PDO	44.4	55.6	27	48.1	51.9	27
	PP	50.0	50.0	10	50.0	50.0	10
Swansea	PDO	63.2	36.8	19	73.7	26.3	19
	PP	31.6	68.4	19	47.4	52.6	19
All areas	PDOs**	47.6	52.4	105	53.9	46.1	102
	PP	21.6	78.4	74	34.7	65.3	75

A clear pattern emerges distinguishing three of the areas (Middlesbrough, Liverpool and Swansea) from the others. In these three areas, although the overall number of investigation stage clients of PDOs and private practice with previous convictions did not vary a great deal, a greater proportion of those from private practice tended to have six or more sets of convictions and actual convictions than clients of PDOs. In other words, in these areas, although it was only a minority of investigation stage clients from either sector who were recorded as having previous convictions, private practice appears to have dealt with more clients with extensive criminal records than PDOs. In Cheltenham and Pontypridd the PDOs recorded more of their investigation stage clients as having previous convictions than their private practice counterparts. However, in Cheltenham a greater proportion of private practice clients with previous convictions had six or more sets of and actual convictions compared to PDO clients, although in Pontypridd the proportions were similar. Birmingham PDO had a smaller number of investigation stage clients with previous convictions than private practice in the area, and a smaller proportion of those with previous convictions had six or more sets of and actual convictions.

Table 2.9b shows, in respect of clients at the investigation stage who had previous custodial sentences, the proportions by reference to the length of those sentences. These data tend to indicate that, overall, clients of the PDOs had more shorter sentences and those of private practice more longer sentences, although none of the differences were significant.

Table 2.9b: Clients' Previous Sentences by Length of Sentence (Investigation Stage file data)

		Less than three months %	3+ - 12 months %	12+ months %	Total No of Sentences
Birmingham	PDO	63	25	13	40
	PP	29	48	22	63
Cheltenham	PDO	31	42	27	59
	PP	13	33	53	15
Liverpool	PDO	36	29	14	42
	PP	34	45	21	56
Middlesbrough	PDO	33	33	33	9
	PP	47	33	21	43
Pontypridd	PDO	33	39	27	51
	PP	17	67	17	17
Swansea	PDO	53	35	13	40
	PP	18	58	24	33
All areas	PDOs	43	36	21	227
	PP	30	46	24	231

As noted earlier, the data on previous convictions at the court stage are more robust. The following tables record information only from those in the two court samples who we ascertained as having previous convictions. As a result, the sample size differs from the overall sample size. Table 2.9c shows the position with regard to the magistrates' court sample, and Table 2.9d for the Crown Court sample.

Table 2.9c: Previous Convictions by Actual and Sets of Convictions (Magistrates' Court file data)

			Mean	Std. Deviation	N
Actual Previous Convictions	Birmingham	PDO	19.2	23.7	24
		PP	22.0	29.3	29
	Cheltenham*	PDO	32.9	39.9	27
		PP	14.9	20.3	36
	Liverpool	PDO	35.4	42.7	25
		PP	23.9	32.3	29
	Middlesbrough**	PDO	7.9	6.3	26
		PP	35.7	33.9	32
	Pontypridd	PDO	18.3	21.2	29
		PP	27.7	25.6	32
	Swansea	PDO	16.5	21.8	26
		PP	21.3	30.5	28
	All areas	PDOs	21.7	29.7	157
		PP	24.1	29.1	186
Sets of Previous Convictions	Birmingham	PDO	8.0	9.5	25
		PP	10.1	11.2	30
	Cheltenham*	PDO	16.3	17.1	27
		PP	8.2	10.3	36
	Liverpool	PDO	17.4	19.5	26
		PP	11.0	13.5	29
	Middlesbrough**	PDO	4.6	3.1	26
		PP	14.1	12.5	32
	Pontypridd	PDO	9.8	9.9	29
		PP	12.6	10.0	32
	Swansea	PDO	8.9	11.2	26
		PP	9.6	10.1	28
	All areas	PDOs	10.9	13.5	159
		PP	10.9	11.3	187

At the all areas level, there was little difference between the PDS and private practice, but this was not the case at the local level. In the case of four PDOs (Birmingham, Middlesbrough, Pontypridd and Swansea) their magistrates' court clients appeared to have fewer actual and fewer sets of previous convictions than clients of private practice in their areas. However, only in the case of Middlesbrough was this difference significant. In Liverpool and Cheltenham the opposite was the case, with PDO magistrates' court clients appearing to have more actual and sets of convictions than private practice in the area, although this difference was only significant in the case of Cheltenham.

Table 2.9d: Previous Convictions by Actual and Sets of Convictions (Crown Court file data)

		Mean	Std. Deviation	N	
Actual Previous Convictions	Birmingham	PDO	8.5	13.6	19
		PP	15.6	20.7	32
	Cheltenham	PDO	29.4	30.7	26
		PP	30.0	37.6	17
	Liverpool	PDO	13.3	16.2	18
		PP	21.2	27.3	34
	Middlesbrough	PDO	17.6	15.2	21
		PP	27.0	29.3	38
	Pontypridd	PDO	33.1	27.3	27
		PP	23.7	34.4	31
	Swansea	PDO	24.7	26.5	21
		PP	24.2	23.6	37
	All areas	PDOs	22.3	24.7	132
		PP	23.2	28.3	189
Sets of Previous Convictions	Birmingham	PDO	4.3	5.5	19
		PP	8.2	8.9	32
	Cheltenham	PDO	12.4	10.3	26
		PP	10.8	10.9	17
	Liverpool	PDO	6.7	7.8	18
		PP	10.1	11.0	34
	Middlesbrough	PDO	9.0	7.4	21
		PP	11.5	10.3	38
	Pontypridd	PDO	15.0	10.5	27
		PP	10.9	10.7	32
	Swansea	PDO	10.9	9.7	21
		PP	11.8	10.3	37
	All areas	PDOs	10.2	9.5	132
		PP	10.6	10.3	190

Although for most PDOs it was true to say that their Crown Court clients with previous convictions had fewer such convictions, when both sets and actual numbers of previous convictions were analysed, there were no significant differences between the PDS and private practice. Pontypridd PDO provided an exception to the general picture, with both more actual and more sets of convictions amongst their Crown Court clients compared to private practice in their area, but the differences were not significant. At the all areas level, there was little to distinguish between the PDS and private practice.

Whilst the numbers of previous convictions and sets of convictions give some indication of both the nature of the client base and caseload seriousness, other relevant factors include how recent a client's convictions are, whether they have convictions for offences that are similar to those of which the client is now accused, and whether clients have previously been given custodial sentences and, if so, the length of those custodial sentences. We now deal with those factors in the same order, starting with recent convictions.

(iv) Recent convictions

Tables 2.10a and 2.10b show information only for those clients who were recorded as having previous convictions, and refer to the number of sets of convictions within the two years up to the date on which instructions were first given in the current case. Thus they demonstrate the proportion of those clients who have previous convictions who have appeared in court for sentence during that period by reference to the number of occasions on which they have appeared in court for sentence.

In magistrates' courts sample, at the all areas level there is no significant difference between the PDS and private practice. In other words, their clients' recent criminal records were broadly the same. The only statistically significant differences are in Liverpool and Middlesbrough. Liverpool PDO had a greater proportion of magistrates' court clients who had previous convictions in the previous two years compared to private practice, and in particular more who had three or more sets of convictions during that period. In Middlesbrough, the position was reversed. With regard to Crown Court cases, although there was some evidence of a tendency for private practice clients to have a more serious recent conviction profile than PDS clients, both at the local level (with Pontypridd a notable exception) and at the all areas level, the differences were not significant.

Table 2.10a: Number of Sets of Convictions in Past Two Years for Clients with Previous Convictions (Magistrates' Court file data)

		0 %	1 %	2 %	3+ %	Missing %	N
Birmingham	PDO	3.1	28.1	9.4	18.8	40.6	32
	PP	5.1	33.3	5.1	20.5	35.9	39
Cheltenham	PDO	14.7	26.5	2.9	32.4	23.5	34
	PP	26.8	26.8	4.9	31.7	9.8	41
Liverpool*	PDO	0.0	13.3	6.7	50.0	30.0	30
	PP	0.0	24.3	10.8	21.6	43.2	37
Middlesbrough**	PDO	0.0	32.3	6.5	16.1	45.2	31
	PP	0.0	10.3	15.4	43.6	30.8	39
Pontypridd	PDO	8.8	26.5	11.8	38.2	14.7	34
	PP	19.0	19.0	7.1	31.0	23.8	42
Swansea	PDO	8.8	11.8	14.7	32.4	32.4	34
	PP	21.9	21.9	6.3	37.5	12.5	32
All areas	PDOs	6.2	23.1	8.7	31.3	30.8	195
	PP	12.2	22.6	8.3	30.9	26.1	230

Table 2.10b: Number of Sets of Convictions in Past Two Years for Clients with Previous Convictions (Crown Court file data)

		0 %	1 %	2 %	3+ %	Missing %	N
Birmingham	PDO	0.0	26.1	4.3	4.3	65.2	23
	PP	5.7	25.7	11.4	20.0	37.1	35
Cheltenham	PDO	6.5	32.3	16.1	19.4	25.8	31
	PP	30.0	25.0	20.0	10.0	15.0	20
Liverpool	PDO	0.0	17.9	17.9	7.1	57.1	28
	PP	0.0	22.5	20.0	15.0	42.5	40
Middlesbrough	PDO	0.0	22.2	14.8	7.4	55.6	27
	PP	0.0	23.1	20.5	30.8	25.6	39
Pontypridd	PDO	14.3	17.9	14.3	50.0	3.6	28
	PP	26.5	14.7	17.6	35.3	5.9	34
Swansea	PDO	27.3	22.7	4.5	36.4	9.1	22
	PP	18.4	18.4	15.8	42.1	5.3	38
All areas	PDOs	7.5	23.3	12.6	20.8	35.8	159
	PP	11.7	21.4	17.5	26.7	22.8	206

(v) *Similar previous convictions*

In addition to the issue of recent convictions, another factor that may, in particular, affect sentence is whether clients have previous convictions for offences that are similar to those for which they are currently being prosecuted. For this purpose, the most common offences were divided into categories (see Appendix 2.1) and a

conviction was treated as similar to the current offence if it came within the same category. No account is taken in these data of the period of time between the current offence and the most recent similar offence.

With regard to the magistrates' court sample, the position as between the PDS and private practice is very similar, with no statistically significant differences between them. In both cases, just over half of clients who had previous convictions had convictions that were similar to the offence(s) for which they were now being prosecuted (Table 2.11a). There is some evidence that private practice clients in Birmingham, Middlesbrough and Pontypridd were more likely to have similar previous convictions than their PDS counterparts, but the reverse was the case in Liverpool and Cheltenham.

In the Crown Court sample, the position at the all areas level again was similar, although interestingly it appears that clients were less likely to have similar previous convictions compared to the magistrates' court sample (Table 2.11b). The data tend to show that in four areas (Birmingham, Liverpool, Middlesbrough and Swansea) private practice had a greater proportion of clients with similar previous convictions than the PDOs. However, the picture was reversed in the case of Cheltenham and Pontypridd PDOs, although only in the case of the latter was the difference significant.

Table 2.11a: Do clients with previous convictions have similar previous convictions?
(Magistrates' Court file data)

		No %	Yes %	Missing %	N
Birmingham	PDO	37.5	46.9	15.6	32
	PP	25.6	56.4	17.9	39
Cheltenham	PDO	14.7	64.7	20.6	34
	PP	31.7	58.5	9.8	41
Liverpool	PDO	23.3	63.3	13.3	30
	PP	29.7	56.8	13.5	37
Middlesbrough	PDO	35.5	51.6	12.9	31
	PP	23.1	61.5	15.4	39
Pontypridd	PDO	35.3	50.0	14.7	34
	PP	21.4	57.1	21.4	42
Swansea	PDO	26.5	50.0	23.5	34
	PP	40.6	50.0	9.4	32
All areas	PDOs	28.7	54.4	16.9	195
	PP	28.3	57.0	14.8	230

Table 2.11b: Do clients with previous convictions have a similar previous conviction? (Crown Court file data)

		No %	Yes %	Missing %	N
Birmingham	PDO	52.2	34.8	13.0	23
	PP	45.7	45.7	8.6	35
Cheltenham	PDO	25.8	61.3	12.9	31
	PP	45.0	45.0	10.0	20
Liverpool	PDO	53.6	14.3	32.1	28
	PP	52.5	37.5	10.0	40
Middlesbrough	PDO	44.4	40.7	14.8	27
	PP	46.2	51.3	2.6	39
Pontypridd*	PDO	21.4	78.6	0.0	28
	PP	47.1	47.1	5.9	34
Swansea	PDO	50.0	45.5	4.5	22
	PP	31.6	65.8	2.6	38
All areas	PDOs	40.3	46.5	13.2	159
	PP	44.7	49.0	6.3	206

(vi) Previous custodial sentences

A further element of clients' previous criminal histories which is relevant to seriousness and complexity of caseloads is the extent to which clients have been sentenced to prison (or other forms of custody) before, and the length of such sentences. Relevant data on investigation stage clients has already been discussed above (see Table 2.9a). Here, in respect of the two court samples, we first look at the proportion of those clients having previous convictions who have previous custodial sentences (Tables 2.12a and 2.12b).

It was shown earlier that private practice clients were significantly more likely than PDS clients to have one or more previous convictions at the all areas level (see Tables 2.6a and 2.6b), although there were exceptions in the case of Swansea (magistrates' court) and Pontypridd (Crown Court). Looking only at those clients who had previous convictions, at the all areas level a greater proportion of private practice magistrates' court clients had at least one previous custodial sentence compared with the PDS, although in Birmingham and Cheltenham the position was reversed. In the case of Crown Court clients, at the all areas level private practice clients with previous convictions were again more likely to have one or more previous custodial sentences, although in Cheltenham and Pontypridd the position was reversed. However, none of the differences were significant.

Table 2.12a: Proportion of Clients with Previous Convictions with one or more Previous Custodial Sentences (Magistrates' Court file data)

		Proportion with one or more previous custodial sentences (%)	N
Birmingham	PDO	40.6	32
	PP	28.2	39
Cheltenham	PDO	32.4	34
	PP	26.8	41
Liverpool	PDO	40.0	30
	PP	43.2	37
Middlesbrough	PDO	21.9	32
	PP	42.1	38
Pontypridd	PDO	35.3	34
	PP	47.6	42
Swansea	PDO	29.4	34
	PP	31.3	32
All areas	PDOs	33.2	196
	PP	36.7	229

Table 2.12b: Proportion of Clients with Previous Convictions with one or more Previous Custodial Sentences (Crown Court file data)

		Proportion with one or more previous custodial sentences (%)	N
Birmingham	PDO	27.3	22
	PP	34.3	35
Cheltenham	PDO	45.2	31
	PP	40.0	20
Liverpool*	PDO	21.4	28
	PP	45.0	40
Middlesbrough	PDO	40.7	27
	PP	50.0	40
Pontypridd	PDO	67.9	28
	PP	50.0	34
Swansea	PDO	36.4	22
	PP	50.0	38
All areas	PDOs	40.5	158
	PP	45.4	207

Taking this analysis a stage further, we show in Tables 2.12c and 2.12d the mean (average) number of custodial sentences for clients who had at least one custodial sentence on their records. With regard to the magistrates' court sample, at the all areas level, the mean number of previous custodial sentences for such clients was identical for PDS and private practice. However, in four areas (Birmingham, Middlesbrough, Pontypridd and Swansea), private practice clients who had served previous custodial sentences had a higher mean number of such sentences than PDS clients, with the position reversed in the other two areas. However, only in the case of Middlesbrough was the difference significant.

In the Crown Court sample, at the all areas level the mean number of previous custodial sentences was again almost the same between the two sectors, and interestingly the mean number was less than for magistrates' court clients. In three regions (Birmingham, Liverpool and Middlesbrough) private practice clients who had served previous custodial sentences had a higher mean number of such sentences than PDS clients, with the position reversed in the other three areas. Again, only in Middlesbrough was the difference significant.

Table 2.12c: Mean Number of Custodial Sentences for Clients with Previous Sentences (Magistrates' Court file data)

		Mean	Std. Deviation	N
Birmingham	PDO	3.4	3.0	14
	PP	5.5	3.4	11
Cheltenham	PDO	6.9	8.0	11
	PP	2.4	2.1	12
Liverpool	PDO	6.4	4.7	12
	PP	4.3	4.7	16
Middlesbrough*	PDO	1.6	0.8	7
	PP	4.6	4.2	16
Pontypridd	PDO	3.7	2.7	13
	PP	4.4	3.9	20
Swansea	PDO	2.4	3.2	10
	PP	3.9	3.8	11
All areas	PDOs	4.2	4.6	67
	PP	4.2	3.8	86

Table 2.12d: Mean Number of Custodial Sentences for Clients with Previous Sentences (Crown Court file data)

		Mean	Std. Deviation	N
Birmingham	PDO	2.6	2.4	7
	PP	3.2	3.6	12
Cheltenham	PDO	4.4	3.5	14
	PP	3.4	2.6	8
Liverpool	PDO	4.0	3.3	6
	PP	4.3	7.5	18
Middlesbrough*	PDO	1.5	0.5	11
	PP	4.0	3.2	20
Pontypridd	PDO	3.6	2.6	19
	PP	3.3	3.1	17
Swansea	PDO	4.0	2.7	8
	PP	3.5	2.4	19
All areas	PDOs	3.4	2.7	65
	PP	3.6	4.2	94

We also examined, for clients who had previous custodial sentences and for whom a PNC printout was available, the frequency with which they had received sentences of particular length. When looking at the average number of previous custodial sentences per client, by reference to the length of such sentences, there is no statistically significant difference between the two sectors. At the local level, the only area where there was a significant difference between the PDS and private practice in respect of the magistrates' court sample was Birmingham, where private practice clients had on average significantly more 6-12 month prior sentences than PDS clients. In the Crown Court sample, the only significant difference was in Swansea where, on average, PDS clients had served more sentences of up to 3 months and of 12-24 months in length. At the all areas level the profile of the PDS and private practice were broadly similar (Tables 2.12e and 2.12f).

Table 2.12e: Average Number of Custodial Sentences by Length of Sentence for Clients with Previous Sentences (Magistrates' Court file data)

		Mean	Std. Deviation	N
Birmingham				
Up to 3 months	PDO	4.4	3.2	8
	PP	2.5	1.9	8
3-6 months*	PDO	2.0	1.4	9
	PP	4.8	2.7	8
6-12 months	PDO	2.0	1.2	7
	PP	2.0	1.2	4
12-24 months	PDO	1.1	0.4	7
	PP	1.0	0.0	6
24 months+	PDO	1.4	0.5	5
	PP	1.8	1.1	5
Cheltenham				
Up to 3 months	PDO	7.9	9.3	13
	PP	3.3	3.7	7
3-6 months	PDO	4.4	6.1	10
	PP	2.6	2.5	7
6-12 months	PDO	3.0	2.1	6
	PP	1.5	0.7	2
12-24 months	PDO	1.5	0.7	2
	PP	1.0	0.0	5
24 months+	PDO	2.2	1.6	5
	PP	1.0	0.0	3
Liverpool				
Up to 3 months	PDO	3.5	4.7	12
	PP	3.5	4.6	6
3-6 months	PDO	4.0	2.4	10
	PP	2.5	2.2	13
6-12 months	PDO	1.4	0.7	9
	PP	2.7	2.9	7
12-24 months	PDO	1.7	1.1	9
	PP	1.8	2.0	6
24 months+	PDO	1.1	0.3	8
	PP	1.4	0.9	5

		Mean	Std. Deviation	N
Middlesbrough				
	PP	4.1	2.9	18
3-6 months	PDO	1.2	0.4	6
	PP	3.2	2.6	13
6-12 months	PDO	1.0	N/A	1
	PP	1.5	0.7	10
12-24 months	PDO	1.0	N/A	1
	PP	2.3	1.2	6
24 months+	PDO	1.0	0.0	2
	PP	2.0	1.4	2
Pontypridd				
Up to 3 months	PDO	2.0	1.6	10
	PP	1.7	2.3	14
3-6 months	PDO	2.8	1.9	12
	PP	2.9	2.4	18
6-12 months	PDO	1.8	1.1	5
	PP	1.1	1.0	14
12-24 months	PDO	1.5	0.7	2
	PP	1.4	2.0	12
24 months+	PDO	1.0	0.0	3
	PP	0.3	0.5	6
Swansea				
Up to 3 months	PDO	1.8	0.5	4
	PP	3.3	4.3	9
3-6 months	PDO	3.5	3.8	4
	PP	3.8	3.1	5
6-12 months	PDO	1.0	0.0	8
	PP	1.6	1.6	7
12-24 months	PDO	1.0	N/A	1
	PP	1.8	1.5	4
24 months+	PDO	1.0	N/A	1
	PP	1.2	0.4	5
All areas				
Up to 3 months	PDO	4.1	5.7	52
	PP	3.3	3.2	62
3-6 months	PDO	3.0	3.3	51
	PP	3.1	2.5	64
6-12 months	PDO	1.8	1.3	36
	PP	1.6	1.5	44
12-24 months	PDO	1.4	0.8	22
	PP	1.5	1.5	39
24 months+	PDO	1.4	0.9	24
	PP	1.2	0.9	26

Table 2.12f: Average Number of Custodial Sentences by Length of Sentence for Clients with Previous Convictions (Crown Court file data)

		Mean	Std. Deviation	N
Birmingham				
Up to 3 months	PDO	2.5	0.7	2
	PP	2.6	2.1	11
3-6 months	PDO	3.0	2.7	3
	PP	2.6	2.7	10
6-12 months	PDO	1.0	N/A	1
	PP	1.3	0.6	3
12-24 months	PDO	1.5	0.7	2
	PP	1.7	1.2	3
24 months+	PDO	1.3	0.5	4
	PP	1.5	0.7	2
Cheltenham				
Up to 3 months	PDO	1.9	1.2	8
	PP	1.7	1.5	6
3-6 months	PDO	2.8	1.4	10
	PP	2.4	1.5	5
6-12 months	PDO	2.9	2.4	7
	PP	1.5	1.0	4
12-24 months	PDO	1.0	0.0	5
	PP	1.2	0.4	5
24 months+	PDO	1.1	0.4	7
	PP	1.5	0.7	2
Liverpool				
Up to 3 months	PDO	4.5	2.6	4
	PP	5.6	8.9	13
3-6 months	PDO	2.3	0.6	3
	PP	3.8	7.8	11
6-12 months	PDO	2.3	1.9	4
	PP	1.9	1.5	8
12-24 months	PDO	2.0	0.0	2
	PP	1.6	1.1	7
24 months+	PDO	1.3	0.6	3
	PP	1.3	1.0	7

		Mean	Std. Deviation	N
Middlesbrough				
Up to 3 months	PDO	2.7	1.5	7
	PP	3.1	2.5	11
3-6 months	PDO	1.3	0.5	7
	PP	3.0	2.3	13
6-12 months	PDO	1.0	0.0	2
	PP	1.8	1.3	10
12-24 months	PDO	1.0	N/A	1
	PP	1.3	0.5	8
24 months+	PDO	1.0	0.0	5
	PP	1.5	0.8	8
Pontypridd				
Up to 3 months	PDO	3.2	2.8	13
	PP	1.6	1.1	12
3-6 months	PDO	2.1	1.3	12
	PP	1.9	1.9	14
6-12 months	PDO	1.6	1.1	16
	PP	1.4	1.2	9
12-24 months	PDO	1.3	0.5	7
	PP	0.9	0.6	10
24 months+	PDO	1.8	1.3	5
	PP	0.9	0.8	9
Swansea				
Up to 3 months*	PDO	4.8	4.1	5
	PP	1.7	1.3	11
3-6 months	PDO	3.5	2.2	6
	PP	2.4	1.5	15
6-12 months	PDO	1.5	1.0	4
	PP	1.1	0.9	9
12-24 months*	PDO	1.7	0.6	3
	PP	1.0	0.0	10
24 months+	PDO	N/A	N/A	0
	PP	1.4	1.0	7
All areas				
Up to 3 months	PDO	3.1	2.5	39
	PP	2.9	4.5	64
3-6 months	PDO	2.4	1.5	41
	PP	2.7	3.6	68
6-12 months	PDO	1.9	1.5	34
	PP	1.5	1.2	43
12-24 months	PDO	1.4	0.5	20
	PP	1.2	0.7	43
24 months+	PDO	1.3	0.7	24
	PP	1.3	0.8	35

Offence Characteristics and Profiles

In addition to client characteristics, a second major dimension of caseloads is the nature of the offences faced by clients, and the seriousness and complexity of those offences. We examine this in a number of ways. First, we look at how cases commenced in terms of whether this was by way of charge, summons or warrant, and in the case of the former, whether the client was produced in court in custody or appeared on bail. Generally, although not always, cases commenced by way of summons are, in the view of the police at least, less serious than those commenced by way of charge. In any event, only a minority of cases (other than traffic offences) are commenced by summons. Where a person is charged with a criminal offence, the police must decide whether to grant bail or keep the person in custody pending their first court appearance. Although offence seriousness is not, per se, a ground for refusing bail, it is relevant to a number of the conditions for withholding bail set out in the relevant legislation.¹⁰⁷ In practice, the decision whether to grant bail is likely to be based on a combination of offence and (suspected) offender characteristics.

Second, we look at the proportion of advice and assistance only claims, which gives some indication of relative caseload seriousness in that free-standing advice and assistance claims are likely to relate to less serious offences where either a client has not been charged with a criminal offence, or the charge or the circumstances would not warrant the grant of a representation order.

Third, we look at the number of clients included on a claim, first in respect of investigation claims and then in relation to magistrates' court proceedings claims. As explained later, this may give some indication of relative case seriousness and complexity, although there are some difficulties in interpreting the data given possible differences in claiming behaviour between the PDS and private practice.

Fourth, in respect of cases in our Crown Court sample, we examine the way in which they reached the Crown Court. Broadly, cases can reach the Crown Court in one of three ways: the offence is indictable-only, a magistrates' court decides that an either-way offence is not suitable for summary trial, or (where the magistrates' court decides that an either-way offence is suitable for summary trial) a defendant elects trial on indictment. Where a defendant faces an either-way offence, direction or election is only possible where, under the plea before venue procedure, the accused either indicates that they intend to plead not guilty, or refuse or fail to indicate their plea. Where an accused indicates, in respect of an either-way offence, that they intend to plead guilty, they are treated as having pleaded guilty. In this case, the magistrates' court can commit the defendant to the Crown Court for sentence if they conclude that their powers of sentencing are insufficient. Cases committed for sentence are not included in our Crown Court sample.

Finally in this section, we examine the nature of the offences of which clients are suspected (investigation stage) or with which they have been charged or summoned (proceedings cases). As explained further below, since many clients are suspected of, or charged with, more than one offence, our analysis is based upon the most serious, or lead, offence. However, a perennial problem of classifying offences by reference to

¹⁰⁷ The Police and Criminal Evidence Act 1984 s38.

seriousness is that the offence suspected or charged does not necessarily give an accurate indication of offence seriousness. For example, whilst murder is self-evidently serious, an offence such as theft may cover a wide range of seriousness. Furthermore, the fact that an offence is serious does not mean that it is complex. Conversely, complexity may arise from a combination of charges which are not, taken alone, particularly serious, or from the fact that a number of people are suspected of or charged with the same offence or combination of offences. For these reasons, the fourth part of our analysis of offence characteristics involves analysis of the number of defendants per claim and, as a separate exercise, assigning measures of seriousness and complexity to cases.

(i) How the case started

As noted above, one indicator of seriousness is how the case started. Data were available on this from the sample of proceedings files. More serious cases would be more likely to start with the client produced in court from police custody following charge (rather than being bailed, or summoned), either because the offence itself is more serious or because the offender is believed by the police to be more likely to abscond or repeat offend (or interfere with the administration of justice). Persons arrested on warrant can be discounted for these purposes since the fact that a person is arrested on warrant bears no relationship to seriousness of the offence. The results for the magistrates' court sample are shown in Table 2.13a, and those for the Crown Court sample are shown in Table 2.13b.

Table 2.13a: How the Case Started (Magistrates' Court file data)

		Charge: Custody %	Charge: Bail %	Summons %	Warrant %	Not Clear %	N
Birmingham	PDO	17.3	59.6	9.6	3.8	9.6	52
	PP	24.5	65.3	4.1	6.1	0	49
Cheltenham	PDO	6.3	72.9	10.4	2.1	8.3	48
	PP	24.5	65.3	4.1	6.1	0	49
Liverpool	PDO	25.5	64.7	2.0	2.0	5.9	51
	PP	22.0	52.0	18.0	2.0	6.0	50
Middlesbrough*	PDO	3.8	80.8	5.8	3.8	5.8	52
	PP	23.5	54.9	5.9	2.0	13.7	51
Pontypridd	PDO	6.1	79.6	12.2	2.0	0	49
	PP	8.0	68.0	16.0	2.0	6.0	50
Swansea	PDO	10.0	72.0	10.0	2.0	6.0	50
	PP	20.0	66.0	6.0	2.0	6.0	50
All areas*	PDOs	11.6	71.5	8.3	2.6	6.0	302
	PP	20.0	61.3	9.7	2.3	6.7	300

Table 2.13b: How the Case Started (Crown Court file data)

		Charge: Custody %	Charge:Bail %	Not Clear %	Other: Breach of DTTO %	Summons %	Warrant %	N
Birmingham	PDO	32.6	58.7	8.7	0.0	0.0	0.0	46
	PP	32.0	60.0	8.0	0.0	0.0	0.0	50
Cheltenham	PDO	43.5	43.5	6.5	2.2	2.2	2.2	46
	PP	34.5	58.6	3.4	0.0	3.4	0.0	29
Liverpool	PDO	34.0	48.0	8.0	0.0	8.0	2.0	50
	PP	28.8	53.8	11.5	0.0	3.8	1.9	52
Middlesbrough	PDO	25.5	63.8	8.5	2.1	0.0	0.0	47
	PP	24.5	63.3	12.2	0.0	0.0	0.0	49
Pontypridd	PDO	40.0	52.5	5.0	0.0	2.5	0.0	40
	PP	36.0	50.0	4.0	0.0	6.0	4.0	50
Swansea*	PDO	25.7	42.9	25.7	0.0	5.7	0.0	35
	PP	44.0	48.0	4.0	0.0	4.0	0.0	50
All areas	PDOs	33.7	51.9	9.8	0.8	3.0	0.8	264
	PP	33.2	55.4	7.5	0.0	2.9	1.1	280

In the magistrates' court sample, other than in Liverpool, private practice had more clients who were produced from custody at the first court appearance than the PDS. The differences were statistically significant at an all areas level and in Middlesbrough. However, in the Crown Court sample the position was reversed at the all areas level and in five of the six areas, but the differences were smaller and not significant. The only significant difference was in Swansea where the PDO had significantly fewer clients who were produced from custody at their first court appearance. Unsurprisingly, a greater proportion of clients whose cases were ultimately dealt with in the Crown Court were denied bail by the police following charge compared to those whose cases were dealt with in magistrates' courts.

(ii) *Advice and assistance cases*

One indication of the nature of caseloads is the extent to which claims are in respect of free-standing legal advice and assistance (i.e. without the solicitor providing representation in court). Prior to 17 May 2004, the General Criminal Contract provided that where legal advice and assistance was provided to a client in respect of whom a representation order was also granted, only one claim could be made for payment. Thus a claim in respect of legal advice and assistance would normally only be made where a client was not charged or summoned for a criminal offence, or where they were charged or summoned but a representation order was not applied for or granted. The latter would most frequently occur where the offence charged was such that the criteria for the grant of a representation order were not met, broadly because it was not sufficiently serious. Thus a high rate of free-standing advice and assistance claims could indicate a high number of relatively minor cases.

Table 2.14, which is based on SPOCC data, demonstrates that PDOs tended to have a higher proportion of free-standing advice and assistance claims as a proportion of all their proceedings work than private practice in their comparator regions. In some

areas the difference, although statistically significant, were fairly minor (Cheltenham, Middlesbrough and Birmingham PDOs had 1-3% more free standing advice and assistance cases as a proportion of their proceedings cases). The differences, however, are larger in Liverpool (7%), Pontypridd (9%) and Swansea (16%).

Table 2.14: Proportion of Free-standing Advice and Assistance within Proceedings Claims (SPOCC)

		Other Claim %	Advice and Assist Only %	Total N
Birmingham*	PDO	92.3	7.7	594
	PP	95.7	4.3	95623
Cheltenham*	PDO	94.0	6.0	483
	PP	95.5	4.5	15228
Liverpool*	PDO	86.8	13.2	1218
	PP	93.3	6.7	40308
Middlesbrough*	PDO	89.1	10.9	571
	PP	91.0	9.0	16880
Pontypridd*	PDO	84.3	15.7	364
	PP	93.3	6.7	5523
Swansea*	PDO	67.3	32.7	614
	PP	83.4	16.6	7298
All areas*	PDOs	85.5	14.5	3844
	PP	94.2	5.8	180860

There are a number of potential interpretations of the relatively high levels of free-standing advice and assistance claims. The PDOs may have taken on more free-standing advice and assistance work in response to having insufficient work and/or as a method of recruiting clients who may return to the PDO in the future. It may also reflect a difficulty in recruiting clients facing more serious or complex allegations. On the other hand, it could indicate that PDOs were providing a fuller service to a wider range of clients than private practice, for example, by carrying out free-standing advice work where private practice firms would have regarded it as uneconomic.

(iii) The number of defendants indicated on the claim

Although a claim in respect of an investigations case or a proceedings case normally relates to only one client, in some circumstances solicitors are required to submit one claim in respect of more than one client. The General Criminal Contract defines a case as one that relates to all clients represented in respect of one offence, or more than one offence, where one or more charges are preferred at the same time, or where the offences are allegedly founded on the same facts or form part of a series of offences. Generally each claim will equate with one case, so that one claim may relate to a number of clients. Thus here we examine the number of clients per claim, based on SPOCC data. It is important to note, when interpreting these data, that it may be affected by the fact that the PDS were filing claims (which form the basis of the SPOCC data) primarily for the purposes of this research, whereas private practice may

have a financial interest in splitting cases, where this is possible, in order to maximise income.¹⁰⁸

Table 2.15a compares the number of defendants included on PDS and private practice investigation claims. Birmingham, Pontypridd and Swansea PDOs have significantly greater proportions of claims in which they acted for more than one client than their private practice counterparts. This is also the case at the all areas level. Middlesbrough private practice acted for a single client in significantly fewer investigation cases. In Liverpool, the picture is similar but the difference does not reach statistical significance. Across all regions the PDS had just over 1% more claims with multiple clients, a difference that is significant.

Table 2.15a: Number of Clients on Investigation Claims (SPOCC)

		1 %	2 %	3 %	4 + %	N
Birmingham**	PDO	90.8	5.8	1.7	0.7	770
	PP	95.5	2.9	0.8	0.5	81893
Cheltenham	PDO	93.9	4.5	1.3	0.2	871
	PP	95.0	3.1	1.2	0.5	21429
Liverpool	PDO	96.9	1.7	0.5	0.5	842
	PP	95.8	3.1	0.5	0.4	34096
Middlesbrough**	PDO	97.7	1.8	0.1	0.3	883
	PP	91.0	6.9	0.9	1.0	17047
Pontypridd**	PDO	85.3	8.7	4.2	1.4	381
	PP	95.9	2.9	0.7	0.4	4412
Swansea**	PDO	93.0	4.4	1.5	1.1	752
	PP	97.6	1.7	0.4	0.2	11099
All areas**	PDOs	93.8	4.0	1.2	0.5	4499
	PP	95.2	3.3	0.8	0.3	169976

Table 2.15b records the number of clients recorded in proceedings claims (ie. claims relating to magistrates' court proceedings). Birmingham, Pontypridd and Cheltenham PDOs had significantly more cases with multiple clients than their private practice counterparts. Middlesbrough PDO had fewer, but the difference was not significant. As at the investigation stage, across all areas the PDS had just over 1% more claims with multiple defendants, a difference that is significant.

¹⁰⁸ This is more likely to happen in proceedings claims than in investigation claims.

Table 2.15b: Number of Clients on Proceedings Claims (SPOCC)

		1 %	2 %	3 %	4 + %	N
Birmingham**	PDO	90.9	5.7	2.4	0.9	548
	PP	96.5	2.7	0.4	0.2	91531
Middlesbrough	PDO	98	1.6	0.2	0.2	509
	PP	97.1	2.4	0.3	0.1	15358
Cheltenham**	PDO	95.6	3.3	0.2	0.6	454
	PP	98	1.6	0.2	0.1	14550
Liverpool	PDO	98	1.3	0.4	0	1057
	PP	97.1	2.3	0.3	0.2	38667
Pontypridd*	PDO	93.2	4.2	1.6	1.0	307
	PP	95.7	3.2	0.7	0.2	5152
Swansea	PDO	95.2	3.9	0.2	0.2	413
	PP	96.7	2.5	0.4	0.3	6086
All areas**	PDOs	95.7	3.0	0.8	0.3	3288
	PP	96.8	2.5	0.4	0.2	170287

(iv) How cases reached the Crown Court

Our Crown Court file sample was drawn by sampling a proportion of cases from SPOCC where the cases had been committed for trial to the Crown Court and, in addition, sampling a smaller number of indictable-only cases that had been dealt with in the main courts in our pilot areas. The nature of the sample by reference to mode of trial status and, in the case of either-way offences, whether the case reached the Crown Court as a result of court direction or defendant election, is shown in Table 2.16a. As a result of the sampling method, which is a consequence of the fact that indictable-only cases do not form part of the SPOCC database, the data in Table 2.16a cannot be interpreted as representative of the respective Crown Court case loads of the PDS and private practice.

However, Table 2.16b, which concerns only either-way cases in our sample, does give some indication of whether such cases reached the Crown Court as a result of court direction or defendant election. It has been suggested that private practice defence lawyers might be more inclined to advise clients to elect trial in the Crown Court on the basis that, all things being equal, they would be likely to receive a higher fee as a result.

Table 2.16a: Crown Court Sample by How Case reached the Crown Court

		Either Way			IndictableOnly %	Other %	N
		Not known	Directed	Elected			
		%	%	%			
Birmingham	PDO	2.2	47.8	0.0	50.0	0.0	46
	PP	4.0	56.0	4.0	36.0	0.0	50
Cheltenham	PDO	10.9	23.9	6.5	56.5	2.2	46
	PP	3.4	31.0	13.8	51.7	0.0	29
Liverpool	PDO	8.0	38.0	12.0	38.0	4.0	50
	PP	13.5	40.4	21.2	25.0	0.0	52
M/brough	PDO	10.6	57.4	4.3	25.5	2.1	47
	PP	18.4	55.1	6.1	20.4	0.0	49
Pontypridd	PDO	5.0	30.0	7.5	55.0	2.5	40
	PP	10.0	38.0	12.0	40.0	0.0	50
Swansea*	PDO	5.7	42.9	0.0	51.4	0.0	35
	PP	2.0	68.0	6.0	22.0	2.0	50
All areas**	PDOs	7.2	40.2	5.3	45.5	1.9	264
	PP	8.9	49.3	10.4	31.1	0.4	280

Table 2.16b: Either way Cases - Direction or election (Crown Court file data)?

		Directed %	Elected %	N
Birmingham	PDO	100.0	0.0	22
	PP	93.3	6.7	30
Cheltenham	PDO	78.6	21.4	14
	PP	69.2	30.8	13
Liverpool	PDO	76.0	24.0	25
	PP	65.6	34.4	32
Middlesbrough	PDO	93.1	6.9	29
	PP	90.0	10.0	30
Pontypridd	PDO	80.0	20.0	15
	PP	76.0	24.0	25
Swansea	PDO	100.0	0.0	15
	PP	91.9	8.1	37
All areas	PDOs	88.3	11.7	120
	PP	82.6	17.4	167

The first thing to note is that the proportion of cases where the court directs trial on indictment is high for both the PDS and private practice. At the all areas level, between eighty and ninety percent of either-way cases dealt with in the Crown Court resulted from a decision by magistrates that the case was not suitable for summary trial, suggesting that it is the courts, and not defence lawyers, who are largely

responsible for either-way cases going to the Crown Court.¹⁰⁹ There is, however, some regional variation. In Birmingham, Middlesbrough and Swansea more than ninety per cent of PDS and private practice either-way cases dealt with in the Crown Court had been directed there by magistrates, whereas in Cheltenham, Liverpool and Pontypridd it was eighty per cent or less.

The second thing to note is that in each area private practice had a greater proportion of clients who elected Crown Court trial than the PDS. Whilst it is tempting to infer that private practice are thus more likely to encourage clients to elect Crown Court trial, the differences were not statistically significant at individual office nor at the all area level. Furthermore, the dynamics of the decision-making process are such that it is not possible from these data to determine the relative influence of the various factors, including representations from defence lawyers (either to the court or their clients) or the nature and seriousness of the alleged offences, on magistrates' decisions to direct trial on indictment or clients' decisions to elect Crown Court trial.

(v) Offence profiles

(a) SPOCC data

In this section we look at the offence profiles of PDS and private practice clients in a number of different ways. First, we look at SPOCC data for investigation stage and magistrates' court cases. This gives a broad indication of the respective caseloads of the PDS and private practice by reference to the offence categories reported by solicitors to the LSC.

Table 2.17a shows the offence profiles as indicated by SPOCC for investigation claims. Approximately four out of ten cases dealt with by both the PDS and private practice were offences against the person or theft. Although for four of the six areas under consideration (excepting Cheltenham and Pontypridd) the difference in the distribution of offence type as between the PDS and private practice is statistically significant, there are few trends which point to an obvious difference between PDS and private practice caseloads. Proportions of burglary and theft appeared generally lower in PDS caseloads by several percentage points (with the exception of Pontypridd) and likewise for robbery (other than in Pontypridd and Cheltenham). All PDOs had a slightly higher proportion of criminal damage cases and most had a slightly higher proportion of sex offences and fraud in their caseloads. Private practice was also more inclined than the PDS (other than in Birmingham, where the proportion was equal) to code their cases as 'other'.

¹⁰⁹ It should be noted that the magistrates' decision on direction may, of course, be affected by representations made by defence lawyers as well as by prosecutors.

Table 2.17a: Most Serious Offence (Investigation Cases, SPOCC)

		Offences Against the Person	Homicide and related grave offences	Sexual offences and offences against children	Robbery	Burglary	Criminal Damage	Theft	Fraud, forgery and other offences of	Public Order and offences against justice	Drugs	Driving offences	Other offences	Number
		%	%	%	%	%	%	%	%	%	%	%	%	
B/ham**	PDO	21.6	0.9	4.2	4.4	7.4	10.3	19.6	4.3	9.5	4.4	6.6	6.9	770
	PP	23.3	1.0	3.6	6.7	8.4	5.6	21.1	3.5	7.8	5.5	6.6	6.9	81893
Cheltenham	PDO	20.2	1.4	2.3	2.6	10.7	8.5	23.9	2.2	7.0	5.6	7.8	7.8	871
	PP	17.5	0.9	3.1	2.7	8.8	7.8	25.7	3.1	7.0	6.0	7.6	9.8	21429
Liverpool**	PDO	17.1	1.0	3.6	3.9	5.8	5.5	22.7	6.5	8.2	7.8	9.9	8.1	842
	PP	16.6	1.3	2.5	4.3	8.8	4.9	23.3	3.4	8.3	7.8	9.7	9.1	34096
Middlesbrough**	PDO	16.9	0.6	6.9	1.9	9.2	8.6	19.7	2.6	14.6	7.0	5.1	6.9	883
	PP	10.8	0.4	2.0	3.5	13.4	5.5	25.6	1.6	9.3	6.7	5.5	15.9	17047
Pontypridd**	PDO	20.5	0.5	5.5	2.1	11.5	11.0	21.0	1.6	6.8	8.9	6.3	4.2	381
	PP	23.8	0.8	5.5	1.3	9.1	9.1	17.8	3.0	6.6	9.2	8.5	5.3	4412
Swansea	PDO	22.6	1.1	4.0	1.2	5.2	10.4	26.7	3.5	8.4	8.5	8.5	0.0	752
	PP	17.6	0.6	2.6	1.8	8.6	7.4	29.5	2.3	12.6	8.1	7.0	2.1	11099
All areas**	PDOs	19.6	0.9	4.3	2.8	8.1	8.8	22.3	3.6	9.4	6.9	7.4	5.9	4499
	PP	19.6	1.0	3.1	5.0	9.1	5.9	23.0	3.2	8.2	6.4	7.3	8.2	169976

Table 2.17b: Most Serious Charge (Magistrates' Court Cases, SPOCC)

		Offences against the person	Homicide and related grave offences	Sexual offences and offences against children	Robbery	Burglary	Criminal Damage	Theft	Fraud and forgery and other offences of dishonesty	Public Order offences and offences against public justice	Supply, production and possession of drugs	Driving offences	Other offences	Number
		%	%	%	%	%	%	%	%	%	%	%	%	
B/ham*	PDO	26.1	0.2	2.0	1.1	5.5	5.8	18.1	4.7	11.1	4.4	12.8	8.2	548
	PP	21.8	0.2	1.5	2.1	6.6	5.2	20.6	4.1	8.8	5.2	15.1	8.9	91531
Cheltenham**	PDO	14.8	0.2	0.9	0.7	5.3	6.6	24.7	3.1	11.5	3.7	18.1	10.6	454
	PP	19.5	0.2	1.3	0.6	6.4	5.2	24.9	4.2	6.7	4.1	15.3	11.6	14550
Liverpool**	PDO	11.7	0.2	1.6	1.2	4.2	4.5	26.2	3.7	11.9	6.5	17.8	10.4	1057
	PP	15.4	0.2	0.9	0.7	5.8	4.5	26.1	4.6	9.8	6.0	15.3	10.7	37610
Middlesbrough**	PDO	15.3	0	2.6	0.6	6.1	6.3	21.4	3.3	15.5	4.9	17.3	6.7	509
	PP	10.0	0.1	1.0	0.7	8.9	6.0	29.2	2.5	8.1	6.6	15.6	11.3	15358
Pontypridd*	PDO	16.9	0	2.0	0.7	6.8	5.9	16.9	4.6	9.8	6.2	16.6	13.7	307
	PP	21.4	0.1	1.7	0.1	6.6	7.5	13.6	3.6	9.9	6.7	19.9	8.8	5152
Swansea**	PDO	15.3	0	1.9	1.5	3.6	6.3	19.4	3.9	12.8	4.1	20.6	10.7	413
	PP	12.5	0.2	1.2	0.3	5.4	5.4	21.1	4.0	15.1	8.1	19.9	6.9	6086
All areas**	PDOs	16.0	0.1	1.8	1.0	5.0	5.7	22.2	3.8	12.2	5.2	17.2	9.8	3288
	PP	18.8	0.2	1.3	1.4	6.5	5.2	22.8	4.1	9.0	5.5	15.5	9.7	170287

Table 2.17b shows the SPOCC data offence profiles for magistrates' court proceedings cases. As with investigation cases, offences against the person and theft constituted approximately forty per cent of the caseloads of both the PDS and private practice, but unlike investigation stage cases at least one in eight cases for both the PDS and private practice concerned a driving offence. Both also had proportionately more public order offences in their caseloads than at the investigation stage.

Each PDO had a significantly different distribution of cases compared with private practice within its comparator region. The SPOCC data show that, compared to private practice in their areas, PDOs dealt with relatively more sexual offences and offences against children (except Cheltenham) and more public order offences (except Pontypridd and Swansea). On the other hand, PDOs had relatively fewer cases involving burglary (except Pontypridd), theft (except Liverpool and Pontypridd), and drugs (except Liverpool), and had fewer in the 'other' category (other than in Pontypridd and Swansea). However, at the all areas level the differences between the caseloads of the PDS and private practice, although statistically significant, were relatively small.

(b) File data

In view of the limitations of the SPOCC data, including the fact that it does not include cases dealt with in the Crown Court, we collected our own data on the lead charge from the files that we examined. 'Lead charge' equates to 'the most serious offence'. In our file sample the lead charge was determined by the researchers rather than the solicitor making the claim. Further, whereas the most serious offence on SPOCC data is the most serious offence finally faced by the client, our file data shows the lead charge at the time that the solicitor first dealt with the case. The offence categories that we used were similar to those used for the purposes of SPOCC except that our 'theft' category included fraud and other offences of dishonesty, and we used two additional categories, 'breach proceedings' and 'administration of justice offences'.

In the investigation stage sample, the PDS and private practice handled similar proportions of arrests for violence (although a slightly higher proportion of arrests of PDS clients were for more serious violence than for private practice clients), offences of dishonesty other than theft (although private practice had a slightly higher proportion of clients arrested for robbery or aggravated burglary), and public order offences. Private practice dealt with higher proportions of sexual offences, (mostly minor) drugs offences and driving offences, while the PDS had a higher proportion of clients arrested for criminal damage.

In the magistrates' court sample, there were no significant differences between the PDS and private practice in respect of the lead charge, either for individual offices or at the all areas level (Table 2.17c). At the all areas level there is an indication that private practice had more cases where the lead charge was theft, but dealt with fewer cases where the lead charge was a driving offence. Private practice was also more likely to indicate that the lead charge fell into the 'other' category. At the individual office level there are few apparent trends, although four PDOs dealt with proportionately more drugs offences, and a different combination of PDOs dealt with more driving offences than their private practice counterparts. On the other hand, in four areas private practice had proportionately more cases where the lead charge was theft.

Table 2.17c: Magistrates' Court, Lead Charge (file data)

		Offences against the person	Sexual offences/ offences against children	Robbery	Burglary	Criminal Damage	Theft	Public Order	Drugs Supply/ Possession	Driving offences	Breach proceedings	Ad. of justice offence	Other	Number
		%	%	%	%	%	%	%	%	%	%	%	%	
Birmingham	PDO	23.1	0.0	1.9	3.8	3.8	30.8	7.7	5.8	11.5	9.6	0.0	1.9	52
	PP	20.4	0.0	0.0	6.1	8.2	26.5	12.2	4.1	14.3	4.1	0.0	4.1	49
Cheltenham	PDO	10.9	0.0	0.0	8.7	6.5	17.4	6.5	6.5	28.3	8.7	0.0	6.5	46
	PP	14.3	0.0	4.1	2.0	10.2	30.6	8.2	0.0	16.3	10.2	0.0	4.1	49
Liverpool	PDO	16.0	0.0	4.0	6.0	2.0	20.0	4.0	0.0	32.0	4.0	0.0	12.0	50
	PP	16.3	2.0	2.0	6.1	2.0	22.4	16.3	4.1	10.2	12.2	0.0	6.1	49
Middlesbrough	PDO	15.7	0.0	0.0	5.9	9.8	23.5	19.6	3.9	15.7	2.0	0.0	3.9	51
	PP	7.8	0.0	2.0	7.8	5.9	37.3	11.8	2.0	13.7	2.0	2.0	7.8	51
Pontypridd	PDO	16.3	0.0	0.0	6.1	4.1	20.4	10.2	8.2	20.4	8.2	2.0	4.1	49
	PP	20.4	0.0	0.0	0.0	4.1	14.3	4.1	4.1	30.6	8.2	0.0	14.3	49
Swansea	PDO	12.5	0.0	2.1	4.2	4.2	12.5	18.8	4.2	25.0	8.3	2.1	6.3	48
	PP	6.0	0.0	0.0	4.0	8.0	18.0	18.0	8.0	20.0	6.0	2.0	10.0	50
All areas	PDOs	15.9	0.0	1.4	5.7	5.1	20.9	11.1	4.7	22.0	6.8	0.7	5.7	296
	PP	14.1	0.3	1.3	4.4	6.4	24.9	11.8	3.7	17.5	7.1	0.7	7.7	297

Table 2.17d: Crown Court, Lead Charge (file data)

		Offences against the person	Homicide and Similar	Sexual offences/ offences against child.	Robbery	Burglary	Criminal Damage	Theft	Public Order	Drugs Supply/ Possession	Driving offences	Breach proceedings	Ad. of justice offence	Other	Number
		%	%	%	%	%	%	%	%	%	%	%	%	%	
Birmingham	PDO	20.0	4.4	4.4	17.8	15.6	6.7	6.7	6.7	6.7	2.2	0.0	0.0	8.9	45
	PP	22.9	0.0	6.3	22.9	6.3	0.0	6.3	2.1	27.1	0.0	0.0	2.1	4.2	48
Cheltenham	PDO	23.9	6.5	4.3	13.0	19.6	0.0	4.3	6.5	2.2	6.5	4.3	4.3	4.3	46
	PP	28.6	0.0	17.9	3.6	17.9	10.7	0.0	3.6	3.6	3.6	0.0	3.6	7.1	28
Liverpool	PDO	28.0	2.0	8.0	6.0	4.0	2.0	18.0	4.0	8.0	2.0	6.0	6.0	6.0	50
	PP	29.4	0.0	2.0	2.0	11.8	3.9	13.7	5.9	17.6	3.9	0.0	2.0	7.8	51
Middlesbrough	PDO	16.7	2.4	14.3	4.8	11.9	2.4	11.9	11.9	7.1	4.8	0.0	2.4	9.5	42
	PP	12.2	0.0	10.2	14.3	18.4	4.1	10.2	8.2	10.2	4.1	0.0	4.1	4.1	49
Pontypridd	PDO	32.5	2.5	15.0	7.5	7.5	0.0	7.5	0.0	12.5	0.0	2.5	7.5	5.0	40
	PP	29.8	0.0	6.4	6.4	21.3	2.1	6.4	6.4	10.6	2.1	0.0	4.3	4.3	47
Swansea	PDO	45.7	2.9	8.6	5.7	5.7	2.9	8.6	0.0	2.9	0.0	2.9	8.6	5.7	35
	PP	44.0	0.0	4.0	6.0	2.0	0.0	2.0	6.0	20.0	8.0	2.0	6.0	0.0	50
All areas**	PDOs	27.1	3.5	8.9	9.3	10.9	2.3	9.7	5.0	6.6	2.7	2.7	4.7	6.6	258
	PP	27.8	0.0	7.0	9.5	12.5	2.9	7.0	5.5	15.8	3.7	0.4	3.7	4.4	273

In the Crown Court sample, at the all areas level the lead charges for PDS and private practice cases did differ significantly (Table 2.17d). This is due, in particular, to the fact that a drugs offence was the lead offence in double the proportion of private practice cases compared to PDS cases. Apart from this, the offence profiles at the all areas level were fairly similar, although it is notable that whereas all PDOs had at least one homicide or similar, private practice had none. At the individual office level, the majority of PDOs had proportionately more cases in the sexual offences, theft and administration of justice categories, whereas the reverse was the case in respect of criminal damage and drugs, although none of these differences was significant.

(vi) Details of lead charge

As noted earlier, the offence categories used in the analysis so far are broad, and are not necessarily discriminating in terms of seriousness. Thus, in our proceedings stage file data sample we collected more detailed information about the lead charge in order to see if there were more nuanced differences between the PDS and private practice caseloads. It is only possible to conduct a meaningful analysis where there are sufficient cases within offence categories, and thus the following excludes homicides, robbery and administration of justice cases. We also exclude the ‘other’ category because the numbers in respect of any particular category of offence are extremely small. The data on the theft category, which includes other offences of dishonesty such as deception, handling and TWOC, does not allow for any meaningful comparison to be made because, given the number of sub-categories, the numbers within sub-categories are relatively low, and seriousness often depends upon the value of the stolen property and on factors such as whether the offence was committed in breach of trust. There are similar reasons for excluding public order offences and sexual offences from the analysis.

(a) Offences against the person

The case profiles for offences against the person are fairly mixed (Table 2.18a). In the magistrates’ court sample, over 70% of PDS cases involving offences against the person were common assault or actual bodily harm, compared with just less than 60% for private practice. However, whilst private practice had a greater proportion of serious assault cases (GBH/wounding) in the magistrates’ courts sample, the reverse was true for such cases in the Crown Court sample.

Table 2.18a: Detailed Lead Charges: Offences Against the person

	Common Assault/ Battery	ABH	GBH and/or wounding	GBH/ Wounding with intent	Threat to Kill	Assault on a Police Officer	Child neglect/ill treatment. etc	Kidnap or False Imprisonment	N
	%	%	%	%	%	%	%	%	
Magistrates' court									
PDOs	25.5	46.8	6.4	0.0	14.9	4.3	2.1	0.0	47
PP	19.0	40.5	9.5	2.4	11.9	11.9	2.4	2.4	42
Crown Court									
PDOs	0.0	27.1	14.3	47.1	8.6	0.0	2.9	0.0	70
PP	0.0	28.9	14.5	36.8	11.8	0.0	1.3	6.6	76

(b) Burglary

Generally, dwelling house burglary is treated as more serious than non-dwelling house burglary, and aggravated burglary more serious than either (Table 2.18b). In the magistrates' court sample, there was little difference between the PDS and private practice as regards dwelling and non-dwelling house burglary. In the Crown Court sample, however, whilst the PDS dealt with a greater proportion of non-dwelling house burglary cases, they also dealt with a greater proportion of aggravated burglary. Taking dwelling house and aggravated burglary cases together, they made up a greater proportion of private practice burglary cases than for the PDS, although the numbers are relatively small.

Table 2.18b: Detailed Lead Charges: Burglary

	Aggravated burglary %	Dwelling House %	Non-dwelling House %	N
Magistrates' court				
PDOs	0.0	47.1	52.9	17
PP	0.0	46.2	53.8	13
Crown Court				
PDOs	23.1	53.8	23.1	26
PP	7.1	85.7	7.1	28

(c) Criminal damage

The numbers for criminal damage are relatively low (Table 2.18c). In relation to the magistrates' court sample there is some, limited evidence that the criminal damage cases dealt with by private practice were more serious than those dealt with by the PDS. In the Crown Court sample, where the number of cases is particularly low, the evidence is more equivocal.

Table 2.18c: Detailed Lead Charges: Criminal Damage

	Criminal Damage under £5000 %	Criminal Damage over £5000 %	Arson %	With intent/ aggravated %	Threats %	N
Magistrates' court						
PDOs	93.3	0.0	6.7	0.0	0.0	15
PP	84.2	0.0	10.5	0.0	5.3	19
Crown Court						
PDOs	16.7	0.0	50.0	33.3	0.0	6
PP	12.5	12.5	37.5	37.5	0.0	8

(d) Drugs offences

In the magistrates' court sample, Table 2.18d shows that the PDS had a slightly more serious drugs caseload than private practice, but the numbers are low. In the Crown Court sample, however, the picture is more mixed. Private practice dealt with more than double the number of drugs cases in the Crown Court, but the PDS dealt with proportionately more Class A drugs cases than private practice.

Table 2.18d: Detailed lead charges: Drugs offences

	Class A			Class B			Class C		N
	Import %	Supply/ possession with intent to supply %	Possession %	Supply/ possession with intent to supply %	Possession %	Production %	Supply/ possession with intent to supply %	Possession %	
Magistrates' court									
PDOs	0.0	21.4	35.7	0.0	42.9	0.0	0.0	0.0	14
PP	0.0	18.2	36.4	0.0	36.4	0.0	0.0	9.1	11
Crown Court									
PDOs	0.0	94.1	0.0	5.9	0.0	0.0	0.0	0.0	17
PP	2.3	76.8	0.0	13.9	0.0	2.3	4.6	0.0	43

(e) Driving offences

Driving offences are, for the most part, dealt with in magistrates' courts rather than the Crown Court, so Table 2.18e only deals with the lead charge in the magistrates' court sample. Of the offences within this category, dangerous driving is the most serious, followed by driving whilst disqualified, whilst alcohol offences generally carry a mandatory driving ban. The PDS dealt with proportionately more dangerous driving and alcohol offences, but private practice dealt with more cases of driving whilst disqualified.

Table 2.18e: Detailed Lead Charges (magistrates' Court file data): Driving Offences

	Alcohol offences %	Driving without insurance/ Tax %	Failure to stop/ Report %	Careless Driving %	Other, Incl. speeding %	Driving whilst disqualified %	Dangerous driving %	N
PDS	38.5	6.2	4.6	4.6	1.5	33.8	10.8	65
PP	30.8	7.7	5.8	3.8	1.9	42.3	7.7	52

(vii) Seriousness and complexity – Peer review assessments

Having looked at the nature and seriousness of lead charges, we now examine the seriousness and complexity of cases. We saw earlier that a case, as defined in the General Criminal Contract (but also as perceived by defence lawyers), may involve more than one charge, and more than one client. As a result, a case may be more serious and/or more complex than the lead offence, considered on its own, would indicate. Thus we decided to examine the seriousness and complexity of cases by asking the peer reviewers who reviewed proceedings files to make an assessment of the seriousness and complexity of each case file that they examined.⁹

Peer reviewers were given the following guidance about seriousness and complexity:

Seriousness concerns both the nature of the alleged offence(s) and the circumstances of the alleged offender (eg. they have relevant previous convictions which are likely to make the penalty greater). Complexity/difficulty relates to the circumstances of the alleged offence(s) (eg. complex facts and/or evidence) and the circumstances of the alleged offender (eg. mental disorder).

The scales were developed in consultation with the peer reviewers. Seriousness was assessed according to a three point scale: most serious, moderately serious, and least serious. Complexity was assessed according to a four point scale: exceptional, demanding, routine and minor. In view of the fact that cases dealt with in the Crown Court are generally more serious than those dealt with in magistrates' courts, reviewers were told that seriousness and complexity should be judged by reference to the standards relevant to the trial court in which the case was finally dealt with. The peer reviewer assessment of case seriousness for both court samples is shown in Table 2.19a.

Table 2.19a: Peer Reviewer Assessment of Case Seriousness (Magistrates' Court and Crown Court)

⁹ It will be recalled that peer reviews were carried out on one-in-two of the cases included in each of the case file samples for the investigation stage and for each court proceedings stage (magistrates' court and Crown Court). Assessment of seriousness and complexity was included in the peer review of the court samples only.

		Least serious %	Moderately serious %	Most serious %	N
Birmingham**	PDO	41.7	50.0	8.3	48
	PP	22.9	60.4	16.7	48
Cheltenham**	PDO	30.6	69.4	0	49
	PP	24.5	55.1	20.4	49
Liverpool	PDO	32.0	52.0	16.0	50
	PP	24.5	57.1	18.4	49
Middlesbrough	PDO	21.3	68.1	10.6	47
	PP	25.0	62.5	12.5	48
Pontypridd	PDO	36.2	48.9	14.9	47
	PP	29.2	58.3	12.5	48
Swansea	PDO	22.0	60.0	18.0	50
	PP	27.1	62.5	10.4	48
All areas	PDOs	30.6	58.1	11.3	291
	PP	25.5	59.3	15.2	290

At the all areas level, according to the peer reviewers, the PDS had a less serious case load than private practice, although it is not a difference that is significant. This is also reflected in the results of Birmingham, Cheltenham, Liverpool and Pontypridd PDOs, although for the latter two offices the difference with private practice was not significant. Middlesbrough and Swansea PDOs, on the other hand, appear to have a marginally more serious caseload than private practice in their areas although, again, the difference is not significant. When magistrates' court and Crown Court cases were isolated and analysed separately, there were no significant differences between the PDS and private practice.

The other dimension assessed by the peer reviewers was case complexity, using a four point scale, and the results are shown in Table 2.19b.

Table 2.19b: Peer Reviewer Assessment of Case Complexity (Magistrates' Court and Crown Court)

		Minor %	Routine %	Demanding %	Exceptional %	N
Birmingham*	PDO	8.3	79.2	12.5	0	48
	PP	8.2	55.1	36.7	0	49
Cheltenham**	PDO	28.6	57.1	14.3	0	49
	PP	14.3	46.9	38.8	0	49
Liverpool	PDO	18.0	56.0	22.0	4.0	50
	PP	18.4	57.1	22.4	2.0	49
Middlesbrough	PDO	16.7	56.3	25.0	2.1	48
	PP	22.9	52.1	22.9	2.1	48
Pontypridd	PDO	17.0	70.2	10.6	2.1	47
	PP	14.9	61.7	23.4	0	47
Swansea	PDO	14.0	48.0	38.0	0	50
	PP	12.5	68.8	18.8	0	48
All areas	PDOs	17.1	61.0	20.5	1.4	292
	PP	15.2	59.6	27.2	0.7	290

As for case seriousness, both Birmingham and Cheltenham PDOs caseloads were assessed as significantly less complex than those of their private practice counterparts, as was Pontypridd PDO, although in this instance the difference is not significant. However, Liverpool PDO cases were assessed as broadly similar in terms of complexity to those for private practice. Again, as for case seriousness, there were indications that Middlesbrough and Swansea caseloads were more complex than private practice, but the results are not significant. At the all areas level, private practice is assessed as having a marginally more complex caseload than the PDS, but it does not reach significance. When magistrates' court and Crown Court cases are isolated and analysed separately, at the magistrates' court level, Cheltenham PDO's caseload alone remains significantly less complex than its private practice counterparts. At the Crown Court level there are no significant differences between the PDOs and private practice.

(viii) Summary

As far as we are aware, peer assessment of seriousness and/or complexity of criminal cases has not been attempted before. Broadly, the results show the PDS as having a less serious and less complex caseload than private practice, but the differences are relatively modest. Not all PDOs, however, followed this pattern. Whilst Birmingham, Cheltenham, Liverpool and Pontypridd PDOs have a less serious caseload, and Birmingham, Cheltenham and Pontypridd have a less complex caseload, than private practice in those areas, there is some evidence that Middlesbrough and Swansea have a more serious and complex caseload than their private practice counterparts.

Assessing seriousness and complexity of criminal cases is notoriously problematic, particularly because it involves a large number of variables and because determining seriousness by reference to offence categories is not sufficiently discriminating to provide an accurate assessment. As noted earlier there were few, if any, meaningful contrasts between the caseloads of the PDS and private practice by reference to offence category. In our file data samples we collected more detailed information about the lead offences, but lack of numbers in the sub-categories makes comparison between the PDS and private practice difficult.

Some of the information that we collected as to client characteristics, particularly the various aspects of clients' previous criminal history, together with factors such as whether clients were initially produced in court in custody, and stand-alone advice and assistance claims may provide, to a greater or lesser extent, proxies for seriousness and complexity. For example, a client with previous convictions, particularly where they are recent and similar to the offence charged, is likely to face a higher sentence than a client without those characteristics. However, the evidence of any relationship between these proxies and peer reviewers' assessments is equivocal.

We saw that at the all areas level the peer reviewers assessed PDS cases as being less serious and less complex than those of private practice. PDS clients were also less likely to have previous convictions, less likely to have previous convictions that were similar to the offence charged, less likely to have a previous custodial sentence and a lower average number of previous custodial sentences (Crown Court), less likely to be produced in custody at their first court appearance, and more likely to receive stand-alone advice and assistance.

A similar picture emerges in relation to Birmingham PDO, whose clients also had fewer actual and sets of convictions compared to their private practice counterparts, and to a lesser extent Liverpool. However, in relation to Cheltenham and Pontypridd, in respect of which the peer reviewers assessed the PDOs as having a less serious and less complex caseload than private practice, many of the proxies indicated the opposite. Conversely, Middlesbrough and Swansea PDOs were assessed as having a more serious and more complex caseload than private practice, but the proxies indicated the reverse. We have not, in this analysis, included offence category for the reasons set out above, but it seems clear that there are factors that are relevant to case seriousness and complexity that are not easily identified and isolated. Nevertheless, we believe that the peer reviewers' assessments are the most reliable indicator of seriousness and complexity of the respective caseloads of the PDS and private practice that are available.

Conclusions

This chapter has compared the client and case profiles of the PDS and private practice, both at the all areas level, and in respect of individual PDOs and their private practice counterparts. This information and analysis is important in its own right, giving a detailed picture of the respective client base and caseloads of the two sectors. It is also important because it provides a context for understanding the processes and outcomes considered in Chapter 3, and for understanding the differences in the cost of providing criminal defence services by the PDS and private practice respectively (Chapter 5). In many respects the differences between the various PDOs are as great as those between the PDS and private practice, reflecting both the significance of local criminal justice practices and cultures and, it would appear, the fact that these factors may be more important than the fact that the PDS is a national organisation with, to a certain extent, common policies and procedures.

In terms of the demographic and socio-economic profiles of clients of the two sectors, there are few significant differences. The gender and ethnicity profiles of the PDS and private practice are broadly similar as are, it would seem, the ages of clients. Both sectors have nearly a fifth of clients who are aged under 18 years. There are some differences in relation to various forms of vulnerability of clients, with a greater proportion of private practice clients at the all areas level having some form of drug or alcohol problem, which was also the case in Birmingham, Middlesbrough, Pontypridd and Swansea. On the other hand, in Pontypridd a significantly greater proportion of PDS clients in the Crown Court sample had mental health problems compared with private practice clients in the area. It is worthy of note that between one fifth and one quarter of all clients, in both sectors, evidenced at least one form of vulnerability.

There were, however, important differences in the antecedent profiles of PDS and private practice clients. A smaller proportion of PDS clients had previous convictions compared to private practice clients, fewer had previous convictions that were similar to the lead offence faced by clients, and fewer had previous custodial sentences, indicating a client caseload for the PDS nationally that is less experienced in terms of criminal histories. However, there was wide variation in terms of individual PDOs. There is evidence that the antecedent histories of PDS clients in Birmingham, Liverpool, Middlesbrough and Swansea were generally less extensive and less serious than private practice clients in those areas. On the other hand, those of Cheltenham and Pontypridd PDO clients were marginally more serious than for private practice.

The data on the nature and seriousness of the offences faced by clients are more difficult to interpret in terms of differences between the two sectors, and the SPOCC data showed different patterns as between the magistrates' court and Crown Court samples. In the former there were no significant differences either at the individual office level or the all areas level. At the all areas level there is some indication that the PDS dealt with a smaller proportion of theft cases and more where the lead charge was a driving offence. The latter was also reflected in four of the areas, and a different combination of four PDOs dealt with proportionately more drugs offences than their private practice counterparts. However, in the Crown Court sample, at the all areas level drugs offences made up double the proportion of private practice cases compared with the PDS. Otherwise, the offence profile at the all areas level was broadly similar. However, at the individual office level the majority of PDOs dealt

with proportionately more sexual offences, theft and administration of justice cases than private practice, and fewer criminal damage and drugs cases.

The peer reviewer assessments of seriousness and complexity of cases did reveal important differences between the PDS and private practice. The caseload of the PDS was assessed as less serious and less complex than that of private practice, although the difference is relatively small. In terms of the individual PDOs, Birmingham, Cheltenham and Pontypridd were assessed as having a less serious and less complex caseload than private practice in those areas, and Liverpool a less serious, but not a less complex, caseload. On the other hand, the assessment provided some evidence that Middlesbrough and Swansea PDOs had more serious and more complex caseloads than private practice.

Chapter 3

Case Processing and Outcomes

A key issue emerging from international research on public defenders is the different outcomes that public defenders achieve for their clients, and the different ways in which public defenders handle their cases. This shows, for example, a fairly consistent pattern of public defenders having more clients plead guilty earlier in the life of a case, with the Canadian research suggesting that this leads to lower sentences (but not higher conviction rates)¹¹⁰ and the Scottish research suggesting that it leads to higher conviction rates but no difference in sentences (because of a different attitude to plea bargaining).¹¹¹ The impact of salaried models on police station work is under-explored.

This chapter concentrates on quantitative data which indicates ways in which cases were handled and the results achieved for clients. It derives from two sources. SPOCC data on all claims handled in the police station and magistrates' court; and file data from the three file samples: police station; magistrates' court, and Crown Court files. Both process and outcome data give a sense of what happens to cases. At a very general level, such data provide a set of indicators, or contexts, for judging the relative quality of the PDS and private practice, although there are significant dangers in adopting a simplistic approach to the interpretation of outcome measures.¹¹² As a result it is important to bear in mind in reading this chapter that we do not regard these individual indicators as definitive of either the quality of work or approach to work being adopted. They are suggestive of how matters are being dealt with in the different organisations, particularly where patterns are seen across a cohort of cases, but they must be considered only as part of the broader picture emerging from the research.

Case Processing in Investigation Cases

We first examine the nature of the service provided to suspects at police stations by public defenders and private practice solicitors' firms. A key indicator of police station advice services is whether or not the adviser attends the police station or simply advises the suspect over the telephone. A second issue is the status of the legal adviser and in particular whether s/he is a qualified solicitor or an accredited police station representative. It is also possible from our file analysis to compare the PDS and private practice in terms of the amount of time they spend at the police station.

¹¹⁰ T. Goriely, *Legal aid delivery systems which offer the best value for money in mass casework? A summary of international experience*, London, Lord Chancellor's Department, 1997 and A. Fleming and A. Henry (1998) *A Literature Review of Public Defender or Staff Lawyer Schemes*, Edinburgh, Scottish Office, 1998.

¹¹¹ T. Goriely et al., *The Public Defence Solicitors' Office in Edinburgh: An Independent Evaluation*, Edinburgh, Scottish Executive Central Research Unit, 2001.

¹¹² R. Moorhead, A. Sherr and A. Paterson (1994) *Judging on Results*: International Journal of the Legal Profession, Volume 2.

Finally, we obtained data from our file analysis on any representations recorded by the legal adviser relating to either charge or bail.

(i) *Attendance and non-attendance at police stations*

Previous research has shown a consistent pattern in the provision of police station legal advice that advisers are less likely to attend at the police station in duty solicitor as distinct from own solicitor cases. SPOCC data collected during this research supports this finding as Table 3.1 shows.

Table 3.1: PDS and Private Practice Investigation Stage Claims on SPOCC: Percentage of Police Station Cases involving Telephone Only Advice

		Own		Duty		All cases	
		PDO	PP	PDO	PP	PDO	PP
Birmingham	%	4.1**	12.8	24.1	21.2	18.4*	15.1
	N	219	57756	551	22954	770	80710
Cheltenham	%	1.8**	11.2	27.4*	20.9	6.7**	14.5
	N	704	14042	164	7267	868	21309
Liverpool	%	17.2**	26.9	20.3*	25.9	18.1**	26.7
	N	587	26272	251	7393	838	33665
Middlesbrough	%	6.9**	12.1	16.7**	25.1	12.3*	14.7
	N	403	13609	478	3344	881	16953
Pontypridd	%	5.8**	10.1	5.9**	18.8	5.8**	12.4
	N	276	3193	101	1164	377	4357
Swansea	%	2.5**	10.2	3.8**	19.3	2.9**	11.2
	N	554	10796	239	1365	793	12161
All areas	%	6.6**	15.2	18.2**	22.1	11.2**	17.0
	N	2743	125668	1784	43487	4527	169155

It can be seen that both private practice and the PDOs were more likely to attend on own clients. Such a differential in service provision is not necessarily related to variations in case type or seriousness as between duty and own solicitor referrals but may reflect instead solicitors wishing to meet their own clients' expectations of a personal attendance.¹¹³ Nevertheless, such a difference may also be accounted for, in part at least, by the likelihood that duty cases more often involve clients arrested for lesser offences. Nevertheless, it is interesting that, despite their need to recruit a client base from scratch, this service differential as between duty and own solicitor investigation stage clients was maintained by all of the PDOs, in that they all had a lower rate of attendances in person on duty than in own solicitor cases (although the differences in Pontypridd and Swansea were only marginal). Indeed, the Cheltenham PDO reported a higher proportion of duty cases on SPOCC as involving telephone advice only (27%) than private practice in the area (21%), a difference that was statistically significant. This was much higher than the Cheltenham PDO rate of telephone only advice to own clients (2%). In Birmingham the position was similar, telephone advice was given by the PDO in 24% of duty cases and only 4% of cases involving own clients. There was a strong difference for Middlesbrough PDO cases

¹¹³ The decision whether or not to attend a client in person at the police station can relate to a number of factors, including the stage the investigation has reached and in particular whether the client is due to be interviewed or, indeed, already has been interviewed at the time of the call.

(15% telephone only advice for duty cases to 7% for cases involving own clients) and a weak difference in Liverpool (20% to 17%).

More importantly for our comparison of the relative performance of the PDOs and private practice, there was also a consistent pattern across all the areas of PDOs attending in person on the client in own solicitor cases more often than private practice. The differences were statistically significant in all areas. It can be estimated from these data that around one in ten own clients and one in twenty duty clients would be more likely to be visited in person by a legal adviser if they called out the PDS rather than a private practice lawyer (depending on area and whether they were an own or duty solicitor client). Nor would differences in the nature of the offences for which PDS and private practice clients were arrested explain this difference in rates of attendance in person at police stations.

Before leaving Table 3.1 it is worth noting that, as well as differences in attendance rates between the PDS and private practice in each area, there are variations in overall attendance rates at police stations across the different areas. For example, in Liverpool both private practice and the PDO had relatively high rates of non-attendance, compared to the other areas, certainly for own solicitor clients. Indeed, Liverpool was the only area where there was a higher rate of attendance for duty than for own clients among private practice, and overall a quarter of private practice cases in Liverpool involved no attendance in person on the suspect at the police station.

Our analysis of investigation stage file data supported the picture shown by the SPOCC data and so is not reported here.

(ii) Status of police station legal adviser

Prior to the introduction of the accreditation scheme for police station legal advisers, there was concern about the proportion of police station advice cases that were dealt with by unqualified staff. However, research conducted subsequent to the introduction of the accreditation scheme tends to show that the status of the legal adviser is not necessarily related to the quality of the advice.⁵ Rather, the proportion of advice undertaken by solicitors or accredited representatives may often reflect more the structure of particular providers, whether private practice firms or PDOs.

Although we sought to collect information on the status of the legal adviser from the files, unfortunately, in a large proportion of files drawn from private practice it was not possible to determine the status of the legal adviser in police station cases (see Table 3.2). This information was unavailable in 61% of private practice cases overall. For those cases in which the status of the adviser was recorded, solicitors predominated in private practice. Data on advisers' status was more frequently available for PDS cases, and this shows that, with the exception of Birmingham where there were no accredited representatives on staff at the relevant time, all the PDOs did rely to a considerable extent on accredited representatives to service clients at police stations. This was the case in 70% of PDO investigation stage cases in Cheltenham

⁵ L.Bridges and S Choongh, *Improving Police Station Legal Advice*, London, Law Society and Legal Aid Board, 1998. In the civil sphere, see Moorhead R, Sherr A and Paterson A (2003) 'Contesting Professionalism: Legal Aid and Non lawyers in England and Wales', *Law and Society Review*, 37 (4) (2003) 765-808.

(where at the time there were relatively few solicitors on the staff, although this subsequently changed), two-thirds in Middlesbrough, just under half in Pontypridd and Liverpool, and two-fifths in Swansea.

Table 3.2: PDS and Private Practice Investigation Stage File Analysis: Status of Legal Adviser in Case

		Solicitor	Accredited Rep	Mixed	Don't Know	No.
Birmingham	PDO %	100	-	-	-	41
	PP %	38	10	-	52	42
Cheltenham	PDO %	26	70	-	4	46
	PP %	10	-	-	90	42
Liverpool	PDO %	44	47	8	-	36
	PP %	30	17	-	53	30
Middlesbrough	PDO %	34	66	-	-	44
	PP %	32	17	-	51	37
Pontypridd	PDO %	49	45	-	6	49
	PP %	38	18	-	45	40
Swansea	PDO %	51	40	2	6	47
	PP %	23	5	-	73	40
All areas	PDOs %	50	45	2	3	263
	PP %	28	10	-	61	231

(iii) Time on police station cases

SPOCC does not contain data on the time spent on cases, although it does contain billing information which may be a proxy for time spent on investigation cases. This suggests that after controlling for case type, etc., Birmingham and Liverpool PDOs spent less time on their investigation stage cases than private practice in their areas and Middlesbrough PDO spent significantly more time than private practice in their area. In proceedings cases, where bills may be a less satisfactory proxy for time spent on cases (because of the effect of standard fees) all PDOs other than Cheltenham appeared to spend less time on proceedings cases than did private suppliers in their area (in Cheltenham there was no significant difference).

Partly because of the proxy nature of the SPOCC data, we attempted to collect detailed data on time spent on cases in our file sample. Here we saw that, if there was a tendency for both PDOs and private practice to attend the police station in person less often in duty solicitor cases, there was also evidence that both sectors tended to spend less time at the police station where the adviser did in fact attend on a duty client (see Table 3.3a). Again, this may reflect, in whole or part, the nature of duty

cases. These probably tend towards involving clients with fewer previous convictions and, perhaps, those who are less likely to be facing more serious charges.

Table 3.3a: Average Time Spent on Police Station Cases for Duty and Own Solicitor Clients (Attendance Cases Only, Investigation Stage File Analysis)

		Travel	Waiting	Attendance on Client	In Interview	Total
		Minutes				
PDOs	Own client	52	16	122	21	195
	Duty Client	48	11	94	17	155
Private practice	Own client	54	17	125	27	196
	Duty client	62	7	113	29	182

There was no clear pattern in terms of average time spent by PDOs and private practice in attending on clients at the police station (see Table 3.3b). In this respect, it should be noted that our samples of files for analysis were drawn from the same police stations for both the PDOs and private practice, so the results should not be affected by differences in police practice between stations. Three of the PDOs (Middlesbrough, Cheltenham and Pontypridd) appear to have spent more time on average in police station attendances than their private practice counterparts, although at least part of this variation is explained by differences in travelling time which may have more to do with the location of PDO solicitors' homes than with issues of efficiency.

In the other three areas (Birmingham, Liverpool and Swansea) PDO advisers spent considerably less time on police station attendance cases than their private practice counterparts. By far the largest difference between the two sectors was in Swansea, where the PDO spent 99 minutes, or 35% less time, on police station attendances than private practice advisers. This included nearly an hour less in attending on the suspect or others and over 40 minutes less in travel time. In Birmingham PDO advisers spent on average 76 minutes, or 36% less time, on police station attendances than private practice in their area, including 50 minutes less on actual attendances on the client or others. Finally, in Liverpool although the PDO spent on average 20 minutes less overall on police station attendances than private practice advisers, this was almost entirely attributable to variations in travel and waiting time, with the PDO and private practice spending virtually the same time in attendances on the suspect or others at the police station. There are four possible explanations for the lower time spent on attendance: one is that the PDS are more efficient in their dealings with police and client; another is that they record less time because they are under less incentive to record time; the third is that private practice is incentivised to spend more time on police station cases because they get paid per hour; and the fourth is that the seriousness and complexity of PDO cases may be lower. As we will see below in relation to proceedings cases, there is evidence to support the fourth proposition.

There is one other feature of these data on time spent on police station attendances that is worth noting. There are significant geographical variations, with the longest average time on attendances being in Swansea (226 minutes) and Pontypridd (214 minutes) and the shortest in Liverpool (156 minutes). Interestingly, these differences

seemed to be attributable to spending less time interviewing the suspect. The time spent in police interviews did not vary greatly between these three areas, but there were considerable differences in time spent by advisers in attending on suspects or others (an hour greater in Swansea and half an hour greater in Pontypridd than in Liverpool). This suggests a different culture and approach to advising clients in the police station which may also reflect differences in quality.

Table 3.3b: Average Time Spent on Police Station Attendance Cases by Area (PDS and Private Practice Investigation Stage File Analysis)

		Travel	Waiting	Attendance	(In Interview)	Total
Birmingham	PDO	41	13	76	(19)	133
	PP	57	25	126	(30)	209
	All cases	49	19	101	(25)	171
Cheltenham	PDO	71	16	112	(16)	201
	PP	40	4	98	(21)	144
	All cases	57	10	106	(18)	175
Liverpool	PDO	39	11	97	(24)	147
	PP	54	14	99	(26)	167
	All cases	46	12	98	(25)	156
Middlesbrough	PDO	54	12	110	(24)	180
	PP	62	6	87	(23)	155
	All cases	58	9	99	(23)	168
Pontypridd	PDO	64	25	137	(20)	227
	PP	49	25	124	(24)	198
	All cases	57	25	131	(22)	214
Swansea	PDO	31	7	136	(14)	181
	PP	73	10	194	(39)	280
	All cases	50	9	163	(25)	226

(iv) *Silence in police interviews*

A crucial indicator of approach in the police station is which suspects advised by the PDS or private practice made no comment during the course of police interviews. There was an indication on the file that the suspect made comments during at least some interviews in the majority of cases handled by either the PDS or private practice in each of the areas (see Table 3.4). On the other hand, in four of the six areas (Middlesbrough, Cheltenham, Pontypridd and Swansea) there was clear evidence that suspects advised by the PDOs made no comment in response to all police questions more often than those advised by private practice. The difference was greatest in Pontypridd (36% no comment interviews for the PDO compared to 14% for private practice), followed by Middlesbrough (20% for the PDO; 12% private practice), Swansea (18% for the PDO; 13% private practice) and Cheltenham (13% for the PDO; 7% private practice). There was very little difference in this respect between the PDO and private practice cases in Liverpool. By contrast with the other areas, suspects advised by the PDO in Birmingham had a relatively low rate of ‘no comment interviews’ (5% compared with 11% for private practice), although a further 7% of PDO clients appear to have commented only in some interviews and not others and the figures are limited somewhat by the inability to tell from the file whether the client commented or not in 14% of Birmingham PDO cases.

Table 3.4: PDS and Private Practice Investigation Stage File Analysis: Suspect Comments in Police Interview

		All no comment	Comment during some interviews	Comment during all interviews	Not clear from file	N
Birmingham	PDO %	5	7	74	14	43
	PP %	11	-	80	9	45
Cheltenham	PDO %	13	4	73	10	48
	PP %	7	-	78	15	41
Liverpool	PDO %	13	3	79	5	39
	PP %	11	3	78	8	36
Middlesbrough	PDO %	20	-	80	-	40
	PP %	12	9	71	10	42
Pontypridd	PDO %	36	-	61	2	44
	PP %	14	-	83	2	42
Swansea	PDO %	18	-	82	-	38
	PP %	13	3	82	3	38
All areas	PDOs %	17	2	75	6	252
	PP %	11	2	79	8	244

In general, the level of no comment interviews suggests a more adversarial approach was taken to police station work by PDS. This is contrary to the common perception of public defenders but is consistent with the dominant view of good defence practice.⁶ It is worth noting here that in our ‘peer review’ of files, we specifically

⁶ R. Ede and E. Shepherd, *Active Defence*, London, Law. Society, 2000.

considered the appropriateness of the advice offered by legal advisers to suspects on their exercise of the ‘right to silence’ in police interviews. The results (see Chapter 4) indicate that where a PDO had a relatively high proportion of clients who exercised silence, the PDO also scored highly on the appropriateness of the advice offered as to strategy to adopt in the police interview.

We also noted in our file analysis where the adviser recorded representations made at the police station with regard to either charge or bail. In fact, there were only a handful of files where such representations were specifically noted. Thus, only one private practice file but ten of those from the PDOs noted specific representations made by the legal adviser at the police station in respect of charge, while eight private practice and nine PDO files recorded representations relating to bail. Finally, there were six PDO cases and two private practice cases where a written statement was prepared for the suspect to hand into the police at the police station. This was also an issue considered in our ‘peer review’ of files (see Chapter 4).

Outcomes of Investigation Stage

In this section we will examine whether there were any significant differences in the outcomes achieved by public defenders and private practice solicitors at police stations. There were no significant differences between PDOs and private practice in terms of the extent to which they retained clients through to the end of the investigation stage of cases. So we turn to look at how those clients who were retained by both sectors fared in terms of whether they were charged or summoned for a criminal offence, received a reprimand or warning, or were released without charge from the police station.

(i) Incidence of ‘bail backs’

Of course, one ‘outcome’ that can occur during the investigation stage of a criminal case is that the suspect will be released from the police station on bail, pending further police enquiries, with a requirement to return to the police station at a later date. In our file analysis, we examined the proportion of total arrests dealt with by both the PDOs and private practice that involved such a ‘bail back’ to the police station (see Table 3.5). Overall, it appears that more arrests dealt with by private practice (25%) involved a ‘bail back’ than those for PDOs (20%). Indeed, the only offence category in which the PDS appears to have had a higher use of ‘bail backs’ than private practice was offences against the person, where 30% of PDO arrests but only 19% of those handled by private practice involved a ‘bail back’. PDOs had a notably low incidence of ‘bail backs’ in relation to arrests for criminal damage (9% compared to 21% for private practice). As would be expected, a high proportion of drugs arrests for both PDOs (53%) and private practice (62%) involved the use of ‘bail backs’.⁷

⁷ It should be noted that these figures pre-date the introduction of CPS involvement in the charging process which may have substantially increased the number of bailbacks.

Table 3.5: PDS and Private Practice Investigation Stage File Analysis Incidence of Bail from Police Station by Offence Type

		No. of arrests	Bailbacks	% of all arrests
Offences against persons	PDOs	47	14	30
	PP	53	11	19
Sexual offences	PDOs	6	3	50
	PP	15	9	60
Robbery/burglary	PDOs	42	7	17
	PP	45	10	22
Other dishonesty	PDOs	97	22	23
	PP	97	30	31
Criminal damage	PDOs	43	4	9
	PP	24	5	21
Public order	PDOs	25	3	12
	PP	25	3	12
Drug offences	PDOs	19	10	53
	PP	26	16	62
Driving offences	PDOs	28	1	4
	PP	43	-	-
Assault/obstruct police	PDOs	3	-	-
	PP	3	-	-
Other	PDOs	52	7	13
	PP	36	7	19
All arrests	PDOs	362	71	20
	PP	267	91	25

(ii) Charges, reprimands/warnings, and no further action

Table 3.6a shows the outcome at the end of the investigation stage of cases reported on SPOCC for PDO and private practice retained clients, divided between duty solicitor and own solicitor cases. As regards duty solicitor cases, there was a statistically significant difference overall, insofar as fewer duty solicitor retained clients of PDOs were charged or summoned for a criminal offence (56%) compared with those of private practice (60%). The differences between individual PDOs and their private practice comparators in terms of duty solicitor clients who were charged were statistically significant in Middlesbrough, where 47% of PDO duty solicitor retained clients were charged or summoned for a criminal offence compared with 52% for private practice, and in Cheltenham where 44% of PDS retained clients were charged or summoned compared to 49% for private practice firms in the area. There were more statistically different outcomes between PDOs and private practice as regards own solicitor clients. Across all areas, 58% of retained own clients of PDOs were charged or summoned for a criminal offence, whereas this was the case for nearly 67% of retained own clients of private practice. There were also statistically significant differences in this respect between the PDS and private practice in four of the six areas (Middlesbrough, Birmingham, Cheltenham and Swansea), and in each case the PDO had a lower proportion of its retained own solicitor clients charged or summoned for a criminal offence than their local private practice counterparts. In

Middlesbrough 50% of retained PDO own solicitor clients were charged or summoned compared with 65% for private practice. In Cheltenham the comparable figures were 50% for the PDO and 64% for private practice; in Birmingham 57% for the PDO and 64% for private practice; and in Swansea 58% for the PDO and 67% for private practice.

Table 3.6a PDS and Private Practice Investigation Claims on SPOCC: Outcome at end of Investigation Stage for Retained Clients

		Client not a suspect/defendant	No Further Action	Reprimand/Warning	Charged/Summoned	N
Duty Solicitor Cases						
Birmingham	PDO**	2.8%	25.1%	11.3%	60.8%	434
	PP	0.6%	28.0%	10.5%	60.8%	18985
Cheltenham	PDO**	1.6%	33.9%	21.0%	43.5%	124
	PP	1.4%	30.2%	19.2%	49.2%	6026
Liverpool	PDO	1.3%	21.0%	9.4%	68.2%	233
	PP	1.0%	19.0%	8.9%	71.1%	6426
Middlesbrough	PDO**	0.2%	39.8%	12.6%	47.3%	427
	PP	1.3%	38.3%	8.7%	51.7%	2828
Pontypridd	PDO	0.0%	37.9%	9.5%	52.6%	95
	PP	1.7%	27.1%	10.8%	60.4%	1026
Swansea	PDO	0.5%	22.5%	20.7%	56.3%	222
	PP	1.2%	23.9%	15.4%	59.4%	1228
All areas	PDOs**	1.2%	29.7%	13.4%	55.6%	1535
	PP	0.9%	27.4%	11.7%	60.0%	36519
Own Clients						
Birmingham	PDO*	0.4%	35.7%	6.7%	57.1%	224
	PP	1.5%	30.3%	4.0%	64.1%	56440
Cheltenham	PDO**	0.2%	43.9%	5.6%	50.4%	665
	PP	1.0%	28.5%	6.2%	64.2%	13337
Liverpool	PDO	0.9%	23.7%	3.8%	71.7%	575
	PP	1.2%	21.8%	2.9%	74.0%	24870
Middlesbrough	PDO**	2.9%	42.8%	4.6%	49.6%	409
	PP	0.7%	31.8%	2.1%	65.4%	13151
Pontypridd	PDO	0.4%	31.0%	3.3%	65.3%	271
	PP	0.6%	28.6%	5.1%	65.8%	3315
Swansea	PDO**	1.6%	32.8%	11.3%	54.3%	628
	PP	1.2%	27.5%	3.8%	67.5%	10946
All areas	PDOs**	1.1%	35.1%	6.2%	57.6%	2772
	PP	1.3%	28.3%	3.8%	66.6%	122059

Our file analysis shows a similar area pattern of differences between PDS and private practice in the proportions of their retained investigation stage clients who are charged or summoned for a criminal offence (see Table 3.6b). In this instance, Middlesbrough PDO had a significantly lower proportion on retained clients charged or summoned (48% as compared with 65% for private practice), but in Pontypridd (80% PDO and

66% private practice retained clients charged or summoned) and Cheltenham (62% of PDO and 40% of private practice retained clients charged or summoned) the reverse was the case. In the other three areas (Birmingham Liverpool and Swansea) the data also show that PDO clients were charged or summoned less often than those of private practice, but the differences were not statistically significant.

Table 3.6b PDO and Private Practice Investigation Stage File Analysis: Outcome at end of Investigation Stage for Retained Clients by Area

		Client not suspect/defendant	No further action	Reprimand/warning	Charged/summoned	N
Birmingham	PDO %	-	30	16	54	37
	PP %	-	23	7	70	43
Cheltenham*	PDO %	-	32	6	62	50
	PP %	-	50	10	40	40
Liverpool	PDO %	-	21	6	73	48
	PP %	-	14	5	81	42
Middlesbrough*	PDO %	2	40	10	48	48
	PP %	-	33	2	65	49
Pontypridd*	PDO %	-	15	6	80	48
	PP %	-	16	18	66	44
Swansea	PDO %	2	24	15	59	46
	PP %	-	26	2	72	43
All Areas*	PDOs %	1	27	10	63	277
	PP %	-	27	7	66	261

(iii) Multivariate analysis

In order to make the comparison of outcomes between the PDS and private practice suppliers statistically robust, we need to compare outcomes for like claims. In particular, we should be comparing claims of equal complexity and for similar localities. However, it is possible that the types of case represented by PDOs are substantially different from the types of case represented by other suppliers in their area, and it is this, not the efficiency of the supplier, which is driving the results. To deal with this problem, it is necessary to undertake multivariate analysis. The data available to us from SPOCC allows us to control for various factors other than the type of supplier (PDO or private practice) that might have an influence on outcomes at the police station. These factors include the number of defendants on the claim, whether it relates to a youth case or a duty solicitor case, supplier size (as measured by the number of SPOCC investigation stage claims made), type of offence, and the location of the police station where the suspect was held. The results of this analysis are shown at Appendix 3.1, Tables 1 and 2. As regard outcomes, this shows that: after controlling for case complexity and location, the likelihood of a retained client being charged was significantly lower for the Liverpool, Middlesbrough and Swansea PDOs relative to private practice clients in these areas. For the other PDOs there was no statistically significant difference between them and private practice in respect of the likelihood of retained clients being charged.

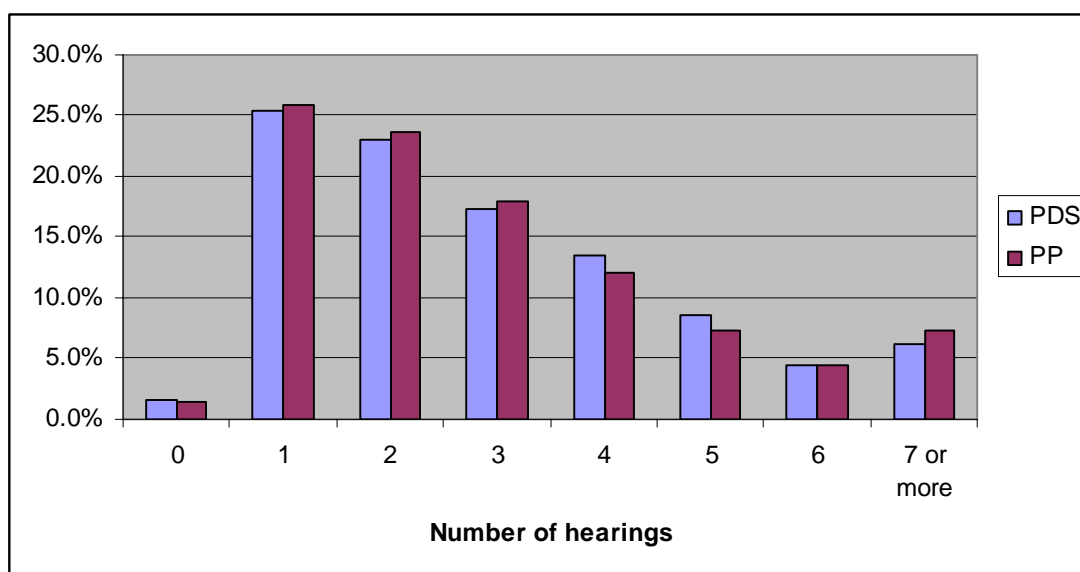
Case Processing in Court Proceedings

This section discusses the data from the proceedings stage of the project. It looks at issues such as the comparative number of hearings on PDO and private practice cases; the outcomes of those cases; timing of guilty pleas; and the benefits achieved from guilty pleas in cracked trials.

(i) The number of hearings

SPOCC data provides an indication of the number of hearings.⁸

Figure 3A: Number of Hearings in Magistrates' Court (SPOCC data)



Generally, although private practice appeared to have fewer hearings than the PDS offices on the above distribution, (although it did have more cases with 7 or more), in terms of the average number of hearings there was almost no difference (PDS mean 2.99, private practice mean 3.03). Within areas, however, there were some significant differences (see Table 3.7a) with the PDS generally having fewer hearings overall. At least one of the PDS offices indicates that this is the result of

our policy of giving robust and appropriate advice. Dealing with obvious guilty pleas at the first available opportunity to maximise available credit, but also taking cases in which there is either a not guilty plea or further negotiation to be conducted for as many hearings as are appropriate.⁹

⁸ These data are based on the magistrates' court claims other than advice and assistance only claims and second hearings for deferred sentence claims. They also exclude outlier values: in particular, on some cases the number of hearings exceeds 40, and some were even in the thousands. Most, possibly all of these, are likely to be errors and were excluded from the analysis.

⁹ Communication from Office Head.

Table 3.7a Mean Number of Hearings per Case in Magistrates' Courts (SPOCC)

		Mean	Std. Deviation	Std. Error Mean	N
Birmingham	PDO*	2.66	1.90	0.014	548
	PP	2.89	2.13		85732
Cheltenham	PDO	2.80	2.00	0.306	454
	PP	2.90	2.20		14031
Liverpool	PDO**	3.01	2.11	0.000	1055
	PP	3.41	2.76		35662
Middlesbrough	PDO	3.46	2.40	0.052	508
	PP	3.25	2.81		14721
Pontypridd	PDO	3.19	1.98	0.980	307
	PP	3.20	2.09		5004
Swansea	PDO**	2.84	1.90	0.004	412
	PP	3.12	2.38		5897
All areas	PDOs	2.99	2.09	0.062	3284
	PP	3.06	2.38		161047

Information on the number of hearings was also collected on the file data, but as this was on a much smaller sample and does not contradict the findings of the much larger SPOCC dataset, we have not reported it.

In the Crown Court the only available data on the number of hearings is from our file sample. In such cases hearings took place both in the magistrates' court and the Crown Court. The results are shown in the following tables.

Table 3.7b Mean Number of Hearings in the Magistrates' Court (Crown Court Files)

		Mean	N
Birmingham	PDO	2.31	42
	PP	2.30	47
Cheltenham	PDO	2.28	40
	PP	2.62	29
Liverpool	PDO	2.80	45
	PP	3.50	42
Middlesbrough**	PDO	2.82	44
	PP	4.17	48
Pontypridd	PDO	2.48	39
	PP	3.13	49
Swansea**	PDO	2.34	32
	PP	3.61	49
All**	PDO	2.52	243
	PP	3.26	263

Generally, with the exception of Birmingham, private practice had more hearings in the magistrates' court before the cases were committed to the Crown Court. The

differences were statistically significant only at the all areas level and in Middlesbrough and Swansea.

The picture in terms of actual Crown Court hearings was if anything reversed, as we can see in Table 3.7c.¹⁰

Table 3.7c Mean Number of Hearings in the Crown Court (Crown Court Files)

		Mean	N
Birmingham	PDO	4.39	46
	PP	4.00	48
Cheltenham	PDO	4.41	46
	PP	3.32	28
Liverpool	PDO	3.66	50
	PP	3.94	49
Middlesbrough	PDO	3.57	46
	PP	3.52	48
Pontypridd	PDO	4.23	39
	PP	3.57	49
Swansea	PDO	4.63	35
	PP	3.59	49
All areas*	PDOs	4.12	262
	PP	3.68	271

Thus generally PDS Crown Court cases had more hearings on average, though not in Liverpool. The difference is only significant at the all areas level, with a half a hearing per case difference. This is somewhat counter intuitive, as all things being equal, one would expect private practice to have more hearings than the PDS, partly because their cases were, if anything, more serious than the PDS; and partly because the economic incentives would generally suggest that, where the amount of work on Crown Court cases takes them over the standard fee payment thresholds, they would have economic incentives to do more hearings, which the PDS would not have.

¹⁰ In the Crown Court a limited number of cases (47) had other solicitors instructed prior to the main solicitor being instructed. Where possible, we collected information on the number of hearings prior to the second solicitor being instructed and added these to the total number of hearings in the case to see if this affected our findings. In terms of significant differences, this did not alter the picture at all.

(ii) *Adjournments*

An interesting issue related to hearings is the reasons for adjournments. Because our interest in this emerged during the course of our data collection, we only collected data on adjournments in three of the areas. Table 3.8a records the information on magistrates' court files and later tables look at the position in the Crown Court. The most noticeable statistic is the fact that the majority of adjournments are procedural or administrative in nature. In other words they appear to be related to the ordinary progress of the case, rather than inadequacies of the prosecution or defence. The second general point is that the number of adjournments caused by the prosecution not being ready is noticeably higher than the number caused by the defence not being ready.

Table 3.8a Adjournments in the Magistrates' Court (Magistrates' Court Files)

	Cheltenham		Pontypridd		Swansea		All	
	PP	PDS	PP	PDS	PP	PDS	PP	PDS
Prosecution not ready	8%	7%	18%	8%	11%	22%	13%	12%
Prosecution witnesses not attending	2%	1%	1%	1%	0%	0%	1%	1%
Defence not ready	0%	1%	3%	0%	0%	2%	1%	1%
Defendant did not appear	10%*	3%	13%	11%	20%	9%	14%*	8%
Defendant not produced	1%	0%	1%	0%	0%	5%	1%	1%
Administrative/procedural	68%	85%	57%	76%	66%	59%	63%	74%*
Not clear from the file	0%	0%	0%	1%	1%	1%	0%	1%
Other	10%*	3%	8%	4%	2%	2%	7%	3%
Number of adjournments recorded	106	98	119	112	91	88	316	298

In the magistrates' court, there were relatively few significant differences.¹¹ The main difference of note is the slightly greater tendency for clients of private practice not to attend court. This difference was significant in Cheltenham and for the three areas as a whole.

The next two tables look at adjournments in Crown Court cases. The first table considers the pattern of adjournments in the magistrates' court stages of the case (pre-transfer or committal). The second table looks at the hearings on these cases which took place in the Crown Court.

¹¹ We compared mean proportions of each type of adjournment as a proportion of all adjournments in the case.

Table 3.8b Adjournments in the Magistrates' Court (Crown Court Files)¹²

	Cheltenham		Pontypridd		Swansea	
	PP	PDS	PP	PDS	PP	PDS
Prosecution not ready	13%	10%	28%*	17%	18%	19%
Prosecution witnesses not attending	0%	0%	0%	0%	0%	0%
Defence not ready	0%	0%	0%	0%	1%	4%
Defendant did not appear	1%	2%	1%	2%	3%	0%
Defendant not produced	0%	1%	0%	0%	3%	6%
Administrative/procedural	80%	87%	68%	78%	76%	71%
Not clear from the file	3%	0%	3%	2%	0%	0%
Other	3%	0%	0%	0%	0%	0%
Number of adjournments	71	89	136	86	160**	69

In these cases, the number of magistrates' court adjournments per case was significantly higher in private practice in Swansea: otherwise the only significant difference was that a higher proportion of adjournments in private practice cases in Pontypridd was due to the prosecution not being ready.

Table 3.8c Adjournments in the Crown Court (Crown Court Files)

	Cheltenham		Pontypridd		Swansea	
	PP	PDS	PP	PDS	PP	PDS
Prosecution not ready	6%	9%	12%	12%	7%	13%
Prosecution witnesses not attending	0%	0%	0%	0%	1%	1%
Defence not ready	1%	0%	1%	0%	1%	1%
Defendant did not appear	0%	0%	2%	3%	6%	1%
Defendant not produced	1%	1%	1%	0%	0%	0%
Administrative/procedural	88%	85%	83%	77%	82%	84%
Not clear from the file	0%	1%	1%	0%	0%	0%
Other	3%	5%	1%	8%*	3%	1%
N of adjournments	68	150	118	132*	124	134*

Turning to adjournments in the Crown Court, the difference in the number of adjournments in Cheltenham is large but is largely accounted for by the fact that there are fewer private practice cases in this sample than there are PDO cases (although in Cheltenham the PDO averaged 3.3 adjournments per case in the Crown Court and private practice averaged 2.3 adjournments per case, the difference was not statistically significant). There was only one significant difference in the type of adjournments and that was that the Pontypridd PDO had a higher proportion of adjournments classified as 'other'.

¹² In this and the following table, comparisons were performed on the average total number of adjournments in each area comparing private practice and the PDS and on the means of the ratio of different types of adjournment as a proportion of all adjournments on a case to test differences between proportions of different types of adjournment.

We also examined the number of court hearings it took to reach a range of different outcomes in both the magistrates' court and Crown Court file samples. On the whole there were few significant differences between the PDOs and private practice in this respect, and for this reason we do not show the full data here. However, in the magistrates' court sample Liverpool PDO cases went through significantly fewer hearings on average than private practice cases to reach both conviction (an average of three fewer hearings per case), a finding probably related to the higher rate of guilty pleas in PDO cases in this area. On the other hand, in magistrates' court cases where there was an acquittal in Middlesbrough, those handled by the PDO went through significantly more hearings on average than similar private practice cases (an average of three more hearings per case). In Crown Court cases, Middlesbrough PDO cases went through fewer hearings on average to reach the mode of trial decision (an average of 1.5 fewer hearings per case), and at the all areas level PDO cases went through significantly fewer hearings on average to reach final sentence (an average of half a hearing per case fewer).

(iii) Length of cases and trials

An interesting contrast to the number of hearings on cases is the length of case. These data are shown in the following tables.

Table 3.9a Length of Case in Days (SPOCC)

		Mean	Std. Deviation	N
Birmingham	PDO	68.6	68.7	546
	PP	67.7	73.3	84383
Cheltenham	PDO	65.8	60.3	449
	PP	60.9	66.3	13952
Liverpool	PDO**	65.0	74.9	1041
	PP	81.7	88.3	35368
Middlesbrough	PDO**	89.4	78.1	505
	PP	70.3	84.4	14674
Pontypridd	PDO**	78.0	95.0	304
	PP	65.9	62.2	4947
Swansea	PDO**	66.8	79.5	406
	PP	56.1	66.7	5838
All areas	PDOs	71.0	75.7	3251
	PP	70.0	77.2	159162

It will be recalled that the PDOs generally had fewer hearings per case, so these data tend to suggest that their cases had more days between hearings than private practice cases. This can be seen in Table 3.9b where in every area apart from Liverpool the PDO cases took longer per hearing than did private practice cases. This suggests either that there were different listing practices for PDO cases, or that the PDO lawyers were sometimes suggesting longer adjournments than their private practice counterparts. This would have slowed the cases down but possibly meant they were more efficient in their use of court time. Another suggestion is that because the courts were aware that the PDOs did not have an economic interest in stringing cases out they might have been more likely to grant longer adjournments.

Table 3.9b: Days per Hearing in the Magistrates' Court (SPOCC)

		Mean	Std. Deviation	N
Birmingham	PDO**	18.6	18.7	546
	PP	16.3	18.4	84367
Cheltenham	PDO*	16.9	17.4	449
	PP	14.9	17.7	13951
Liverpool	PDO	14.3	17.0	1041
	PP**	19.2	26.9	35361
Middlesbrough	PDO**	19.8	22.1	505
	PP	15.1	19.4	14672
Pontypridd	PDO*	17.6	21.3	304
	PP	14.7	13.9	4947
Swansea	PDO**	16.4	18.8	406
	PP	12.5	16.6	5837
All areas	PDOs	16.8	18.9	3251
	PP	16.5	20.5	159135

Of cases where there was a trial, there was no significant difference in length of trial in the magistrates' court (most trials lasted a day or less). The length of time for which trials were listed was also collected where this was available. The difference in the distributions was not significant. In the Crown Court, although the average (mean) length of the PDS trials was 3.7 days compared to private practice trials of 2.7 days, the difference was not significant.

(iv) Bail

One process issue on which we collected data was the extent to which clients were bailed or remanded in custody (RIC) at the first hearing and the extent to which their bail status changed during the case. To a degree this adds to the information we have on case seriousness in Chapter 2, but also the extent to which the client's status changed in a positive direction (from being remanded in custody to being bailed) may be an indication of the quality of a lawyer's bail work (both the applications and the work that goes into sorting out appropriate bail conditions). Similarly, movements in a negative direction may indicate poor quality bail work (failing to anticipate and/or prepare for bail objections from the prosecution or the bench at hearings). The defendant's own behaviour can also obviously impact on bail status, especially movements in a negative direction. Tables 3.10a and 3.10b show the results for the magistrates' and Crown Court file data. There are almost no significant differences and low numbers of case where the bail status of clients changed.

Table 3.10a Bail Situation after First Hearing (Magistrates' Court Sample)

		Bailed	RIC	RIC then Bailed later	Bailed but RIC later	N
Birmingham	PDO	75.5	10.2	8.2	6.1	49
	PP	75.6	17.8	2.2	4.4	45
Cheltenham	PDO	90.7	9.3	0.0	0.0	43
	PP	76.6	12.8	4.3	6.4	47
Liverpool*	PDO	72.9	22.9	0.0	4.2	48
	PP	73.5	8.2	10.2	8.2	49
Middlesbrough	PDO	88.0	2.0	2.0	8.0	50
	PP	78.6	4.8	9.5	7.1	42
Pontypridd	PDO	85.1	8.5	0.0	6.4	47
	PP	87.8	4.1	4.1	4.1	49
Swansea	PDO	88.1	4.8	2.4	4.8	42
	PP	72.3	10.6	6.4	10.6	47
All areas	PDO	83.2	9.7	2.2	5.0	279
	PP	77.4	9.7	6.1	6.8	279

Table 3.10b Bail Situation after First Hearing (Crown Court Sample)

		Bailed	RICed	RICed then bailed later	Bailed but RICed later	N
Birmingham	PDO	64.4	20.0	13.3	2.2	45
	PP	66.0	20.0	6.0	8.0	50
Cheltenham	PDO	55.6	35.6	2.2	6.7	45
	PP	65.5	17.2	6.9	10.3	29
Liverpool	PDO	58.3	12.5	20.8	8.3	48
	PP	71.2	19.2	5.8	3.8	52
Middlesbrough	PDO	79.5	15.9	2.3	2.3	44
	PP	71.7	19.6	0.0	8.7	46
Pontypridd	PDO	50.0	45.0	0.0	5.0	40
	PP	51.0	28.6	12.2	8.2	49
Swansea	PDO	63.6	18.2	12.1	6.1	33
	PP	49.0	40.8	4.1	6.1	49
All areas	PDO	62.0	24.3	8.6	5.1	225
	PP	62.2	24.7	5.8	7.3	275

There was no obvious pattern to the number of clients bailed at the outset of Crown Court cases or bailed having initially been remanded in custody. There was perhaps a slightly greater tendency of private practice clients to be remanded in custody having been bailed initially, but again this may be due to general patterns in the clients' behaviour (as we have seen in Chapter 2, our evaluation of the clients suggests they may have more antecedents and so may be more of a bail-risk) and the differences are in any event relatively small and not statistically significant.

(v) *Advocacy*

An interesting issue is whether there was a different tendency to instruct either outside agents in magistrates' court cases, or barristers in Crown Court cases. As a result, we recorded information on whether the hearings were conducted by an advocate from within the firm and from outside the firm

In the magistrates' court, as a proportion of all hearings on cases, the PDOs only instructed advocates outside the firm in 2.7% of hearings, whereas private practice did so in 5.8% of hearings. The difference was not quite statistically significant. For magistrates' court hearings in cases that were eventually committed or transferred to the Crown Court for trial, the PDOs instructed advocates from outside the firm in about 4% of hearings, private practice in 6% of hearings. The difference was not significant. At the Crown Court level, the PDOs instructed outside advocates in 99.6% of hearings, private practice in 98.8% of hearings. Again, the difference was not significant.

(vi) *Time Spent on Cases*

We were able to compare the time spent on cases by comparing claim information data collected from solicitors' files in private practice with data collected from the Case Management System for the PDS. The results for the two court samples are in the Table 3.11a and Table 3.11b.¹³

¹³ These data report chargeable time only. This was the most consistently and reliably available information on private practitioner files and the PDS CMS system. We conducted a similar analysis including the non-chargeable time and this did not produce markedly different results.

Table 3.11a Mean Time Spent on Cases in Magistrates' Court Files (in minutes, PDS Chargeable Time Only)

		Mean	Std. Deviation	Std. Error Mean	N
Birmingham	PDO	439	359	50	52
	PP	945	2364	338	49
Cheltenham	PDO	360	261	38	48
	PP	298	296	42	50
Liverpool	PDO**	334	320	45	51
	PP	731	727	103	50
Middlesbrough	PDO**	367	297	41	50
	PP	186	150	21	52
Pontypridd	PDO	354	353	50	49
	PP	256	404	57	50
Swansea	PDO	369	306	43	50
	PP	382	402	57	50
All areas	PDOs	371	317	18	302
	PP	465	1065	62	299

There was no consistent pattern across the areas on time spent on magistrates' court cases. Liverpool PDO spent significantly less time on average than private practitioners in their locale, whereas in Middlesbrough the position was the opposite: Middlesbrough PDO spent significantly more time than private practice did on its cases.

Table 3.11b Mean Time Spent on Cases in Crown Court Files (in minutes, PDS Chargeable Time Only)

	PDS or PP	Mean	N	Std. Deviation
Birmingham	PP	5329	44	19668
	PDS	1401	32	1438
Cheltenham	PP	1180	16	1090
	PDS	2174	36	4040
Liverpool	PP	1465	37	1170
	PDS	1264	23	2154
Middlesbrough	PP	1344	46	2124
	PDS	2144	39	3184
Pontypridd	PP	1371	27	1080
	PDS	1582	28	2946
Swansea	PP	1250	43	948
	PDS	4346	24	10613
All	PP	2160	213	9093
	PDS	2112	182	4764

It was not always possible to obtain reliable data on time spent on Crown Court cases, but in those cases where data were available, the PDS spent less time on average in Crown Court cases in Liverpool and Birmingham, but the reverse was true in the four other areas. The differences between the PDS and private practice were not significant. It is also likely that the results in some areas were affected by the inclusion of some very long Crown Court cases (as is indicated by the high standard deviations for private practice in Birmingham and for the PDO in Swansea).

Outcomes in Proceedings Cases

Having considered in some detail elements describing the process of case-handling by the PDS and private practice in our comparator areas, we move on to look at the actual results achieved by the two types of service. It should be observed from the outset that outcome data are difficult to interpret, as outcomes achieved even on sizeable samples of cases can be explained at least in part by local variations and differences in case types rather than quality of service.

(i) General pattern of outcomes

The overall pattern of outcomes as recorded in the SPOCC data can be seen in the following tables. Table 3.12a sets out the SPOCC data for proceedings cases. This includes all magistrates' court cases as well as those cases which complete in the Crown Court where a claim is made in the magistrates' court (mostly cases committed for sentence but also possibly some of cases transferred up to the Crown Court for). In relation to the proceedings data, the suggestions are that the PDS have more guilty pleas but fewer cracked trials (indeed fewer trials generally); but more discontinuances. There are also fewer committals for trial. We subject key aspects of these differences to more robust analysis below.

¹⁵ We are told that cases that are transferred to the Crown Court are not always subject to a legal aid claim in the magistrates' court.

Table 3.12a Outcomes in magistrates' court proceedings cases (SPOCC)

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All Areas		N
	PDS	PP	PDS	PP	PDS	PP	PDS	PP	PDS	PP	PDS	PP	PDS	PP	
	%	%	%	%	%	%	%	%	%	%	%	%	%	%	
No Further Instructions from client	2.9	3.9	4.4	2.0	2.7	2.9	3.2	5.5	2.3	1.5	0.7	1.6	2.7	3.9	6279
Change of Solicitor	6.4	2.6	6.4	2.2	1.5	2.4	2.2	3.1	8.8	2.5	2.2	1.9	4.1	2.6	4215
Proceedings Discontinued/ charges withdrawn	25.9	19.2	22.5	23.4	12.6	10.2	14.8	16.0	27.0	21.9	20.4	12.9	20.9	17.0	27737
Guilty Plea	40.9	38.0	50.0	48.0	59.0	60.7	56.5	45.7	50.8	40.0	57.0	59.1	51.2	44.4	72572
Cracked Trial	5.5	10.9	7.0	5.1	6.2	6.1	7.7	7.4	3.9	9.6	4.9	5.5	6.1	9.0	14571
Contested hearing or Trial	10.2	11.7	5.5	5.7	6.5	7.3	5.9	7.7	3.9	12.3	5.3	6.1	6.3	9.8	15807
Representation Order withdrawn	0.2	0.2	0.0	0.0	0.2	0.1	0.0	0.3	0.0	0.1	0.0	0.4	0.0	0.2	354
Committal for sentence	1.8	2.2	0.9	1.8	1.5	3.5	2.3	2.0	2.3	2.5	3.9	2.0	2.1	2.2	3598
Committal for trial	6.0	10.5	3.3	11.8	9.2	5.5	7.0	11.6	0.3	8.9	5.1	9.6	6.2	10.1	16293
Transfer to Crown Court	0.2	0.5	0.0	0.0	0.4	1.0	0.3	0.5	0.3	0.5	0.5	0.4	0.2	0.5	831
Extradition	0.0	0.1	0.0	0.0	0.1	0.0	0.1	0.1	0.0	0.1	0.0	0.3	0.0	0.1	186
Indictable Only (early hearing/remitted back)	0.0	0.3	0.0	0.0	0.1	0.1	0.0	0.1	0.3	0.1	0.0	0.2	0.0	0.2	334
	548	85089	454	508	14635	13939	1046	35003	307	4956	412	5880	3275	159502	162777

Table 3.12b Summary of outcomes from file data (magistrates' court)

	All		Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea	
	PP	PDS	PP	PDS	PP	PDS	PP	PDS	PP	PDS	PP	PDS	PP	PDS
	%	%	%	%	%	%	%	%	%	%	%	%	%	%
Charges withdrawn	22	21	24	16	23	28	20	22	26	26	20	19	20	17
Bindovers	2	2	2	3	0	0	1	0	4	11	4	0	1	3
Guilty pleas	69	71	69	75	76	71	56	77**	56	57	77	75	76	70
Other convictions	8	5	14	3	3	1	18	3	13	3	0	8	1	12
Acquittals	2	2	2	4	1	0	6	1	1	5	0	2	2	1
Other	0	1	0	0	0	1	1	1	0	0	0	2	1	0
No. of Charges	627	609	130	108	78	110**	96	96	85	74	111	118	127	103

We collected similar information in relation to file data, which we set out in Table 3.12b for completeness. On the files in our sample, we considered whether there were significantly higher numbers of charges, withdrawals, etc.¹⁶ There were only two significant results: Liverpool PDO had a significantly higher number of guilty pleas than private practice in their area (consistent with the SPOCC data) and Cheltenham PDO had significantly more charges on their files.

Overall, on the file data, in the magistrates' court the levels of conviction were similar, in 79% of the PDS cases the clients were convicted of something and the same was true in 77% of private practice cases, a difference that was not significant. Similarly, in the Crown Court, overall levels of convictions were similar, in 65% of the PDS cases the client was convicted of something and the same was true in 70% of private practice cases, a difference which was not significant.

(ii) *Multivariate analysis*

As with the investigation stage, in order to make the comparison of outcomes between PDS and private practice suppliers statistically robust, we need to compare outcomes for like claims. The data available to us from SPOCC allows us to control, primarily for cases concluded in the magistrates' courts, for the type of offence and the number of defendants when estimating the differences in outcomes between PDS and private practice cases. In addition, it is possible to control for the number of claims made by each supplier (a proxy for supplier size). Finally, it could be argued that the geographic variation in prosecution and court practices means we should control for differences at the local level. The results are shown in Appendix 3.1, Tables 3-6. The analysis was based on cases where the original provider retained the cases throughout the proceedings (i.e. excluding those where the client subsequently changed solicitor). The results of multiple regression analyses are based on four measures of outcome which relate to the proceedings stage (case withdrawn or discontinued, guilty plea, trial/hearing, cracked trial).

The results can be summarised as follows:

1. after controlling for case complexity and location, the likelihood of a client having charges withdrawn or discontinued at the proceedings stage was significantly higher in five of the PDOs (Birmingham, Middlesbrough, Pontypridd, Swansea and Cheltenham) relative to private supplier cases, and significantly lower in only one: Liverpool [Table 3 in Appendix 3.1].
2. after controlling for case complexity and location, the likelihood of a client having a guilty plea entered at the proceedings stage was significantly higher in three of the PDOs (Birmingham, Liverpool and Pontypridd) relative to private supplier cases, and significantly lower in one: Middlesbrough [Table 4 in Appendix 3.1].
3. after controlling for case complexity and location, the likelihood of a client having a formal trial/hearing at the proceedings stage was significantly

¹⁶ Because of the nature of the data, this a comparison was performed on the *number* of charges, guilty pleas etc. rather than the *proportions* shown in the table.

lower for PDO cases in Liverpool and Pontypridd relative to private supplier cases, and insignificantly different in the others [Table 5 in Appendix 3.1].

4. after controlling for case complexity and location, the likelihood of a client having a cracked trial at the proceedings stage in PDO cases was significantly lower in Birmingham, Middlesbrough and Pontypridd relative to private supplier cases, and no different in the other three PDOs [Table 6 in Appendix 3.1].

As with investigation cases, the picture is, thus, one broadly positive about the performance of PDS offices relative to private practice, particularly in Middlesbrough, Cheltenham and Swansea. Liverpool's results suggest slightly poorer performance than local firms on one indicator (lower likelihood of having charges withdrawn). This is the one negative note in relation to the otherwise consistently positive finding for the PDOs, as all the other five offices were significantly more likely to have charges withdrawn during the proceedings stage than private practitioners.

It should be noted, however, that this analysis is based on SPOCC data only. It is not sensitive to all the differences in cases explored in Chapter 2, such as the lower level of previous convictions and generally lower levels of complexity and seriousness seen in PDS cases which might account for the difference in outcomes.

(iii) Pleas on the day of trial

One of the most frequent criticisms made of the SPOCC data codes was that of the way 'cracked trials' were coded.¹⁷ It was felt that practitioners might have different definitions of a cracked trial and also that there was significant overlap with other code categories, such as ordinary guilty pleas. We have more detailed data on cracked trials from our file samples. We defined a cracked trial as any case where pleas were indicated on the day of trial. The figures shown are for the number of cracked trials as a proportion of all cases where there are guilty pleas. Table 3.13a shows the figures for both magistrates' court and Crown Court cases.

¹⁷ The outcome codes have subsequently been updated.

Table 3.13a Proportion of pleas indicated on day of trial (Magistrates' court and Crown Court file samples)

		Magistrates' court files		Crown Court files	
		%	No.	%	No.
Birmingham	PDO	14.6	48	28.0	25
	PP	18.2	33	41.7	36
Cheltenham	PDO	26.8	41	6.3	32
	PP	4.9*	41	45.0*	20
Liverpool	PDO	16.7	42	34.5	29
	PP	26.5	34	29.0	31
Middlesbrough	PDO	17.2	40	40.0	25
	PP	13.5	38	42.3	26
Pontypridd	PDO	19.4	31	33.3	21
	PP	16.2	37	25.0	32
Swansea	PDO	10.8	37	31.6	19
	PP	15.4	39	29.4	34
All Areas	PDO	15.0	239	27.8	151
	PP	2.6	222	34.6	179

In the magistrates' court there was no consistent pattern and in only one area was there any significant difference. Cheltenham PDO had a far higher proportion of pleas on the day of trial than did private practice in the area.

Generally the levels of cracked trial were higher in the Crown Court, perhaps reflecting the seriousness of offences being dealt with (and the consequent difficulties of clients facing up to a decision on plea) or possibly reflecting the more transient role of counsel in these proceedings, where it may be their participation which precipitates a plea. Again, there was no clear pattern and only in Cheltenham was there a significant difference, although this time it is private practice cases with significantly more cracked trials.

Whilst cracked trials are usually, and to a degree understandably, regarded by policy makers as wasteful, the Scottish public defenders research showed that they can have positive benefits from the perspective of the defendant. We were interested in identifying the nature of any benefits arising to the defendant from cracked trials. In 49% of cases there was apparent benefit. Whilst the PDS appeared more likely to get benefit for their clients from a cracked trial (benefit occurred in 54% of PDS cases and 43% of PP cases) the differences were not significantly different. The benefits indicated were as follows:

Table 3.13b Benefits to defendants from cracked trials

Guilty plea related to	PDS	PP
	% of cracked trials	
reduction of charges	12.2	16.7
substitution of alternative charges	19.5	16.7
change in phrasing of charge	4.9	6.7
other apparent benefit	17.1	6.7
N	41	30

(iv) The nature of the actual convictions

Tables 3.14a and 3.14b show the profile of lead convictions organised by offence categories in the magistrates' court and Crown Court samples respectively.

Table 3.14a Convictions by offence group in Magistrates' court cases (file sample)

	PDS %	N	PP %	N
Offences against the person	11.5	27	10.6	24
Homicide and similar	0	0	0	0
Sexual Offences/Children	0	0	0	0
Robbery	1.3	3	0	0
Burglary	5.1	12	3.5	8
Criminal Damage	3.8	9	6.2	14
Theft	22.2	52	26.5	60
Public order etc	9.0	21	11.1	25
Drugs supply/possession etc	6.0	14	4.4	10
Driving offences	26.9	63	21.7	49
Breach proceedings	9.4	22	8.0	18
Administration of justice	0	0	0	0
Other	4.7	11	8.0	18
Total		234		226

Table 3.14b Convictions by offence group in Crown Court cases (file sample)

	PDS %	N	PP %	N
Offences against the person	23.5	40	20.2	39
Homicide and similar	4.7	8	0.0	0
Sexual Offences/Children	4.7	8	3.6	7
Robbery	4.1	7	5.7	11
Burglary	9.4	16	12.4	24
Criminal Damage	2.9	5	4.1	8
Theft	13.5	23	7.3	14
Public order etc	10.6	18	11.9	23
Drugs supply/possession etc	7.6	13	21.2	41
Driving offences	4.1	7	3.6	7
Breach proceedings	4.1	7	0.5	1
Administration of justice	3.5	6	1.6	3
Other	7.1	12	7.8	15
Total		170		193

The only striking difference is the number of convictions for drug offences in the Crown Court, with a much higher number of these in the private practice cases, as would be expected from the higher incidence of such cases in private practice caseloads (see Chapter 2).

We collected detailed information on the actual lead offence for each case where a client was convicted. The results of that analysis are set out in Appendix 3.2. This shows the lead offence that the client was charged with and the lead offence that they ended up being convicted of. This enabled us to consider whether there was any discernible difference in the overall pattern of the seriousness of convictions or differences in the plea-bargaining achievements of the two services. No particular patterns were apparent, beyond the difference in the number of drugs convictions in the Crown Court.

(v) *Offence Characteristics*

To assist in interpreting the outcomes profiles of the PDS and private practice, we recorded some detail on the nature of convictions where it was felt this might influence sentence.

Clients who were charged in relation to more than one separate incident might be expected to get more severe sentences, for example. In the magistrates' court, about half of all clients were in fact only charged in relation to one incident. The average (mean) number of incidents was the same for private practice and the PDS (1.4 incidents per client convicted).¹⁸ In the Crown Court, 49% of PDS clients and 44% of

¹⁸ We removed one outlier from the analysis as one private practice client had been convicted in relation to over 150 incidents, which would have significantly distorted the mean.

private practice clients were charged in relation to one incident only. The mean number of incidents for the PDS was 1.6, while the mean for private practice was 2.1. The difference was not significant.

The following table shows the aggravating factors identified where the clients were convicted in either magistrates' courts or the Crown Court.

Table 3.15 Potentially aggravating factors for convictions (Magistrates' court and Crown Court file samples)

	Magistrates' court		Crown Court	
	PDS %	PP %	PDS %	PP %
Offence committed whilst on bail	5.1	7.9	1.2	4.4*
Defendant failed to surrender to bail	5.9	8.7	1.6	2.9
Breach of trust	1.3	0.9	3.1	2.2
Pre-meditated	0.0	0.4	0.4	0.7
Vulnerable victim	2.5	1.3	7.5	5.8
Racial Aggravation	0.4	0.9	3.1	1.8
Group offence	3.4	2.2	5.1	4.4
Weapon used	0.8	2.6	14.5	12.0
Number	302	299	264	281

With regard to potentially aggravating factors in the magistrates' courts, the PDS and private practice did not have significantly different profiles, with few aggravating factors in evidence and no significant differences. In the Crown Court there was only one significant difference, which was a greater tendency for private practice clients to commit further offences whilst on bail, perhaps indicating that they were more likely to have repeat-offender clients in their case mix.

(vi) Sentences in the Magistrates' court

Sentencing data were derived from our file sample. Given the numbers involved, the results for sentence are presented here at an all areas level. We tested for differences at the office level but found insufficient difference for reporting to be sensible. Of those clients convicted:

- 20% of private practice and 13% of PDS clients were sentenced to immediate custody. The difference was not quite significant. For cases where the clients received custodial sentences, the PDS average length of sentence for those was marginally higher (7.0 months compared with 5.3 months) but this difference was not significant.
- 29% of private practice and 35% of PDS clients received fines. The difference was not significant. Of those receiving fines, private practice clients average fine was £124, whereas for the PDS it was £175, a difference that was significant.
- 21% of private practice clients received community rehabilitation orders, compared with 17% in the PDS. This difference was not significant. The

average length of these orders was the same for both sets of clients (14 months).

- 10% of private practice clients and 18% of PDS clients were ordered to pay compensation. This difference was significant. Where ordered, average levels of compensation were similar: £232 for private practice clients and £252 for the PDS clients, a difference that was not significant.
- 10% of private practice clients received discharges or bindovers, compared with 17% of PDS clients. This difference was significant.
- The PDS had one client who received a suspended prison sentence, while private practice had no such results.
- 12% of private practice clients received community punishment orders, compared with 9% of PDS clients. Private practice averaged 102 hours and PDS clients 98 hours. Neither of these differences was significant.
- 1% (3) of private practice clients and 2% (5) of PDS clients received a combination order, a difference that was not significant.
- 2% (4) of PDS client received Drug Testing and Treatment Orders (DTTOs). There were no private practice clients who received these orders. The difference was significant.
- 1% (2) of private practice clients and only one PDS client (0.5%) received an attendance centre order, a difference that was not significant.

These results tend to suggest that the sentencing outcomes achieved by the PDS and private practice were similar. We can also investigate the extent to which convicted clients risked prison by using an indication of whether a pre-sentence report (PSR) was obtained. Of those convicted 39% of PDS clients and 49% of private practice clients were ordered to undergo a PSR. This difference was significant. It is worth considering the incidence of custody of those who received PSRs. 25% of private practice clients and 15% of PDS clients who had a pre-sentence report received custodial sentences, although the difference was not significant. We also recorded how far the actual sentence deviated from the recommendations of the PSR. The results are inconclusive, in that private practice had more clients who were sentenced less severely than the PSR recommendation, but more sentenced more severely. The differences were not, in any event, significant.

Table 3.16 How did the sentence relate to the PSR recommendation (Magistrates' court file sample)

	PDS	PP
Less severe	4.3%	7.8%
About the same	78.3%	70.1%
More severe	17.4%	22.1%
Number	69	77

(vii) Sentences in the Crown Court

As with magistrates' court cases, given the numbers involved, the results for sentence are presented here at an all areas level.¹⁹ Of those clients convicted:

- 45.9% of PDS and 54.9% of private practice clients were sentenced to immediate custody. The difference was not quite significant. For cases where clients received custodial sentences, there was no significant difference in length of sentence.
- Community punishment orders were given to 18.0% of PDS clients and 12.8% of private practice clients. The difference was not significant. The length of these orders for both sets of clients was not significantly different.
- 17.4% of PDS and 12.8% of private practice clients were given Community Rehabilitation Orders. The difference was not significant. The length of these orders for both sets of clients was not significantly different.
- 14.0% of PDS and 9.2% of private practice clients were ordered to pay compensation. The difference was not significant. The amount of compensation ordered by the court did not significantly differ between PDS and private practice clients.
- 7.6% of PDS and 8.2% of private practice clients received fines. The difference was not significant. The fines received by PDS and PP clients did not differ significantly in value.
- 2.9% of PDS clients and 2.1% of private practice clients were given suspended sentences. The difference was not significant.
- 1.2% of PDS and 3.1% of private practice clients received combination orders, a difference that was not significant.
- 3.5% of PDS clients and 2.1% of private practice clients received DTTOs. The difference was not significant.
- No PDS or PP clients received attendance orders or discharges/bindovers.

As with magistrates' court cases, the results suggest that sentencing outcomes were not very different for the PDOs or private practice. Of those convicted, 66.9% of PDS and 64.1% of PP clients were ordered to undergo a PSR. The difference was not significant. 43.5% of PDS clients and 56.0% of PP clients who had a pre-sentence report received custodial sentences, a difference which was not significant. The PDS did appear to be more likely to get sentences less severe than the PSR recommendations.

¹⁹ We tested for differences at the office level but found insufficient difference for reporting to be sensible.

Table 3.17 How did the sentence relate to the PSR recommendation? (Crown Court file sample)

	PDS	PP
Less Severe	10.7%	0.0%
About the same	62.7%	64.0%
More severe	26.7%	36.0%
N	75	75

(viii) Appeals

In 9.9% of their convictions, the PDS took substantive steps relating to an appeal. This amounted to 17 cases; two were appeals against the conviction, fourteen against the sentence and one against both the sentence and the conviction. 4.6% of private practice cases were followed up with substantive steps on appeal (9 cases). All were against the sentence. Generally the appeals were unsuccessful.

Conclusions

This chapter suggests a number of subtle but important differences in the way cases are handled by the PDS compared to private practice. Whilst it is fair to say that such differences as there are not consistent across all six areas, the main differences are supportive of the view that the PDS was, with important regional variation, performing at higher levels of quality than private practice, especially at the investigation stage.

The PDS has proved more likely to attend the police station than private practice over the life of this project. This is particularly true for attendances on own clients. Both the PDS and private practice are less likely to attend police stations for duty callouts, although the PDS was still more likely to attend than private practice. This finding is an interesting counterpoint to the observation that salaried staff are less motivated to work for clients (and so might be less likely to attend). This may be less of an issue within the PDS currently because as an organisation it has the capacity to give staff economic incentives (through callout rates, overtime benefits, etc.) to attend on clients at police stations.²⁰ More generally, the PDS was under a powerful incentive to attract clients and this might well be expected to prompt favourable response to client call outs. Whatever the reason for this finding, it is an important indication in favour of the PDS in terms of quality, though there may be efficiency issues if this is a reflection of PDOs operating at under-capacity.

The file data indicated that the PDS were spending less time on police station investigation cases and this was borne out by the SPOCC data for some PDOs. This could be an artefact of the different systems and incentives for recording time. For private practice, their livelihoods depended on recording time. For the PDS, time was monitored (particularly towards the end of the project) to ensure the PDS was 'billing'

²⁰ Private practice similarly uses incentives to encourage staff to attend police stations.

its time effectively, but this is a rather weaker incentive than that operating for private practice. Lower levels of time might also reflect less serious caseloads.

Another interesting indicator of how cases are handled, and one that reflects on the assumption that public defenders are more likely to encourage clients to cooperate with the prosecution, was the extent to which clients exercised their right to silence in the police station. In four of the areas studied the PDS clients were significantly more likely to exercise their right to silence (Middlesbrough, Cheltenham, Pontypridd and Swansea).

There were also indications that half the PDS offices were getting better results at the investigation stage for their clients. Middlesbrough, Cheltenham and Swansea PDOs had fewer clients charged than private practice, and Middlesbrough and Cheltenham PDOs had more clients who were 'no further actioned' by the police. It is worth noting that both Middlesbrough and Cheltenham PDOs were more likely to have clients who exercised their right to silence.

In terms of the proceedings stage, there were fewer clear differences between the two services. Although some PDS offices (Birmingham, Swansea and Liverpool) averaged fewer hearings per case, the position in the other areas was more mixed. There were fewer trials in Liverpool and Pontypridd PDS offices. Reasons for adjourning cases were generally similar. Interestingly there was a slight but significant tendency for the PDS cases to have more time between hearings.

In terms of outcomes, all the PDS offices except Liverpool had a higher proportion of cases where the charges were dropped than private practice. Three PDS offices (Birmingham, Liverpool and Pontypridd) had more guilty pleas than private practice in their areas.

On the basis of the SPOCC data, levels of cracked trial were significantly lower for the Middlesbrough, Cheltenham and Swansea PDOs compared to private practice. Doubts have been expressed about the validity of SPOCC data on that indicator, and in terms of our file analysis (which relies on a much smaller sample) levels of cracked trials were generally not significantly different (although our file analysis suggested Cheltenham PDO had significantly more clients plead guilty on the day of trial in the magistrates' court and significantly fewer in the Crown Court). Both the PDS and private practice appeared to be getting similar benefits for clients from cracked trials.

Our file data suggests that the actual nature of convictions of clients did not appear to differ significantly, save that our private practice cases had a greater proportion of drugs cases in the Crown Court. It will also be remembered from Chapter 2 that there are some significant differences in client profiles (especially as regards antecedents and peer review ratings of complexity and seriousness). These factors should be borne in mind in interpreting sentences. Generally there were few significant differences. In both Crown Court and the magistrates' court cases private practice clients more often got prison sentences, were less frequently ordered to pay compensation and were more likely to be ordered to do Community Rehabilitation. In the magistrates' court they had fewer discharges/bindovers. Private practice clients in the magistrates' court were more likely to be ordered to undergo pre-sentence reports, but the differences in this respect were marginal in the Crown Court.

Chapter 4

Evaluation of Quality through Peer Review

This chapter investigates the quality of criminal defence work conducted by Public Defender Offices (PDOs) and private practice solicitors through the medium of peer review of files. Peer review conducted by fellow professionals, with significant expertise in the particular field of legal work, appears to be the most reliable method of evaluating the quality of legal services. Quality here refers to the extent to which lawyers meet relevant standards of competence, and peer review of quality is to be distinguished from ‘value for money’ reviews which have a separate, and distinctive, focus.

Methodology and Presentation

The use of peer review as a method of assessing the quality of criminal defence work is relatively novel. It was first attempted in 1992, at the outset of Legal Aid Franchising, as reported in *Lawyers – the Quality Agenda*.¹¹⁴ It was used to a limited extent, in relation to crime, in research conducted by Lee Bridges and Satnam Choongh, *Improving Police Station Legal Advice*,¹¹⁵ but it has rarely been used in other research into the criminal defence services in England and Wales. A form of peer review is used by the CPS Inspectorate to assess the quality of files and court advocacy, and ‘peers’ are used by the testing organisations to assess candidates in the police station representative and duty solicitor accreditation schemes, although this does not involve assessment of case files, nor advocacy in ‘real’ cases. Peer review was employed in the evaluation of civil advice services conducted in *Quality and Cost*,¹¹⁶ and has continued to be applied in an increasing number of subject categories to assess legal work¹¹⁷. The knowledge and experience gained from these studies (in which many of the research team were involved) have been instrumental in the development of the specific methods employed here. Peer review was not used to assess quality in the pilot Scottish Public Defender Solicitors Office and other, proxy indicators of quality were used.¹¹⁸

The peer review framework and methodology were designed to enable objective, qualitative judgements to be made about case files *and* the work represented by those

¹¹⁴ A. Sherr, R. Moorhead and A. Paterson, *Lawyers – the Quality Agenda*, London, HMSO, 1994. Note that Rosenthal and Williams each considered such issues in the United States earlier.

¹¹⁵ L. Bridges and S. Choongh, *Improving Police Station Legal Advice*, London, Law Society and Legal Aid Board, Research Study No 31, 1998.

¹¹⁶ R. Moorhead *et al.* *Quality and Cost: Final Report on the Contracting of Civil, Non-Family Advice and Assistance Pilot*, London, The Stationary Office, 2001.

¹¹⁷ See, Moorhead and Harding (2003) ‘Quality and Access: Specialist and tolerance work under civil contracts’ in R. Moorhead and A. Sherr (eds), *An Anatomy of Access: Evaluating Entry, Initial Advice and Signposting using model clients*, London: Legal Services Research Centre, 2003.

¹¹⁸ T. Goriely, *et al.*, *The Public Defence Solicitors' Office in Edinburgh: An Independent Evaluation*, Edinburgh, Scottish Executive Central Research Unit, 2001. . Peer review is now also being developed as part of the Scottish legal aid system (See A. Paterson’s paper at International Legal Aid Forum, Killarney 2005).

files. This distinction is important: on the one hand, a well-presented file does not necessarily mean that the substance of the advice and assistance given was competent; on the other, criminal defence solicitors often make reference to the oral nature of much of their work, and assert that a poorly filled out or badly presented file does not necessarily mean that the advice and assistance actually given was of poor quality. Whilst there is some truth in this assertion, both Law Society and Legal Services Commission (LSC) literature emphasise the importance of keeping adequate written records, and as was noted in *Quality in Criminal Defence Services*:

... maintaining an adequate record is important not only for audit purposes, or in the event that the case is passed to another caseworker. Some record keeping is evidence of quality *per se*, since without certain information being recorded in writing, it is not possible to perform competently the overall task of advising and defending the client.¹¹⁹

This chapter presents quality assessment based on two samples which were carried out at different times with two different sets of criteria from PDOs and private practice firms in the six areas covered by the research. Both studies used similar five-point scales to rate files and the work they evidenced. The earlier of these two pieces of research (the Investigation File Sample) examined cases after the first year of the PDS and focused solely on the investigation stage. It was carried out by a single peer reviewer, a former criminal defence practitioner and acknowledged expert on qualitative aspects of police station legal advice, who was also a member of the research team.¹²⁰ At this stage the LSC Peer Review system had not yet been finalised and assessment by an existing member of the team was a convenient approach. The guidance and grading sheet used in the evaluation of the Investigation File Sample are included in Appendix 4.1. Information and results emanating from the early file sample at the end of the first year of the pilot were fed back to criminal defence solicitors from the PDS and to private practice through the medium of a report and a set of pro-forma appearing on the LSC website.¹²¹

A total of 299 files were examined in this first peer review exercise, with the sample split between half drawn for the PDS and half from private practice firms operating in the same areas. There were therefore 25 files from each PDO and 25 from private practice within each area, with the exception of the Liverpool PDO where 24 files were examined. Private practice investigation stage files were based on a random sample of such cases conducted in the main police stations served by each of the PDOs

The peer review in the second study was more wide ranging, covering all work on the criminal defence files selected, including the investigation stage. This was conducted through a framework and methodology originally developed for a study of civil, non-family advice and assistance cases by a research and operations team based at the

¹¹⁹ L. Bridges, *et al.*, *Quality in Criminal Defence Services*, London, Legal Services Commission, 2000.

¹²⁰ Professor Ed Cape of the University of the West of England, author of *Defending Suspects at Police Stations*, London: Legal Action Group, 2003.

¹²¹ Version 7 of this document can be viewed currently: http://www.legalservices.gov.uk/docs/pds/pds6_police_station_attendance_dec03.pdf.

Institute of Advanced Legal Studies (IALS) on behalf of the LSC.¹²² Three members of this original team were also involved in the current research, and they worked together with the principal author of the earlier investigation study criteria in developing the methodology for the second stage peer review study.

For this second stage, a team of peer reviewers were carefully selected from an independent group of practising solicitors who had considerable experience in criminal law and also in supervising and reviewing the files of other fee earners. Peer reviewers were chosen on the basis of open application, both from private practice and from the PDS. Selected peer reviewers were trained over a two-day period, to equip them with the specific evaluative tools that they would need to carry out reviews. There was monitoring and further training after they carried out their first peer reviews. Both the recruitment and training processes were carried out as part of a larger exercise being conducted on behalf of the LSC to develop peer review of criminal defence work generally.¹²³

After initial training, the peer reviewers assessed the suppliers' case files. Peer review was conducted on closed files, and peer reviewers were instructed to discount those files where it appeared that they had been re-arranged, e.g., for the purposes of billing or closure. The files were randomly selected by the research team and presented to the peer reviewers as stratified samples broken down by region and supplier-category (PDO and private practice (PP)). It was intended that there would be a total sample of 600 files made up of 50 randomly selected cases from each of the supplier-categories in each region, with 25 of these relating to cases concluded in the magistrates' court and 25 to Crown Court cases. Due to some complications, the final tally was three files short – 597 – but this was more than sufficient to make statistically significant findings based on the sample.

In consultation with the peer reviewers, the researchers developed a full set of standard criteria in order to assess the quality of the files and of the firms/PDOs reviewed. The peer reviewers used these standard criteria and ratings system to determine the quality of advice and legal work provided to clients. Peer reviews were carried out individually on case files and subsequently 'overview reports' were also provided for each firm or PDO where files had been reviewed.

The ratings system used a five-point scale, in which a score of 1 indicated excellence while 5 reflected failure. The criteria for indicators and definition of ratings are set out in full in [Appendix 4.2](#), although the definitions only reached these fixed forms after this exercise was completed.

In the tables for this second study results are listed as average grades. The range of possible results goes from 1 which equals "excellent" down to 5 which equals "non-performance" or very poor. Ranging in between these extremes are 2 "competence plus", which is the equivalent of a good quality file, through 3 "threshold competence", which is a 'pass' file down to 4 which equals "below competence" or poor. Obtaining a level of 3 is a 'bare' or minimum level of competence which a

¹²² For full details please see R. Moorhead, et.al., *Quality and Cost: Final Report on the Contracting of Civil, Non-Family Advice and Assistance Pilot*, London, The Stationary Office, 2001.

¹²³ See *Independent Peer Review of Legal Advice and Legal Work: A Consultation Paper*, London, Legal Services Commission, April 2005.

solicitor would expect to find on a file. Marks of 1 to 3 are acceptable; marks of 4 and 5 are not acceptable levels of quality.¹²⁴ The lower the number the better the provider's performance in the category to which the ranking corresponds.

As noted, the study looked at a similar number of magistrates' and Crown Court files. This was necessary to ensure that there was a sufficient Crown Court sample for the research team to draw statistically sound conclusions about providers' capabilities in that arena, but it necessitated the separation of results into magistrates' and Crown Court tables, to avoid giving undue weight to providers' Crown Court activities in the analysis. This is because Crown Court cases make up only a small proportion of most providers' overall workload. The tables for the earlier study are fewer and more detailed. Rather than averages, they present a breakdown of rankings received by each provider in each category as percentages.

The use of tests of statistical significance is similar to that in the other parts of this report and is described in detail in Chapter 1. In particular, where a particular difference between the finding relating the PDS and private practice is marked as '**' this indicates that it is highly significant on the relevant standard statistical test, whereas a difference denoted as '*' is also significant. (A more colloquial way of putting it is to say that where we indicate '**', there is a 99% chance that the results show a real difference between the services, and where we show '*', there is a 95% chance that the difference is a real one). In our tables we attach these notations to whichever of the PDO or private practice is considered to have scored better on the particular finding.

In the remainder of this chapter, we first discuss the findings of the two peer review studies in terms of assessments of the overall performance of the PDOs and private practice in each area and on an 'all areas' basis. We then go on to look at more detailed results of both studies under the following headings:

- A. The File
- B. Communication
- C. Information and Fact Gathering
- D. Advice and Assistance
- E. The Work/Assistance
- F. Efficiency
- G. Ethics and Overall Mark

Each section is divided between statistical results, first relating to the earlier investigation stage study and then to the court samples, and secondly peer reviewers' general observations on the court files of particular PDO and private practice providers. Comments of peer reviewers in relation to specific files are used for the purpose only of elucidating the issues under consideration. Such comments might relate to private practice or PDOs, and this is indicated next to the quote where this information is available.¹²⁵ No attempt is made to equalise critical and positive

¹²⁴ The findings of the earlier analysis were originally coded so that 1 equalled non-performance or very poor and 5 equalled excellence, however those findings have been retabulated here to avoid any confusion.

¹²⁵ Unfortunately, in the process of transcribing some information, this information was lost in some cases.

comments in relation to either mode of delivery and therefore no implication as to the relevant performance of the two sectors (which is examined in the statistical tables) should be drawn from the balance of quotations reproduced here. This qualitative material is useful only in understanding why peer reviewers grade items in the way they do.

Overall Performance

(i) Investigation stage sample

In the first peer review study on investigation stage files, the reviewer gave an overall mark for the standard of service/performance, as a separate exercise from the assessments made in respect of individual criteria. This criterion was designed to prompt an overall impression of the standard of service and performance following examination of the file by reference to the various separate criteria, but without attempting to add up the 'score'. The method enabled the reviewer to avoid making a judgment where there was insufficient information in the file to enable a judgment to be made, but this was the case in only 3% of files.

Table 4.1a: Level of Service/Performance (Investigation Stage File Analysis)

		Excellent %	Good %	Competent %	Poor %	Very Poor %	Average	Files
Birmingham	PDO		12.0	48.0	36.0	4.0	3.2	25
	PP	4.2	33.3	33.3	29.2		2.9	24
Cheltenham	PDO						2.4	25
	*	4.0	68.0	16.0	12.0			
Liverpool	PP		18.2	54.5	27.3		3.1	22
	PDO	4.2	8.3	66.7	16.7	4.2	3.1	24
Middlesbrough	PP	13.0	39.1	26.1	17.4	4.3	2.8	23
	PDO		32.0	44.0	24.0		2.9	25
Pontypridd	PP	4.3	30.4	30.4	30.4	4.3	3.0	23
	PDO						1.6	25
Swansea	*	52.0	40.0	4.0	4.0			22
	PP		13.6	54.5	31.8		3.2	22
All areas	PDO	8.0	52.0	40.0			2.3	25
	PP	4.2	62.5	29.2	4.2		2.3	24
All areas	PDO						2.6	149
	*	11.4	35.6	36.2	15.4	1.3		149
	PP	4.3	33.3	37.7	23.2	1.4	2.8	138

There are two main ways of interpreting data on competence. One is to ascertain what proportion of files 'passed' (scored at competent or above). As Table 4.1a shows, at the all areas level the PDOs performed better than private practice on this method of interpretation, with 83% of PDOs being assessed as competent or above

compared to 75% of private practice, a difference that is near significance. A fault with this method is that it only takes the ‘pass-fail’ distinction as important. If we are concerned to see finer gradations of quality, and in particular, whether PDOs have more (or fewer) files at higher levels of quality than private practice, we must compare the rankings of both sets of files. Using this method, the overall profile of the PDOs was better than private practice, with a higher proportion of cases being assessed as good or excellent. This difference was largely attributable to the higher proportion of PDO files rated as excellent and lower proportion rated as poor compared with private practice.

There is evidence of local variation. All Swansea PDO files and the vast majority of Swansea private practice files were competent or above, whereas in the other areas both the PDOs and private practice all have proportions of files being graded as poor or very poor (although Pontypridd PDO had relatively few). In most areas, a greater proportion of private practice files were assessed as poor or very poor compared to PDO files, although in Liverpool the proportions were about the same, and in Birmingham 40% of PDO files were below threshold competence compared to 29% of Birmingham private practice files.

Comparing the overall averages of PDOs with private practice in their areas (i.e. taking into account the rankings rather than simply whether they were competent or not), Liverpool and Birmingham PDOs appear to do worse than their private practice counterparts, a difference that is approaching statistical significance. On the other hand, Cheltenham and Pontypridd PDOs have a significantly better profile than private practice in those areas.

(ii) Court proceedings stages samples

Tables 4.1b and 4.1c below address the state of the suppliers’ files at the magistrates’ and Crown Courts respectively in the second study which covered all defence work. Each presents the peer reviewers’ findings, broken down by region and provider. The key issues they were looking at in relation to providers’ files were overall performance, first at the investigation stage of cases, and secondly at the court proceedings stages.

This involved an overall assessment of the two samples of work in each court, and it was based upon the peer reviewer’s overall impression of the standard of work done on the file, rather than a mechanical adding up of the scores given in respect of the other criteria. Although we discuss it first, it is the final summary judgement of the peer review providing an overall assessment of the work done at each stage and for each sample.

The Crown Court sample had passed through three stages: investigation, the magistrates’ court and the Crown Court. Therefore peer reviewers provided an overall score at each stage. Magistrates’ court files would have passed through only the first two stages and were given a score for each, although not all files reviewed would have been dealt with by the firm at each stage.

Table 4.1b General Assessment, Magistrates' Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
Overall – Investigation	2.4	2.6	2.2*	2.8	2.5	2.4	2.5	2.9	2.0*	2.9	3.0	2.6	2.4	2.7
Overall – Magistrates' Court	2.7	2.5	2.5	2.8	2.8	2.7	2.5	2.9	2.6*	2.9	2.9	2.9	2.7	2.8

Table 4.1c General Assessment, Crown Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
Overall – Investigation	2.7	2.5	2.2*	2.9	2.3	2.4	2.3	2.6	2.3	2.7	3.0	2.4*	2.4	2.6
Overall – Magistrates' Court	2.5	2.6	2.6	2.8	3.0	2.7	2.6	2.9	2.6	2.9	3.0	2.5*	2.7	2.7
Overall – Crown Court	3.4	2.4*	2.5	2.9	2.4	2.6	2.3	3.0	2.7	3.3	3.1	2.4	2.7	2.8

(a) Investigation stage of court samples

Across all the research areas, the overall investigation stage performance of PDOs in the magistrates' court and Crown Court samples appears better than that of private practice. The difference was more pronounced in the magistrates' court sample than the Crown Court sample, but in neither was it statistically significant.

Private practice were better in the investigation stage of the magistrates' court sample in Liverpool and Swansea, although the differences were not significant, but in the other four regions the PDOs were assessed as having carried out better quality work. PDOs significantly outperformed the private practice in Cheltenham and in Pontypridd (where the difference was almost a full rank).

In the Crown Court sample, private practice significantly outperformed the PDO at the investigation stage in Swansea, but in all other regions were outperformed by the PDOs, significantly so in Cheltenham.

It is interesting to compare the results of the peer review of the investigation stage of cases as between the earlier study which focussed on this stage only and the later study. Of course, it must be remembered that the two studies involved different peer reviewers, criteria and samples. In particular, the earlier study would have included cases which were concluded at the police station and did not involve court

proceedings. Also, although at both stages an attempt was made to evaluate the quality of police station advice in the context of what happened in the case overall, information on the handling of cases beyond the police station and the outcome of subsequent court proceedings would not have been available in all files in the earlier investigation stage sample.

Bearing these caveats in mind, Table 4.1d below reproduces for both the PDOs and private practice their overall ratings in respect of the investigation stage in each of the three samples. On an all areas basis, the performance ratings of both the PDOs and private practice showed a marginal improvement between the earlier and later samples. However, the more notable comparisons are to be found in local area results. Three of the PDOs (Birmingham, Liverpool and Middlesbrough) show a considerable improvement in their overall ratings of investigation stage performance between the earlier and later samples, and Cheltenham PDO (already a strong performer in the earlier study) also had a marginally better performance in the later samples. On the other hand, the Pontypridd PDO was evaluated as declining from its very high level of overall performance in the earlier study, although it still performed on average at or near ‘competence plus’ level in the later samples, and the Swansea PDO shows a considerable decline in overall performance levels between the earlier and later samples.

Table 4.1d Comparison of Overall Performance at Investigation Stage (Investigation Stage, Magistrates’ Court and Crown Court File Samples)

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas		
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	
Investigation File Sample	3.2	2.9	2.4	3.1	3.1	2.8	2.9	3.0	1.6	3.2	2.3	2.3	2.6	2.8	
Magistrates’ Court File Sample	2.4	2.6	*	2.2	2.8	2.5	2.4	2.5	2.9	2.0	2.9	3.0	2.6	2.4	2.7
Crown Court file sample	2.7	2.5	*	2.2	2.9	2.3	2.4	2.3	2.6	2.3	2.7	3.0	*	2.4	2.6

Private practice was also evaluated as performing better in the later samples in all areas other than Swansea, although in general their improvement on overall ratings were not as great as those shown by the PDOs. The exception was Pontypridd, where the performance of private practice improved and that of the PDO declined between the two studies, although the PDO was still judged to be performing better than private practice in the later samples. Swansea was the only area where the performance of private practice declined in the later samples, although not so much as that of the Swansea PDO.

(b) Court proceedings stages

In terms of their overall performance across all areas at the court stage, PDOs were slightly better in the magistrates’ courts sample and in the Crown Court (2.7 to 2.8 in each instance), but neither of these differences was statistically significant. The two

sectors scored the same with respect to overall performance across all areas in the magistrates' court stage of Crown Court cases.

In the magistrates' court sample private practice performed better at the court stage in Birmingham and Liverpool. They were as good as the PDO in Swansea, but they performed worse than the PDOs in the other three regions, including Pontypridd, where they were significantly worse. However, in terms of performance at the magistrates' court stage of Crown Court cases, private practice performed better than the PDOs in Liverpool and significantly so in Swansea, but PDOs performed better than private practice in the other four areas.

In the Crown Court, the overall performance of private practice was better than the PDO in Birmingham and significantly so in Swansea, but the PDOs outperformed private practice in the remaining four areas.

Performance on Specific Criteria

A. The File

(i) Investigation stage file sample

In the earlier investigation stage study, the quality of written records in police station cases was assessed first by reference to whether a standard form was used to record advice and assistance at the police station and, if so, on the adequacy of the form, and secondly on how easy the file was to use.

Although standard police station pro-forma are not required, either by the LSC or the Law Society, some Law Society literature recommends their use. Partly as a result of the earlier study, the PDS has developed its own police station attendance form (*PDS 6*) and this has been made generally available to the profession via the LSC website. There is some difference of opinion about the utility of standard forms, but the general view is that they can be an important element in the provision of a good quality of service, and they were used by most firms in the sample, as well as by the PDOs.

Table 4.2a Use of Standard Forms at the Investigation Stage (The Investigation File Sample)

		No %	Yes %	Files N
<i>Birmingham</i>	PDO	0.0	100.0	25
	PP	8.0	92.0	25
Cheltenham	PDO	0.0	100.0	25
	PP	0.0	100.0	25
Liverpool	PDO	4.2	95.8	24
	PP	28.0	72.0	25
Middlesbrough	PDO	0.0	100.0	25
	PP	4.0	96.0	25
Pontypridd	PDO	0.0	100.0	25
	PP	4.0	96.0	25
Swansea	PDO	0.0	100.0	25
	PP	0.0	100.0	25

As Table 4.2a above shows, the vast majority of files examined contained a standard police station form, although it is notable that more than a quarter of private practice files in Liverpool did not.

Where a standard form was used, a judgement was made about its adequacy by reference to the extent to which the form prompted the securing and recording of relevant information, and permitted appropriate narrative entries. For example, a form that prompts a record that advice on ‘silence’ was given is not as useful as a form prompting a narrative entry of the advice actually given. This is a substantive quality issue because, in particular, the advice given may be important in a subsequent argument as to whether inferences should be drawn from ‘silence’. It also assists the subsequent assessment of the file. It is worth noting that the Crime Transaction Criteria may encourage the mere recording of the fact of advice, rather than the substance of that advice (see, for example, questions 18 to 22 of the current version of the transaction criteria)¹²⁶.

The member of the research team who carried out this earlier study had been consulted by the PDS on the design of form *PDS 6* but responsibility for the final design lay with the PDS. The PDS police station form has undergone several revisions since the first version in May 2001. These have taken place in June 2001, January 2002, May 2002, July 2003, November 2003 and December 2003. As data for this analysis was collected during the course of 2002 and early 2003, not all of these revisions would have been reflected in the results reported here.

In the event, the PDS police station form was assessed as ‘good’ (i.e. was given a score of 2). Additional prompts, e.g. for the time of attendance(s) on the client, time(s) that disclosure was obtained from the police, and the nature of the charge(s) (as opposed to the fact of charge) would have brought it closer to an ‘excellent’ score (i.e. 1). It might also have been useful to have a prompt for noting property taken from the client by the police, although the fact of “seizure of property” was recorded elsewhere on the form. Although it is important to include a range of issues on a standard form, it was suggested that consideration should be given to providing more space for narrative entries relating to crucial items such as disclosure from the police and instructions from the client. It was noticeable that even though there was a prompt on form *PDS 6* then in use, ‘Continued on a separate sheet?’ under the headings “Police Disclosure” and “Instructions”, advisers tended to confine entries to the space available, sometimes writing between lines towards the end of the record in an apparent attempt to avoid using a separate sheet. This seemed likely to result in an inadequate written record being made, but could be considered a matter of training and supervision as much as of form design.

¹²⁶ *Transaction Criteria: Crime*, London, Legak Services Commission, at http://www.legalservices.gov.uk/criminal/contracting/cdg_arrangements.asp#crime

Table 4.2b Adequacy of Standard Forms at the Investigation Stage, (The Investigation File Sample)

		Missing Data %	Excellent %	Good %	Average %	Poor %	Very Poor %	N/A	Files
Birmingham	PDO	4.0	0.0	96.0	0.0	0.0	0.0	0	25
	PP	12.0	0.0	20.0	44.0	24.0	0.0	0	25
Cheltenham	PDO	0.0	0.0	100.0	0.0	0.0	0.0	0	25
	PP	0.0	0.0	84.0	8.0	8.0	0.0	0	25
Liverpool	PDO	4.2	0.0	95.8	0.0	0.0	0.0	0	24
	PP	24.0	12.0	32.0	24.0	4.0	0.0	4	25
Middlesbrough	PDO	0.0	0.0	100.0	0.0	0.0	0.0	0	25
	PP	4.0	4.0	52.0	16.0	24.0	0.0	0	25
Pontypridd	PDO	0.0	0.0	100.0	0.0	0.0	0.0	0	25
	PP	0.0	0.0	16.0	28.0	44.0	8.0	4	25
Swansea	PDO	0.0	0.0	100.0	0.0	0.0	0.0	0	25
	PP	0.0	4.0	80.0	16.0	0.0	0.0	0	25

As demonstrated in Table 4.2b above, private practice forms were of lower quality overall than the PDS form. This was particularly marked in Middlesbrough and Birmingham where nearly a quarter of private practice files contained a form that was regarded as poor, and in Pontypridd where over half of private practice files contained a form that was poor or very poor. The main concerns were lack of prompts to record important information such as police disclosure and advice given, and forms apparently designed to satisfy auditing criteria without prompting the recording of substantive information, for instance, demonstrating that advice as to the meaning of the caution was given rather than prompting the recording of what the advice actually was.

Looking beyond the particular issue of the police station form, files were assessed in terms of their ease of use, with separate assessments being made of legibility and layout. The ease with which a police station file can be read and understood is particularly important given that research has identified discontinuity of representation as a significant feature of criminal cases (i.e., a client may be advised and represented by a number of different people during the course of any particular case).¹²⁷ The lawyer at court will also often be under considerable time pressure, in the context of which it is necessary to be able to quickly assimilate information contained on file. Legibility is also important in terms of the ability to demonstrate contract compliance by evidence on the file. Although assessment of legibility is arguably somewhat subjective, it was assessed on the basis that if the reviewer had difficulty reading written records, this was likely to be the case for others who had to use the file.

¹²⁷ See, for example, M. McConville *et al*, *Standing Accused*, Oxford, Clarendon Press, 1994, p41.

Table 4.2c Legibility of Files at the Investigation Stage, (The Investigation File Sample)

		Missing Data %	Excellent %	Good %	Average %	Poor %	Very Poor %	Files
Birmingham	PDO	0.0	0.0	48.0	24.0	28.0	0.0	25
	PP	0.0	12.0	48.0	36.0	4.0	0.0	25
Cheltenham	PDO	0.0	12.0	68.0	20.0	0.0	0.0	25
	PP	4.0	40.0	32.0	12.0	12.0	0.0	25
Liverpool	PDO	0.0	8.3	37.5	33.3	20.8	0.0	24
	PP	0.0	28.0	40.0	28.0	4.0	0.0	25
Middlesbrough	PDO	0.0	0.0	36.0	64.0	0.0	0.0	25
	PP	0.0	12.0	56.0	24.0	4.0	4.0	25
Pontypridd	PDO	0.0	36.0	44.0	16.0	4.0	0.0	25
	PP	0.0	4.0	40.0	40.0	12.0	4.0	25
Swansea	PDO	0.0	4.0	64.0	32.0	0.0	0.0	25
	PP	0.0	44.0	16.0	20.0	20.0	0.0	25
All areas	PDO	0.0	10.1	49.7	31.5	8.7	0.0	149
	PP	0.7	23.3	38.7	26.7	9.3	1.3	150

Table 4.2c shows that the majority of files were legible, although more than a quarter of Birmingham PDO files, a fifth of Liverpool PDO files and a fifth of Swansea private practice files were poor in this respect. Across all areas, private practice files in general were somewhat more legible than PDO files.

Layout refers to the ease of use of the file bearing in mind the fact that information on file may need to be readily accessible to someone other than the person who prepared the file, e.g. in subsequent court proceedings. The assessment of layout was to some extent problematic since it was apparent that, for a variety of reasons, some files reviewed were not in the state they would have been at the relevant time, for example, because they had been sorted on being closed, or because some materials had been transferred to a court file.

Table 4.2d Layout of Files at the Investigation Stage, (The Investigation File Sample)

		Excellent %	Good %	Average %	Poor %	Very Poor %	Files
Birmingham	PDO*	88.0	12.0	0.0	0.0	0.0	25
	PP	32.0	40.0	24.0	0.0	4.0	25
Cheltenham	PDO*	68.0	24.0	4.0	0.0	4.0	25
	PP	16.0	56.0	24.0	0.0	4.0	25
Liverpool	PDO	12.5	58.3	25.0	4.2	0.0	24
	PP	16.0	44.0	28.0	12.0	0.0	25
Middlesbrough	PDO*	48.0	48.0	4.0	0.0	0.0	25
	PP	0.0	80.0	16.0	4.0	0.0	25
Pontypridd	PDO*	92.0	4.0	4.0	0.0	0.0	25
	PP	4.0	60.0	32.0	4.0	0.0	25
Swansea	PDO	56.0	24.0	16.0	0.0	4.0	25
	PP	56.0	36.0	8.0	0.0	0.0	25
All regions	PDO**	61.1	28.2	8.7	0.7	1.3	149
	PP	20.7	52.7	22.0	3.3	1.3	150

Most of the files in all areas were well laid out, with the proportion of files scoring 2 (i.e. good) or better ranging from 60% of private practice files in Liverpool to 100% of Birmingham PDO files. At the all areas level PDOs performed better than private practice in this respect, a difference that is highly significant. The differences between PDOs and private practice in Middlesbrough, Cheltenham, Pontypridd and Birmingham are significant, but in the other two regions they are not.

(ii) Magistrates' court and Crown Court samples

Tables 4.3a and 4.3b below address the state of the providers' files dealing with work at magistrates' courts and the Crown Court respectively. Each presents the peer reviewers' findings, broken down by area and provider. The key issues they were looking at in relation to providers' files were:

- 1) The Effectiveness of File Composition
- 2) Appropriateness of Level of Information Recorded at Investigation Stage
- 3) Appropriateness of Level of Information Recorded Post Charge
- 4) Appropriateness of Case Management

Table 4.3a The File, Magistrates' Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas		
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	
How effective is composition of the file?	2.3	2.6	** 2.4	3.1	2.8	2.7	2.3	2.8	** 2.5	2.9	2.8	2.8	** 2.5	2.8	
How appropriate is the level of information recorded at investigation stage?	2.4	2.6	2.3	2.6	2.6	2.5	2.3	2.6	** 2.0	3.0	3.0	2.5	*	2.4	2.6
How appropriate is the level of information recorded post charge?	2.5	2.4	** 2.5	3.1	2.7	2.8	** 2.4	2.8	2.6	2.9	3.0	2.5	*	2.6	*
How appropriate was the management of the case throughout?	2.9	2.4	** 2.4	2.9	2.7	2.7	** 2.3	2.8	2.8	2.9	3.0	2.9	2.6	2.7	

Table 4.3b The File, Crown Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas			
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP		
How effective is composition of the file?	2.5	2.6	2.7	2.9	2.6	2.6	*	2.3	2.7	2.6	2.8	2.8	2.6	*	2.6	2.7
How appropriate is the level of information recorded at investigation stage?	2.7	2.4	*	2.2	2.8	2.5	2.6	2.3	2.4	2.0	2.8	2.9	2.3	*	2.4	2.6
How appropriate is the level of information recorded post charge?	2.4	2.6	** 2.5	3.1	2.8	2.7	*	2.5	3.0	2.4	2.9	2.8	2.4	*	2.6	2.7
How appropriate was the management of the case throughout?	2.9	2.6	*	2.3	2.8	2.6	2.5	2.3	2.8	2.7	2.9	2.9	2.4	**	2.6	2.7

A.1 Effectiveness of File Composition

On an all areas basis, PDOs had more effectively composed files than private practice both in the magistrates' courts and the Crown Court samples. The difference was highly significant in the magistrates' courts sample, and significant in the Crown Court sample.

In the magistrates' court sample (Table 4.3a above) there were highly significant differences between the PDOs and private practice in Pontypridd and in Cheltenham, with the PDO being the more effective in both. In the Crown Court sample the only region to register a significant result was Middlesbrough, where the PDO's file composition was more effective than local private practice.

A.2 Appropriateness of Level of Information Recorded at Investigation Stage

In both court samples, PDOs were more likely to have recorded an appropriate level of information at the investigation stage than private practice, but there were no significant overall results in this category.

In the magistrates' court sample, the most impressive comparison comes from Pontypridd, where the PDO outperformed private practice by a full grade (2.0 to 3.0), a difference that was highly significant. On the other hand, private practice was significantly better in this respect in Swansea.

In the Crown Court sample, PDO performance was significantly better in Cheltenham and Pontypridd, but once again the private practice was significantly better in Swansea.

A.3 Appropriateness of Level of Information Recorded Post Charge

Overall, the PDOs' recording of information post charge was more appropriate than that of private practice, who they significantly outperformed in both court samples. The difference in the overall results was greater in the magistrates' court sample than in the Crown Court sample.

In Swansea private practice were significantly more likely to have recorded an appropriate level of information post charge, but in the other regions the PDOs were more reliable. In Cheltenham and Middlesbrough this difference was highly significant.

Private practice in Swansea was also significantly better in this respect than their local PDO in the Crown Court sample. But in Middlesbrough and Pontypridd it was the PDOs that were significantly better in the Crown Court sample, and in Cheltenham the PDO's better performance was highly significant.

A.4 Appropriateness of Case Management

Over all areas the case management of PDOs was slightly more appropriate than that of private practice (2.6 as opposed to 2.7 in both court samples). The results were not statistically significant in either sample.

In the magistrates' courts sample there were highly significant differences in Cheltenham and Middlesborough, where the PDOs outperformed local private practice.

In the Crown Court sample, private practice outperformed the PDO to a highly significant degree in Swansea. The PDOs were significantly better in Cheltenham and Middlesbrough.

Discussion

This section has shown the Public Defender Service as significantly better than their private practice counterparts at an all areas level in keeping good information, on well composed files, appropriately managed.

The structure of a case file can be important for two distinct reasons. In many solicitors' offices a variety of fee-earners work on any particular file and it is therefore important that files are composed in such a way that each fee-earner can easily make sense of the information on the file.¹²⁸ As the following comments taken from peer reviewers' notes indicate, poor continuity may not only result in an inferior standard of work and fee-earners being confused as to how to progress the case, but also in clients who are quite unsure of what is happening.

There was a lack of analysis of the credibility of clients' accounts which could have been due to the involvement of numerous fee earners in case preparation. This meant that although the basics were done, no-one was taking responsibility for the extra work.

Some files were passed through quite a number of fee earners, most of whom wrote to the client. Whilst this is understandable, the client could have been warned of this or the designated fee earner could have been the signatory on the correspondence.

Such problems, however, are not an inevitable outcome when several fee earners work on the same case, as peer reviewers' comments show:

There was no duplication of work, when different fee earners worked on the same file, especially when at court.

Various fee earners dealt with the files but there was (sic) no instances when a change of fee earner prejudiced the client.

In most files there have been a number of different fee earners and support staff working on files but any transmission seems to have been effortless and certainly has never prejudiced the client. This appears to be deliberately cultivated as there is (sic) often two fee earners named in the initial client letter and I suspect that it comes as a natural consequence of working in an office that is totally focussed on crime to the exclusion of everything else.

Another reason why file management is important is that advocates appearing in court often need to be able to find information on file relatively quickly in order, for example, to be able to deal with a query from the magistrate or judge. This takes on added significance where a firm is acting for a number of clients in respect of the

¹²⁸ See L. Bridges, et.al., *Quality in Criminal Defence Services*, op. cit, p. 5

same allegation or where a client faces a number of different allegations. Sadly, peer reviewers found some files that would have failed in this basic function:

The trial notes are pitifully bad. Representatives attending court behind advocates have a number of very important functions to fulfil one of which is to take an accurate note of the evidence and maintain it in an indexed and accessible format. Advocates are reliant upon these notes when it comes to speeches as there is nothing worse than misrepresenting what was said by a witness. The notes from what little there was of the trial would have been unhelpful in this regard and suggest a need for training in note-taking skills. The blue instructions folder also contains notes relating to someone else's drugs case which appear to have been misfiled. [PDO]

There was particular concern on one file where Counsel was given a 2-day trial with three defendants and four witnesses without a set of instructions. Counsel had to do his own check as to any possible conflict check (sic) between defendants as it had not been carried out by the firm.

Inadequately prepared briefs do little to aid counsel or the client: Briefs were wholly inadequate in that they were usually less than ten lines long and consistently stated that counsel should read the client's account in the police interview in order to discover the defence instructions, and that counsel should read the prosecution papers to assess the prosecution evidence. Briefs rarely mentioned the plea and never mentioned the bail situation or any specific detail about the offence.

On the other hand, adequately prepared briefs not only aided counsel and client, they demonstrated a professional attitude and level of responsibility in the fee earners.

The fee earner also displayed a clear appreciation of the issues, good evidence gathering and prepared briefs to counsel that were never less than competent, leading, unsurprisingly, to good outcomes.

Assessment of the level of information recorded in case files is considered in regard to the two distinct investigation and post-charge stages. There is no obvious, straightforward standard for the level of information that should be recorded in case files for either stage, although in the past expectations were created by the Crime Transaction Criteria, and various Law Society publications offer guidance. Guidance to the peer reviewers indicated that a variety of factors may affect the level of information that should be recorded, including the nature and seriousness of the allegation, the plea, etc., and that they should take such factors into account when making a judgement.

Problems with the organisation of correspondence were common, as hinted at by one peer reviewer:

This file is organised to the very highest standard and is very easy to follow through. Other PDS offices keep separate correspondence and attendance sections which make their files difficult to follow. Here these sections are combined so it is very easy to pick the file up and understand what is going on

at any stage without having to cross refer to material in separate compartments. [PDO]

In other cases, documents were out of order, incomplete or absent. Reviewers often noted this sort of disorder, but sometimes, as in the case of one file, it was

shocking. Two unrelated and very serious Crown Court trials [were] combined into one file and one brief along with sundry other matters. [PDO]

Some of the improvements the reviewers suggested, with regard to specific files, could be applied more broadly. Most files would benefit from “pagination and indexing” [PDO] and “good use of proformas” [PDO] not only means that information is presented in a familiar and easily accessible format, but it can also save time when the file is being prepared. Peer reviewers commented on a supplier’s failure to complete pro forma or keep contemporaneous records of telephone calls:

Investigations below competence as much of pro-forma not completed and no contemporaneous notes of telephone calls. No advice call give, (sic) immediate attendance at the police station. Time recordings of calls wrong. [PDO]

In another case it was unclear from the file if the supplier had had any involvement at the investigation stage whatsoever.

It was not clear from file whether there was involvement in investigation stage. The only clue is that the source of business ringed is ‘PS Duty’. [PDO]

By contrast, a reviewer noted of one case that largely because of the supplier’s “prompt and sensible advice” at the investigation stage the client received “a very good result indeed” [PDO].

Good management might be important but it seems it might not always be essential to ensure a good outcome. One peer reviewer observed,

The outcome [of this case] was exceptionally good, but I am bound to conclude it was good luck in the absence of any evidence of good management! [PP]

Such cases are rare, however, and reviewers’ comments suggest that better organised files are more likely to yield positive outcomes. Although a substantial majority of files were managed competently or better, there were cases in which otherwise well managed work was let down by simple omissions, a problem evinced in this peer reviewer’s comment:

I feel I had no option but to mark down this otherwise well managed file because there is no evidence at all that the question of plea/prosecution evidence was ever considered. There isn't even a copy of the intoximeter printout on file! [PDO]

In a similarly flawed case (where an otherwise diligent provider failed to obtain primary disclosure) the reviewer noted:

The file is one of those without the case progression checklist on the rear file flap. The failing does not appear to have been picked up at an effective review. [PDO]

File reviews to identify problems and, if necessary, take corrective action could also be more widely beneficial. For example, of one file the reviewer said:

This file is very easy to follow. The police station notes are excellent both in relation to observations, information and instructions, advice to client and recording of the interview itself. The file is well managed. A file review on 28th January 2003 identifies the areas that had been overlooked and remedial action is taken immediately i.e. chasing witnesses, tapes, charge sheet and custody record as there was an apparent period of inactivity on the file during December 2002. Good use of trial plan. [PDO]

B: Communication and Timeliness

(i) Investigation stage file sample

The investigation file sample study did not address issues of communication in a way comparable with the later court-based study. However, the earlier study did look at the issue of the timeliness both in the first contact with the client (whether by telephone or in person) and in the first attendance by a legal adviser at the police station. With regard to the former, the General Criminal Contract requires that where a client has been arrested and requests advice and the contractor accepts the matter, first contact with the client must normally be made within 45 minutes of the initial information that a client has requested advice being received (Part D Quality and Performance Standards para 5.1).

Timeliness of first contact was assessed on a yes/no basis. Where timeliness of first contact was not relevant, e.g. where the attendance was by prior arrangement (as where a client is attending at the police station having been previously granted bail to attend the police station on a future date), this was indicated by 'n/a'. As can be seen from Table 4.4a, this was so in between 4% and 20% of cases across the different areas and sectors.

Timeliness of first contact is an important aspect of good practice and, as noted above, is a contract requirement. In order to demonstrate compliance it is necessary for files to contain information recording the time that the solicitor or firm became aware that advice had been requested and the time that first contact was made. In Table 4.4a failure to record this information is indicated by 'X'. It can be seen that at the all regions level, 25% of private practice files and 11% of PDO files did not contain this information. There was wide variation in this respect, both as between areas and as between private practice and PDO files within areas. For example, in Middlesbrough there were no PDO files where this information was not recorded, compared to one fifth of private practice files. Similarly, in Pontypridd only 4% of PDO files omitted this information compared to four in ten private practice files. On the other hand,

nearly 30% of both private practice and PDO files in Liverpool did not include information about the timing of first contact with the client.

Table 4.4a: PDO and Private Practice Investigation Stage File Peer Review
Was first contact timely?

		n/a %	No %	Yes %	x %	Files N
Birmingham	PDO	4.0	56.0	28.0	12.0	25
	PP*	4.0		64.0	32.0	25
Cheltenham	PDO	12.0	16.0	68.0	4.0	25
	PP	12.0		64.0	24.0	25
Liverpool	PDO	4.2	4.2	62.5	29.2	24
	PP	8.0		64.0	28.0	25
Middlesbrough	PDO	8	4	88		25
	PP	4	8	68	20	25
Pontypridd	PDO*	16		80	4	25
	PP	16	16	28	40	25
Swansea	PDO	20	8	52	20	25
	PP	8	12	76	4	25
All regions	PDO	10.7	14.8	63.1	11.4	149
	PP*	8.7	6.0	60.7	24.7	150

In order to analyse the differences between files where first attendance was judged to be timely, and those where it was judged to be not timely, it is necessary to exclude files where this criterion was not relevant as well as those where there was insufficient information to make a judgment. In some cases the timeliness of first contact may be outside of the control of the lawyer, for example, where the custody officer does not allow contact when first requested. Where this was evident from the file, first contact was treated as being timely. At the all areas level 91% of private practice first contact was timely, compared to 81% of PDO first attendances, a difference that is statistically significant. This difference is largely due to the Birmingham PDO where only one third of their first contacts were timely, compared to all Birmingham private practice first attendances being timely, a difference that is statistically significant. Cheltenham PDO also appeared to perform less well than its private practice counterparts, the difference being near significance. Pontypridd PDO, on the other hand, performed significantly better than private practice in their locale.

The second measure of timeliness was timeliness of first attendance at the police station. The contract requires that where a decision is made to attend on a client at the police station in person, attendance should normally be within 45 minutes of the decision to attend (Part D Quality and Performance Standards para 5.2). It should be noted that this requirement is problematic as an indicator of quality since it relies on the time of the decision to attend being recorded and, more importantly, even if it is recorded it is often not possible to assess whether the timing of that decision was appropriate.

As with timeliness of first contact, this criterion was assessed on a yes/no basis. Where timeliness of first attendance was not relevant, e.g. where the attendance was

by prior arrangement or where there was no attendance in person, this was indicated by 'n/a'. As can be seen from Table 4.4b, there was significant variation between regions in respect of the incidence of 'not applicables', but little significant difference between PDOs and private practice within regions. This suggests non-attendance in person may be a function of police or defence practitioner practices and/or client preferences in certain regions rather than variable quality between PDOs and private practice.

Table 4.4b: PDO and Private Practice Investigation Stage File Peer Review
Was first attendance timely?

		Missing data	n/a	No	Yes	x	Files
		%	%	%	%	%	N
Birmingham	PDO		4	12	72	12	25
	PP		8	4	64	24	25
Cheltenham	PDO		20	4	72	4	25
	PP		16	4	48	32	25
Liverpool	PDO	4.2	29.2	4.2	50	12.5	24
	PP		28	8	32	32	25
Middlesbrough	PDO*		12	4	84		25
	PP	4	12	24	48	12	25
Pontypridd	PDO		16	4	76	4	25
	PP		20	8	44	28	25
Swansea	PDO		16	4	60	20	25
	PP		20	4	60	16	25
All regions	PDO	0.7	16.1	5.4	69.1	8.7	149
	PP	0.7	17.3	8.7	49.3	24.0	150

Timeliness of first attendance is good practice and, as noted above, is a contract requirement. In order to make a judgment about this form of timeliness it is necessary for both the time the decision to attend was made and the time of first attendance to be recorded. It can be seen from Table 4.4b that nearly a quarter of private practice files overall omitted the information necessary to make a judgment about this form of timeliness, compared to less than one in ten of PDO files. However, as between and within local areas, there is no consistent pattern. All Middlesbrough PDO files contained this information, but one fifth of Swansea PDO files recorded inadequate information in this respect. Nearly a third of private practice files in Cheltenham and Liverpool, and about a quarter of private practice files in Birmingham and Pontypridd also failed to show the relevant information. In a minority of files the information that was recorded was clearly incorrect, the time of the first attendance being recorded as being prior to the time of the decision to attend.

If those cases where this form of timeliness was inapplicable and those where there was no information on the timeliness of first attendance are excluded, PDOs performed better than private practice at the all areas level, the difference being near significance. Within local areas, Middlesbrough PDO was significantly better than its

private practice counterparts in this respect, with 96% of first attendances being timely compared to 67% for private practice. There was no significant difference between the PDOs and private practice in the other areas.

(ii) *Magistrates' court and Crown Court samples*

This section focuses on the magistrates' court and Crown Court samples and looks at the outgoing communication from the lawyer in relation to the client, and in relation to others including the prosecution, defence counsel, etc. The first three criteria assess the 'appropriateness' of the communications, by reference to the person being communicated with. For example, whereas it would be appropriate to use relatively complex language and technical legal terms when communicating with other lawyers, this would not normally be appropriate when communicating with a client. Appropriateness may also address the amount of communication. Where standard letters are sent to every client, but much of the information is not relevant or is even confusing, this might also be inappropriate. Timeliness will also be very important and needs careful judgement in criminal trials. Advice and developments regarding any appeal are dealt with separately.

The issues addressed at this stage were:

- 1) Appropriateness of Communication and Client Handling
- 2) Appropriateness of Advice on the Merits of the Case
- 3) Appropriateness of Advice to Clients on Case Developments
- 4) Appropriateness of Communications with Others
- 5) Timeliness of All Communications

Table 4.5a Communication, Magistrates' Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
How appropriate were the lawyer's communication and client handling skills?	2.4	2.6	** 2.4	3.0	2.6	2.8	* 2.5	3.0	* 2.4	2.8	2.8	2.7	** 2.5	2.8
How appropriately was the client informed of the merits of their case?	2.6	2.6	** 2.6	3.3	2.8	3.3	2.9	2.9	** 2.5	3.1	3.0	3.1	** 2.7	3.0
How appropriately was the client informed of all developments?	2.6	2.7	** 2.4	2.9	2.7	2.8	* 2.4	2.7	** 2.4	3.1	2.7	2.8	** 2.5	2.8
How appropriate was the lawyer's communication with others?	2.6	2.9	** 2.4	2.9	2.7	2.9	2.5	2.9	* 2.5	3.0	2.9	2.8	** 2.6	2.9

How timely was all communication?			*						**				*	
	2.7	2.6	2.6	2.8	2.7	2.4	2.3	2.7	2.3	3.2	2.6	2.7	2.5	2.7

Table 4.5b Communication, Crown Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
How appropriate were the lawyer's communication and client handling skills?	2.5	2.6	2.6	3.0	2.4	2.8	2.3	2.9	2.4	2.8	2.8	2.4	2.5	2.7
How appropriately was the client informed of the merits of their case?	2.6	2.8	2.6	3.4	2.9	3.0	2.5	3.0	2.5	3.1	3.1	2.8	2.7	3.0
How appropriately was the client informed of all developments?	2.5	2.6	2.5	2.9	2.7	2.9	2.4	2.9	2.4	2.8	2.6	2.6	2.5	2.7
How appropriate was the lawyer's communication with others?	2.6	2.6	2.3	2.9	2.7	2.6	2.6	3.1	2.4	3.0	2.7	2.5	2.6	2.7
How timely was all communication?	2.4	2.6	2.7	2.9	2.6	2.5	2.5	2.8	2.4	2.9	2.5	2.6	2.5	2.7

B.1 Appropriateness of Communication and Client Handling

PDOs' communication and client handling skills were better than private practice in both courts' samples at the all areas level. The difference was highly significant in the magistrates' courts sample and significant in the Crown Courts sample.

In the magistrates' court sample the Middlesbrough and Pontypridd PDOs significantly outperformed local private practice, while the better standard of communications from the PDO in Cheltenham was highly significant. The Middlesbrough and Pontypridd PDOs were also significantly better than their private practice counterparts in the Crown Courts sample.

B.2 Appropriateness of Advice on the Merits of the Case

In both courts the overall performance of private practice was at the level of threshold competence (3.0). Meanwhile, PDOs' advice on the merits of their clients' cases was in the range of competence plus, a difference that was highly significant at the magistrates' court level.

The advice of the PDOs in Cheltenham and Pontypridd was highly significantly better than that from private practice in the magistrates' courts sample.

The Cheltenham, Middlesbrough and Pontypridd PDOs gave significantly more appropriate advice on the merits than private practice in the Crown Courts sample.

B.3 Appropriateness of Advice to Clients on Case Developments

PDOs were more likely than private practice appropriately to apprise their clients of case developments. In the Crown Court, the overall difference was slightly smaller than in the magistrates' courts sample, where it was also highly significant.

In the magistrates' courts, PDOs outperformed private practice in all regions. They were significantly better in Middlesbrough and highly significantly better in Cheltenham and Pontypridd. Meanwhile, in the Crown Court sample the PDOs significantly outperformed private practice in Middlesbrough and Pontypridd.

B.4 Appropriateness of Communications with Others

PDOs are more likely to communicate appropriately with others. The overall difference is slight between suppliers at the Crown Court, but larger and highly significant in the magistrates' courts.

In the magistrates' courts, Pontypridd's PDO was significantly better than local private practice and the better performance of Cheltenham PDO was highly significant. The only significant differences in the Crown Court sample were in Cheltenham and Pontypridd, where the PDOs did better than private practice.

B.5 Timeliness of All Communications

The overall timeliness of communications was the same in both courts, with the PDOs performing significantly better than private practice.

In the magistrates' court sample, the PDOs were significantly better in Cheltenham and greatly better in Pontypridd, where the difference was a highly significant 0.9 of a grade, with private practice achieving only threshold competence. In the Crown Court, the Middlesbrough and Pontypridd PDOs were significantly more timely in their communications than local private practice.

Overall, in terms of the criteria addressed under the Communications heading the Public Defender Service obtains a clean sweep of significantly better results in the magistrates' courts sample. They are similarly numerically higher in performance in the Crown Court sample, although these differences are significant for only 2 of the 5 criteria.

Discussion

One of the challenges in professional-client communication is that clients are a heterogeneous group, with sometimes vastly different needs and abilities, as the following reviewers' comments help to illustrate:

Client suffering from schizophrenia and learning difficulties, dealt with sympathetically, professionally and appropriately throughout. [PDO]

This client, a first class honours graduate of good character, was obviously fairly demanding. He was kept well informed of developments throughout. [PDO]

There did not seem on this file to be any allowance made in letters to the client that her understanding was more limited than other clients. The explanation of the effects of a Restraining Order was very brief and it doesn't appear that she was ever warned that this could happen prior to sentence. [PP]

Good communication, especially with a very anxious client with no previous experience of criminal matters. [PDO]

Instructions were obtained in difficult circumstances from a client whose command of English was not good. Despite the absence of an interpreter the quality of instructions obtained and advice given is good. [PDO]

This is challenging because advising a client as to the merits of his or her case – with regard to information obtained from the client, prosecution and others using the law relating to the allegation(s) and evidence – is a crucial part of a defence lawyer's job. Peer reviewers assessed the appropriateness of the advice given. The question dealt with in their evaluation was not concerned with the advice *per se*, but with the way in which it was communicated to the client. The skills exhibited by suppliers in the way they communicated with clients varied greatly, as these comments illustrate:

Very good client skills. [PDO]

One letter only to client. [PP]

Clear client cont. letter, and accurate and succinct advice letter, together with outcome letter. [PP]

This client was both articulate and demanding. The suppliers took great care in communicating with him and left no stone unturned particularly with regard to the expert evidence and obtaining considerable supportive material about his drug rehabilitation. [PDO]

Poor letters to defendant not really telling him anything. [PP]

Friendly letters to client and straightforward advice. [PP]

Clients must also be properly informed of all relevant developments in relation to the lawyer's work on the file and developments concerning the police, prosecution and court, such as new evidence, decisions to amend charges or discontinue, and dates of court hearings. However, it must be remembered that communication with a client is very much a two-way street, and it can be difficult for lawyers if, for whatever reason, their clients are unwilling or unable to engage in a dialogue with them. This was a difficulty of which peer reviewers were only too well aware:

Clear evidence on file of a high standard of communication skills with a client who was not disposed to accept advice, [the client] was a drug addict desperate to secure bail. [PDO]

Good communication skills evident via interpreters although client plainly refused to accept advice when offered. [PDO]

In such cases, peer reviewers favoured persistence and understanding, as this evaluation reveals:

Client uncommunicative from start to finish. Dealt with professionally and sympathetically throughout. [PDO]

Criminal cases normally require defence lawyers to communicate with a range of other agencies and individuals such as the police and Crown Prosecution Service, court officials, defence counsel, other defence lawyers and prospective witnesses. Here reviewers made straightforward remarks such as:

Good particularly in terms of communication with the probation service. [PDO]

Good written representation to the Crown to discontinue. [PDO]

Assisted Probation Officer with report. [PDO]

Good communication with client and CPS resulting in case being concluded very satisfactorily on first hearing. [PP]

Communication with clients and with others needs to be 'timely' which means that it should occur at the correct and appropriate time, neither too early nor too late. As some reviewers noted, timeliness was often instrumental in ensuring the clients' best interests were served and the best outcome for the client secured:

Good communication resulting in speedy conclusion. [PP]

Overall this was an especially strong area of performance of the Public Defender Service in the Magistrates' Court sample, but they also showed themselves to be performing well in the Crown Court.

C: Fact Gathering

(i) Investigation stage file sample

The earlier peer review looked at the information lawyers recorded at the investigation stage. It focused specifically on the extent of information that should be recorded as a matter of good practice (having regard to the particular features and requirements of police station practice). For this purpose, the assessment takes account of a broad judgement made, so far as could be ascertained, of the apparent seriousness and complexity of the case, since less serious or less complex cases may not involve much information, or may justify the recording of less information than would be required in a more serious or complex case. This criterion differs from that concerning the adequacy of police station pro-formas (considered earlier) since even a well-designed form may not be fully, or adequately, completed.

Basic information, such as the name and address of the client, was normally recorded. Files would receive a low score if (taking into account seriousness and complexity) they contained little information concerning disclosure from the police and instructions from the client, advice given and reasons for advice; there was a failure to record police interviews; failure to record the nature of the charge and, where relevant, failure to record bail conditions. Lack of recorded information may reflect the fact that information was obtained but was not recorded, or that it was not obtained (and therefore could not be recorded). It was frequently not possible to discern from the file which of these reasons was relevant. Further, if information was not obtained, this may have been because the police or client were unwilling, or unable, to disclose it, and this may not have been apparent from the file.

It might be argued, therefore, that it is inappropriate to use the level of recorded information as a review criterion. However, the various factors referred to above would not invalidate regional comparisons nor, since the seriousness and complexity of the case were taken into account in forming a judgement, comparisons between PDOs and private practice within regions. Furthermore, the Crime Transaction Criteria, in effect, require police station files to contain information concerning the allegation and the evidence that has been obtained from the police (para 7),¹²⁹ and information demonstrating that instructions were taken from the client (para 9).

¹²⁹ In relation to the latter, for transaction criteria audit purposes, compliance is to be recorded where the file contains a note that instructions were not taken prior to the police interview since the “adviser may have good reasons for not taking instructions.” Note also the R. Ede and A. Edwards, *Criminal Defence: The Good Practice Guide*, London: Law Society, 2000, ch 6 and the Criminal Litigation Accreditation Scheme Standards of Performance.

Table 4.6a Level of Information Recorded – Investigation File Sample

		Missing data %	Excellent %	Good %	Average %	Poor %	Very Poor %	Files
Birmingham	PDO	8.0		8.0	20.0	60.0	4.0	25
	PP			24.0	32.0	40.0	4.0	25
Cheltenham	PDO *		8.0	60.0	20.0	8.0	4.0	25
	PP	4.0		4.0	48.0	40.0	4.0	25
Liverpool	PDO			4.2	50.0	37.5	8.3	24
	PP *		20.0	24.0	32.0	16.0	8.0	25
Middlesbrough	PDO			20.0	52.0	28.0		25
	PP			20.0	48.0	28.0	4.0	25
Pontypridd	PDO *		28.0	52.0	20.0			25
	PP			24.0	44.0	24.0	8.0	25
Swansea	PDO			20.0	76.0	4.0		25
	PP		4.0	40.0	44.0	12.0		25
All Areas	PDO	1.3	6.0	27.5	39.6	22.8	2.7	149
	PP	0.7	4.0	22.7	41.3	26.7	4.7	150

However, in the research sample, few if any files that contained little or no information from the client recorded any reason for this. If they did so, this was reflected positively in the score given; and a similar approach was taken where, rarely, the file showed that disclosure requested of the police had been refused.

At the all areas level, there is no significant difference between PDOs and private practice. There is evidence of some regional variation; the majority of Swansea files contained at least a satisfactory level of information, whereas files in Birmingham, Middlesbrough and Liverpool performed markedly less well in this respect.

However, the differences between individual PDOs and private practice in their areas presents a more complex picture. Swansea, Pontypridd, Middlesbrough and Cheltenham PDOs all performed better than their private practice counterparts, with Pontypridd performing particularly well in this regard both in absolute terms and in comparison with private practice in the region. The differences for Swansea and Middlesbrough were not, however, statistically significant. Three-quarters of Swansea PDO files scored 3 (competence), with 20% scoring 2 (competence plus), and none scoring 1 (excellent), whereas 44% of Swansea private practice files scored 3, and the same proportion scored 2 or 1. Middlesbrough PDO and private practice files were much more similar to each other. On the other hand, Liverpool PDO performed less well than private practice (the difference being significant), as did Birmingham PDO (the difference being near significance). Only 4% of Liverpool PDO files scored good or excellent, compared with 44% of Liverpool private practice files. In Birmingham only just over a quarter of PDO files scored 3 or better compared to just over half of private practice files. Nearly two-thirds of Birmingham PDO files were poor or very poor, compared with 44% of private practice files in that region.

The results indicate that there is no necessary correlation between the use and adequacy of police station pro-formas and the level of information recorded. Whilst PDOs use the same police station form, there was a large variation in the level of information recorded as between different offices. On the other hand, whilst 50% of police station forms used by private practice in Pontypridd were poor or very poor, over two thirds of files in that region were at least adequate in terms of the level of information recorded.

A judgement was made as to whether the lawyer acted appropriately in (a) securing disclosure from the police, and (b) obtaining instructions from the client. To a large extent, making these judgements from files is dependant upon the level of information recorded on the file by the lawyer and, as noted earlier, there may be a variety of factors affecting the level of information recorded.

Obtaining disclosure from the police is a criterion principally concerned with disclosure about alleged offence(s). The recording of routine information such as information in the custody record, times of arrest and detention, was not dealt with under this criterion but under *Quality of written records*. The principal assumption made was that a lawyer should take steps to obtain sufficient disclosure from the police concerning the alleged offence(s) to enable them, taking into account other information such as the client's instructions, to give meaningful advice, especially as to what strategy to adopt in interview. The criterion is concerned with the actions taken by the lawyer to secure disclosure as opposed to the disclosure actually obtained but this, of course, was judged by reference to what was recorded in the file. If, for example, the file demonstrated that the lawyer had taken appropriate steps to obtain disclosure but in the event failed to obtain it this would, nevertheless, be given a good score. If, however, the lawyer had taken appropriate steps but failed to record them, and recorded little or no disclosure, it would have received a low score since it was impossible to tell from the file that such steps had been taken.

In making a judgement the whole file was considered so that if, for example, written disclosure provided by the police was on file, and it was apparent that it had been provided by the police prior to the time that the lawyer advised the client, this would be taken into account. Finally, in making a judgement about whether the actions taken were appropriate, account was taken of factors such as the seriousness of the case, whether the client was interviewed more than once, and whether the lawyer had attended on a previous occasion in respect of the same allegation (i.e. whether it was a bail-back).

Table 4.6b Appropriateness of Attempts to Secure Information from Police
(Investigation File Sample)

		Missing Data %	Excellent %	Good %	Average %	Poor %	Very Poor %	X %	Files
Birmingham	PDO	0.0	0.0	12.0	44.0	40.0	4.0	0.0	25
	PP	4.0	0.0	28.0	36.0	24.0	4.0	4.0	25
Cheltenham	PDO *	0.0	0.0	40.0	48.0	8.0	0.0	4.0	25
	PP	0.0	0.0	16.0	44.0	36.0	0.0	4.0	25
Liverpool	PDO	0.0	0.0	16.7	66.7	16.7	0.0	0.0	24
	PP *	4.0	4.0	56.0	20.0	4.0	4.0	8.0	25
Middlesbrough	PDO	0.0	0.0	12.0	36.0	52.0	0.0	0.0	25
	PP *	0.0	4.0	24.0	44.0	16.0	4.0	8.0	25
Pontypridd	PDO *	0.0	20.0	68.0	12.0	0.0	0.0	0.0	25
	PP	0.0	0.0	24.0	40.0	32.0	4.0	0.0	25
Swansea	PDO	0.0	4.0	44.0	44.0	4.0	0.0	4.0	25
	PP	0.0	8.0	32.0	40.0	20.0	0.0	0.0	25
All Regions	PDO	0.0	4.0	32.2	41.6	20.1	0.7	1.3	149
	PP	1.3	2.7	30.0	37.3	22.0	2.7	4.0	150

In a small minority of cases there was insufficient information on the file to enable a judgement to be made as to whether the lawyer had acted appropriately in obtaining information from the police. At the all areas level the difference between PDOs and private practice in seeking to secure police disclosure was not significant. It is a matter of concern, however, that in a quarter of private practice files and in a fifth of PDO files, the actions taken to secure disclosure were rated as poor or very poor. There were marked variations both between areas and as between different PDOs and their private practice counterparts. PDOs out-performed private practice in three regions, and the differences were significant in Cheltenham and Pontypridd. However, Middlesbrough and Liverpool PDOs did significantly less well than private practice in their areas. More than half of Middlesbrough PDO files were marked as poor in this respect (compared to 20% of Middlesbrough private practice files scoring poor or very poor), as were 40% of Birmingham PDO files (compared to 28% of Birmingham private practice files scoring poor or very poor).

A similar judgement was made about actions taken to obtain instructions from the client. Again, the underlying assumption is that a lawyer needs to obtain sufficient information from the client in order to enable him or her to give meaningful advice especially as to what strategy to adopt in interview.¹³⁰ As with the previous criterion, judgements were made in respect of the steps taken by the lawyer to secure instructions rather than in respect of the instructions actually obtained, and similar factors were taken into account in making a judgement. If no, or limited, instructions were noted on the file, but an explanation for this was recorded, the file would not be marked down in this respect. If, however, there were no explanation for the lack of instructions recorded in writing, the file would be marked down.

¹³⁰ Bridges and Choongh found that in nearly 60% of the cases they observed, the lawyer had obtained a full understanding of the client's account prior to the first police interview, although they did not observe the written records made by the lawyer. See L. Bridges and S. Choongh, *Improving Police Station Legal Advice*, *op. cit.*, p. 119.

Table 4.6c Appropriateness of Attempts to Secure Instructions from Client
(Investigation File Sample)

		Missing Data %	Excellent %	Good %	Average %	Poor %	Very Poor %	X %	Files
Birmingham	PDO	0.0	0.0	4.0	16.0	56.0	16.0	8.0	25
	PP *	0.0	0.0	16.0	40.0	24.0	12.0	8.0	25
Cheltenham	PDO	0.0	0.0	20.0	52.0	24.0	0.0	4.0	25
	PP	0.0	0.0	16.0	36.0	36.0	0.0	12.0	25
Liverpool	PDO	0.0	0.0	12.5	50.0	25.0	12.5	0.0	24
	PP	0.0	4.0	48.0	20.0	16.0	4.0	8.0	25
Middlesbrough	PDO	0.0	0.0	16.0	24.0	60.0	0.0	0.0	25
	PP	0.0	0.0	28.0	28.0	16.0	16.0	12.0	25
Pontypridd	PDO *	0.0	8.0	76.0	16.0	0.0	0.0	0.0	25
	PP	0.0	0.0	16.0	44.0	36.0	4.0	0.0	25
Swansea	PDO	0.0	4.0	28.0	44.0	24.0	0.0	0.0	25
	PP	4.0	4.0	36.0	36.0	20.0	0.0	0.0	25
All Areas	PDO	0.0	2.0	26.2	33.6	31.5	4.7	2.0	149
	PP	0.7	1.3	26.7	34.0	24.7	6.0	6.7	150

Overall, relatively few files contained insufficient information to enable a judgement to be made about the appropriateness of actions in obtaining instructions from clients, although this was the case in more than one in ten Cheltenham and Middlesbrough private practice files. At the all areas level, private practice appears to have performed slightly better than PDOs in terms of obtaining clients' instructions, but the difference is not significant. However, at the local level the differences were more marked. In Pontypridd the PDO performed significantly better than its private practice counterparts. On the other hand, Birmingham PDO performed significantly less well than its private practice counterparts, and Liverpool PDO's poorer performance (relative to private practice) was near significance; 72% of Birmingham PDO files and 60% of Middlesbrough PDO files being judged as poor or very poor in this respect compared to 36% and 32% respectively of their private practice counterparts.

The general picture to emerge from this earlier peer review was one of lack of uniformity in performance of the PDOs, in comparison with local private practice, between the different areas.

(ii) Magistrates' Court and Crown Court samples

We now turn to consider the findings on 'fact gathering' in the later peer review of magistrates' court and Crown Court files. As before, since efforts to obtain information may not be successful, as a result of an uncooperative client or an obstructive prosecution, the review criteria are concerned with the actions taken (or not taken) in order to obtain information. Guidance to peer reviewers indicated that the fact there were little or no instructions or information on the file should not result in the award of a low mark if it is apparent from the file that the lawyer took appropriate steps to obtain information but was unsuccessful for reasons beyond their control.

Peer reviewers looked separately at information from the client, information from the police or prosecution, and information from others. The issues addressed at this stage were:

- 1) Effectiveness in Gathering Information from Client
- 2) Effectiveness in Gathering Information from Police/Prosecution at Investigation Stage
- 3) Effectiveness in Gathering Information from Police/Prosecution Post-Charge
- 4) Effectiveness in Gathering Information from Others

Table 4.7 a Fact Gathering, Magistrates' Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
How effective was the lawyer in seeking relevant information from client?	2.5	2.7	2.5	3.1	2.7	2.6	2.6	3.0	2.4	3.1	3.3	2.4	2.7	2.8
In seeking relevant information from police/prosecution at investigation?	2.5	2.4	2.4	2.6	2.6	2.2	2.2	2.7	2.0	3.0	2.9	2.2	2.4	2.5
In seeking relevant information from police/prosecution post-charge?	2.6	2.6	2.6	2.9	2.8	2.6	2.3	2.8	2.5	3.1	3.0	2.8	2.6	2.8
In seeking relevant information from others?	2.8	2.5	2.5	3.2	2.3	2.6	2.6	3.2	2.7	2.8	2.9	2.6	2.7	2.9

Table 4.7b Fact Gathering, Crown Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
How effective was the lawyer in seeking relevant information from client?	2.5	2.6	2.6	2.9	2.8	2.5	2.5	3.0	2.5	3.1	3.2	2.5	2.7	2.8
In seeking relevant information from police/prosecution at investigation?	2.7	2.5	2.2*	2.7	2.5	2.5	2.4	2.3	2.3	2.6	2.9	2.3	2.5	2.5
In seeking relevant information from police/prosecution post-charge?	2.4	2.6	2.4*	2.9	2.8	2.7	2.7	2.7	2.4	2.9	3.0	2.5	2.6	2.7
In seeking relevant information from others?	2.8	2.4	2.6	2.9	2.9	2.6	2.4*	3.1	2.6	3.2	3.2**	2.0	2.8	2.7

C.1 Effectiveness in Gathering Information from Client

The overall effectiveness of PDOs and private practice in gathering information from their clients is the same in both courts, with PDOs performing slightly, although not significantly, better.

In the magistrates' court in Swansea, private practice was substantially and significantly better than the PDO, which they outperformed by almost a full grade. The PDOs were better, significantly better in Cheltenham and highly significantly better in Pontypridd. In the Crown Court sample private practice was once again significantly better in Swansea, but it was the PDO that was significantly more effective at gathering information from clients in Pontypridd.

C.2 Effectiveness in Gathering Information from Police/Prosecution at Investigation Stage

Overall, suppliers were a little more effective in gathering information from police or prosecutors at the investigation stage than they were in gathering information from their clients and others. At the all areas level in the magistrates' court the PDOs were slightly better than private practice but the difference was not significant. Peer reviewers assessed their performance as equal in the Crown Courts.

In Swansea private practice significantly outperformed the PDO in the magistrates' court. It is worth noting that the difference between private practice and PDO performance in Pontypridd was not only significant, but the PDO was judged better by a full grade. In the Crown Court, Swansea private practice significantly outperformed the PDO once again, but it was the PDO which was the significantly better supplier in Cheltenham.

C.3 Effectiveness in Gathering Information from Police/Prosecution Post-Charge

Overall, the PDOs were significantly more effective in gathering information from police or prosecutors post-charge in the magistrates' court sample. They were slightly better overall in the Crown Court, but the difference was not significant.

In Cheltenham, Middlesbrough and Pontypridd magistrates' courts the PDOs were all significantly more effective than private practice on this criterion. In the Crown Court, private practice was significantly better in Swansea, but the PDOs were significantly better in Cheltenham and Pontypridd.

C.4 Effectiveness in Gathering Information from Others

In the magistrates' court sample private practice was outperformed, albeit not significantly, by PDOs. However, in the Crown Court, largely due to an exceptionally large and highly significant difference in one region, private practice was, on average, slightly, but not significantly, better than the PDOs.

Cheltenham provided the only significant difference at a local level for the magistrates' court sample, where the PDO gathered information more effectively than private practice. In the Crown Court, the PDOs in Middlesbrough and Pontypridd were significantly better than their private practice counterparts. But the most interesting result comes from Swansea, where private practice was a highly significant 1.2 grades better than the local PDO.

The general picture of better, although not necessarily statistically significantly better, performance by the PDOs is continued in this section. Also, in contrast to the earlier investigation stage peer review, the PDOs were much more consistent in their performance across the different areas, with the exception of the Swansea office. Indeed, the results begin to show a consistent divergence in relation to this one PDO where results are significantly worse than in local private practice.

Discussion

The characteristically better performance of PDOs was reflected in the observations of peer reviewers:

All relevant information obtained from client and CPS. Witnesses ultimately un-cooperative despite great efforts on the part of the supplier. [PDO]

Client's instructions clear and appropriate information obtained from CDAT in support of change of circumstance application in respect of bail. At the police station a great deal of information was eventually teased out of the police. [PDO]

They also highlighted the importance of information gathering in reference to a case in Swansea, where the private practice were consistently better than the PDO:

Very good proof of evidence and information for the bail applications. [PP]

Although the statistics suggested that Swansea PDO was significantly worse than its private practice counterparts in most categories, the following comments about practice within the Swansea PDO serve as a reminder that few suppliers, other than those with an overall rating of “excellent”, were consistent at all times and in all cases.

There seems to be no proof of personal circumstances and the previous convictions, which one presumes would be readily available, only arrive late in the day. [PDO]

Good detailed proof and comments taken from client at an early stage. [PDO]

A number of reviewers commented on contacts made with professional and other sources, for information.

The contact and correspondence with police is particularly impressive. [PDO]

Supplier considered the medical evidence and came to sensible conclusions as to the evidence needed. [PP]

Very good, especially the material from the medical records, from the client's mother and girlfriend and from the police. [PDO]

Some comments highlighted the amount of effort required to complete this task adequately.

Information was sought in all relevant areas including the prosecution, defence experts, car auction, CCTV, custody video (which proved crucial), defendant's wife. All of this was undertaken promptly and appropriately. No stone was left unturned. [PDO]

Other comments point out insufficient effort expended in some cases to secure the necessary information.

In a conference at court on 28-06-02 it is agreed that defence witnesses be chased. There is one prompt and brief letter to client, which does not elicit a response about this, then no further action but no explanation on file. [PDO]

Expected more attempts to obtain unused material from CPS. [PP]

Supplier failed to obtain an early stage a psychiatric report (sic). [PDO]

Potential witnesses – two men and a guard – were never contacted. [PP]

Supplier represented at police station through to Crown Court. Alleged assaults happen in front of many witnesses at a party yet no steps are taken to obtain details of potential witnesses at police station investigation stage so they could be proofed early. [PDO]

A number of reviewers stress the value of efficient, effective fact gathering to the progress and outcome of the case.

All required information obtained immediately resulting in speedy conclusion. [PDO]

Full information from client obtained in very difficult circumstances clearly had great influence on sentence. [PP]

Better information and advice at the outset would probably have enabled the case to be concluded in the Magistrate's Court. [PDO]

Good level of information obtained leading to early withdrawal of prosecution case. [PDO]

D: Advice and Assistance

(i) Investigation stage file sample

The investigation file study addressed some different issues from those considered in the later analysis, but because of its tighter focus it is able to provide a more detailed picture of the lawyer's actions and advice in the initial stage, a matter which was not considered in the court-based study. In the earlier study, files were assessed by reference to (a) appropriateness of decision to attend the police station, (b) appropriateness of decision to attend police interview with suspect, (c) advice given to the client regarding their legal position, and (d) advice to the client regarding strategy in police interviews.

Almost all decisions by PDOs and private practice to attend the police station in order to advise the client in person (rather than over the telephone) were judged to be appropriate, as were decisions of the legal adviser to attend the police interview with the suspect. The most notable finding in the latter respect was the relatively high number of cases in some areas where this criterion was non-applicable either because there was no police interview with the suspect or the lawyer had been contacted only after the police interview had been completed. This was the case in one third of files in Liverpool (both private practice and PDO), which is consistent with anecdotal evidence of a culture in Liverpool whereby a significant minority of suspects do not ask for legal advice at the police station, or do not ask for it unless and until they are charged. In Middlesbrough, nearly one quarter of PDO files were marked 'not applicable' in respect of this criterion compared to 8% of private practice files. There was also a difference between PDO (16%) and private practice (8%) files in Swansea marked as 'not applicable' in this respect. These differences tend to indicate differences between the type of cases or clients dealt with by private practice and PDOs in the region, but it was not possible to discern what factors were operative.

Advice to clients on their legal position relates to the apparent strength of the police case, whether the client has a defence, whether (on the client's instructions) they are guilty or innocent of an alleged offence and, if relevant, the legality of the exercise of police powers such as search or the taking of samples. Advice on strategy in police

interview refers, in particular, to whether the client should answer questions, and whether they should adopt a strategy such as handing in a statement.

The Crime Transaction Criteria do not directly refer to legal advice as to the client’s legal position in the sense described above. The relevant parts of the criteria concentrate on advice as to interview strategy and, as noted earlier, they tend to assess whether the file demonstrates that advice has been given, rather than the content of any advice. However, the Police Station Accreditation Scheme Standards of Performance indicate that such advice should be given (para 3.8.1), and they contain an overall obligation to record advice given (para 1.1.8). As is the case with police disclosure and client’s instructions, the fact that there is no record on the file does not necessarily mean that no advice was given, and it should be noted that many police station pro-forma did not contain a prompt for such advice to be given and recorded, although the PDS form does. Nevertheless, advising clients on their legal position is a fundamental part of the role of a defence lawyer at the police station, and a record of such advice may be critical to the future conduct, and outcome, of the case.

Table 4.8a Appropriateness of Advice Regarding Client’s Legal Position, (Investigation File Sample)

		Excellent %	Good %	Average %	Poor %	X %	Files
Birmingham	PDO	0.0	4.0	8.0	0.0	88.0	25
	PP	0.0	8.0	8.0	0.0	84.0	25
Cheltenham	PDO	0.0	32.0	24.0	4.0	40.0	25
	PP	0.0	0.0	4.0	0.0	96.0	25
Liverpool	PDO	0.0	12.5	16.7	4.2	66.7	24
	PP	4.0	16.0	8.0	0.0	72.0	25
Middlesbrough	PDO	0.0	8.0	12.0	0.0	80.0	25
	PP	4.0	12.0	0.0	0.0	84.0	25
Pontypridd	PDO	16.0	64.0	4.0	4.0	12.0	25
	PP	0.0	0.0	4.0	0.0	96.0	25
Swansea	PDO	8.0	36.0	8.0	0.0	48.0	25
	PP	0.0	16.0	8.0	0.0	76.0	25
All Areas	PDO*	4.0	26.2	12.1	2.0	55.7	149
	PP	1.3	8.7	5.3	0.0	84.7	150

The most notable finding demonstrated in Table 4.8a is that at the all areas level the majority of files contained no record of advice to the client concerning their legal position. Although the PDOs performed significantly better than private practice in this respect, it was still the case that over half of all PDO files contained no record of such advice. As noted above, the PDS pro-forma does contain a prompt for advice on legal position to be recorded, and Cheltenham, Liverpool, Pontypridd and Swansea PDOs all have markedly better results in terms of recording this information than their private practice counterparts. In Birmingham and Middlesbrough, on the other hand, both the PDOs and private practice failed to record advice to the client in 80% or more of their files. Where advice was recorded, private practice and PDOs performed to a broadly similar standard as regards the adequacy of that advice at the all areas level, and there were no significant differences at a local level.

The Crime Transaction Criteria do require the recording of the fact of advice as to the implications of ‘silence’ in the police interview, and whether to answer police questions or whether to hand in a statement, although they do not provide for the assessment of any advice given or the reasons for such advice. By contrast, the Accreditation Scheme Standards of Performance require the lawyer to give ‘reasoned and considered’ advice regarding interview strategy (para 3.8.3), and as noted earlier, there is an overall obligation to record relevant advice given. This is supported elsewhere, for example, in *Criminal Defence*.¹³¹ Furthermore, case law on inferences from ‘silence’ has demonstrated that the advice given, and the grounds or reasons for such advice, can be critical in determining whether inferences should be drawn.

Table 4.8b Appropriateness of Advice Regarding Strategy in Police Interview (Investigation File Sample)

		Excellent %	Good %	Average %	Poor %	Very Poor %	N/A %	X %	Files
Birmingham	PDO	0.0	28.0	28.0	8.0	0.0	12.0	24.0	25
	PP	8.0	48.0	12.0	4.0	0.0	4.0	24.0	25
Cheltenham	PDO	4.0	68.0	16.0	8.0	0.0	0.0	4.0	25
	PP	4.0	20.0	24.0	4.0	0.0	0.0	48.0	25
Liverpool	PDO	8.3	20.8	16.7	0.0	0.0	33.3	20.8	24
	PP	4.0	16.0	8.0	16.0	0.0	36.0	20.0	25
Middlesbrough	PDO	4.0	32.0	36.0	4.0	0.0	20.0	4.0	25
	PP	8.0	20.0	28.0	4.0	0.0	8.0	32.0	25
Pontypridd	PDO	56.0	28.0	4.0	0.0	0.0	8.0	4.0	25
	PP	0.0	16.0	24.0	4.0	0.0	4.0	52.0	25
Swansea	PDO	8.0	56.0	12.0	4.0	0.0	12.0	8.0	25
	PP	8.0	32.0	44.0	0.0	0.0	16.0	0.0	25
All Regions	PDO	13.4	38.9	18.8	4.0	0.0	14.1	10.7	149
	PP	5.3	25.3	23.3	5.3	0.0	11.3	29.3	150

The proportion of files in which there was no record of advice regarding interview strategy was significantly lower compared to those with no record of advice on legal position, although more than a one quarter of private practice files contained no such record, as did one in ten PDO files. There is some evidence of local variation in this respect, with between one in four and one in five files in Birmingham and Liverpool containing no, or little, information as to advice regarding interview strategy, but almost all files in Swansea containing such information. It is also noticeable that at the all areas level advice as to interview strategy was treated as not being applicable in more than one in ten files, which would be the case where there was no police interview or where the interview(s) had already been conducted before the solicitor was instructed. Liverpool stands out in this respect, which may be evidence that there is a significantly different police station culture in that area, with a tendency for lawyers to be called into the police station only after the police interview has been conducted.

¹³¹ R. Ede and A. Edwards, *op.cit.*, ch. 6.

In order to consider and compare the standard of advice given, it is necessary to exclude those files where advice on interview strategy was inapplicable or where there was insufficient evidence to make a judgement, and the results can be seen in Table 4.8c (below).

Table 4.8c Appropriateness of Advice Regarding Strategy in Police Interview (Excluding Files Where it Was Not Applicable or Where There Was Insufficient Information to Make a Judgement) (Investigation File Sample)

		Excellent %	Good %	Average %	Poor %	Very Poor %	Files
Birmingham	PDO	0.0	43.8	43.8	12.5	0.0	16
	PP	11.1	66.7	16.7	5.6	0.0	18
Cheltenham	PDO	4.2	70.8	16.7	8.3	0.0	24
	PP	7.7	38.5	46.2	7.7	0.0	13
Liverpool	PDO	18.2	45.5	36.4	0.0	0.0	11
	PP	9.1	36.4	18.2	36.4	0.0	11
Middlesbrough	PDO	5.3	42.1	47.4	5.3	0.0	19
	PP	13.3	33.3	46.7	6.7	0.0	15
Pontypridd	PDO**	63.6	31.8	4.5	0.0	0.0	22
	PP	0.0	36.4	54.5	9.1	0.0	11
Swansea	PDO	10.0	70.0	15.0	5.0	0.0	20
	PP	9.5	38.1	52.4	0.0	0.0	21
All Regions	PDO*	17.9	51.8	25.0	5.4	0.0	112
	PP	9.0	42.7	39.3	9.0	0.0	89

As might be expected, where interview strategy was recorded, thus enabling a judgement to be made, it was normally judged as at least competent, though there are a clear group of files for both PDOs and private practice where only a 4 is awarded (indicating Below Competence), and this was particularly significant in the case of Liverpool private practice files where more than one third of files were so judged. The advice recorded as having been given was assessed on a five-point scale. At the all areas level, PDOs performed significantly better than private practice. At the local level, Pontypridd PDO stands out as performing particularly well with over 95% of files being assessed as good or excellent. This is particularly important given the high proportion of Pontypridd PDO clients who made no comment interviews at the police station. In Birmingham, on the other hand, private practice performed better than the PDO, the difference being near significance. In the other regions the differences between PDOs and PP were not significant (although in Swansea the difference neared significance).

(ii) Magistrates' court and Crown Court samples

The issues addressed in the magistrates' court and Crown Court peer reviews at this stage were:

- 1) Quality of the Advice
- 2) Appropriateness of the Advice on Plea
- 3) Appropriateness of the Advice on Appeal

Table 4.9a Advice and Assistance, Magistrates' Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
How good was the advice?	2.4	2.6	**				*		**				**	
	2.4	2.6	2.4	3.1	2.8	2.4	2.4	2.8	2.2	2.9	2.8	2.8	2.5	2.8
How appropriate was the advice on plea?	*		*		*		*		**				**	
	2.3	2.7	2.4	2.8	2.9	2.4	2.4	2.7	2.2	2.9	2.7	2.8	2.5	2.7
How appropriate was the advice on appeal?														
	2.8	3.0	2.7	3.3	2.8	3.2	2.6	2.6	2.5	3.4	2.9	3.4	2.8	3.2

Table 4.9b Advice and Assistance, Crown Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All area	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
How good was the advice?							*		*		*		*	
	2.5	2.7	2.5	2.8	2.7	2.7	2.2	3.0	2.3	2.8	2.9	2.4	2.5	2.7
How appropriate was the advice on plea?					*		*		*		*			
	2.4	2.4	2.5	2.8	2.9	2.5	2.3	2.9	2.3	2.9	3.0	2.4	2.6	2.6
How appropriate was the advice on appeal?			*				*		*		*		*	
	3.0	2.9	2.8	3.2	3.3	3.1	2.6	3.2	2.4	3.2	3.2	4.1	3.0	3.2

D.1 Quality of the Advice

At the all areas level the quality of PDOs' advice was significantly better in both courts. The difference was highly significant in the magistrates' court sample and significant in the Crown Court.

In the magistrates' court sample the PDOs were significantly better in Middlesbrough and highly significantly better in Cheltenham and Pontypridd.

Private practice provided significantly better advice in the Crown Court in Swansea. But it was the PDOs that were significantly better in Middlesbrough and Pontypridd.

D.2 Appropriateness of the Advice on Plea

The overall results for the magistrates' court and Crown Court samples are rather different with regard to the appropriateness of advice on plea – in the magistrates' court PDOs were highly significantly better than private practice, while they performed equally well in the Crown Court.

In the magistrates' court sample, Liverpool was the only region where the private practice was more likely to provide appropriate advice on pleas, a difference that was

significant. The PDOs were significantly better in Birmingham, Cheltenham and Middlesbrough, and highly significantly better in Pontypridd.

Private practice were significantly better in Liverpool and Swansea, in the Crown Courts sample, while the PDOs were significantly better in Middlesbrough and Pontypridd.

D.3 Appropriateness of the Advice on Appeal

At the all areas level the difference between the performance of PDOs and private practice is greater in the magistrates' courts, but in the Crown Court the difference is still significant. In both samples the PDOs were more likely to provide appropriate advice on appeal.

Aside from Middlesbrough, where both sets of suppliers performed equally well, the PDOs were better in all local areas in the magistrates' courts. None of the results were significant, but in Pontypridd the PDO was almost a full grade better than private practice.

In the Crown Court sample the PDOs were significantly better than private practice in Cheltenham, Middlesbrough, Pontypridd and Swansea.

The somewhat mixed picture in individual areas is therefore maintained in this section, together with the common trend of better overall results for the PDS at the all areas level.

Discussion

Giving good advice is one of the most important elements of the work of criminal defence lawyers. The client needs to know where they stand as far as the merits of their case are concerned, the strength of the evidence against them and also what decisions they need to take in order to react appropriately to the prosecution evidence and the procedural requirements of a criminal prosecution.

Cases where clients had not received advice, and the consequences of poor advice, were noted by a number of reviewers, across the areas:

Letters to clients did not appear to advise client on the strength of the evidence, the likely sentence or their chances of success. On one file, there was no mention of strong forensic evidence against the client and the consequential high likelihood of a conviction. [PP]

There was a lack, on all files reviewed, of any advice by the suppliers on likely sentence. This was especially unfortunate in one case of a s.116 return to custody. No advice was recorded on the consequences of the sentences actually imposed. [PP]

Very little advice given to client about anything, even advice about plea to the burglary charges was inadequate. [PP]

On occasions, errors were made in the advice to the client: On one file, the client was not advised of the possibility of a custodial sentence. On another, an exceptional hardship argument was not considered. On a third, the client on a summons was advised in a standard letter that they were in jeopardy of a Bail Act offence. The fee earner did not consider a potential abuse point stemming from the late communication of the information. [PDO]

Some reviewers noted cases where the manner in which clients received information and advice was inappropriate:

The practice of sending prosecution and other documents to the client with the instruction that they read them carefully, as an alternative to a detailed consideration with the client and realistic appraisal of the strength of the evidence and assessment of their case, was unsatisfactory. [PP]

Many cases where the quality of the advice given was appropriate and served the client well, were also reported.

Excellent. Many solicitors would simply have allowed this client to plead guilty. This client could not have received better advice. [PDO]

The quality of advice provided was good, with reasoning for advice being documented on attendance notes. [PDO]

Across the areas, reviewers addressed the nature and timeliness of advice on plea, including its impact on outcomes:

The advice as to plea of guilty could have been given a little earlier had the problem identified by the file review been picked up at an earlier stage. The advice thereafter was good and the client received a very lenient sentence. [PDO]

On some files it appeared that advice could have been given to enter guilty pleas earlier and this would probably have enabled the matters to be concluded in the Magistrate's Court. Equally concerning was the tactic on one file of prolonging a not guilty plea when it was known as a guilty plea from the outset. [PDO]

Sound advice on plea leading to good result. [PP]

This was an 82 year-old driver with eyesight difficulties. Whilst I am not sure the initial advice to plead not guilty to careless driving was legally sound, it enabled the caseworker to negotiate a favourable outcome...well done! [PDO]

I do not think this client could have been better advised. He kept his options open until the last minute when a guilty plea was entered on an agreed basis favourable to him and surprisingly, given the seriousness of the charge and the reputation of the Judge, led to a non-custodial sentence. [PDO]

Good detailed advice provided from the outset. At one stage the client considered entering a guilty plea simply to dispose of the case. The supplier however provided further advice, which resulted in the Crown discontinuing the case. [PDO]

Historically there has been concern that private practice had financial incentives unnecessarily to prolong cases, one feature of which was late advice to plead guilty. The research on the Scottish Public Defence Solicitors' Office (PDSO) found that the PDSO resolved more cases at an earlier stage than private practice.¹³² In an attempt to ensure that English and Welsh PDS lawyers did not advise clients to plead guilty inappropriately, the professional head of the PDS issued guidance to PDS lawyers in 2002.¹³³

There were no significant differences between private practice and the PDOs on this question. This remained the case when the magistrates' court and Crown Court samples were isolated and analysed separately. Typical comments made about suppliers included:

There was no undue delay on the part of the solicitor.

No unnecessary delays were caused to the court. Adjournments were generally appropriate.

The matter of giving advice on appeal was raised by a number of reviewers. Although some suppliers did give advice on appeal, it was not uncommon for cases reviewed to have the following types of comments made.

Although evidence on appeal is adequate, clients are not told of the time limit.

Firms are required to advise clients of their right to appeal against sentence/conviction, e.g. merits, time limit. Only one file has some of this information recorded and the firm would be well advised to amend their closing letter to include this information.

There was no possibility of an appeal on any of the files reviewed but the firm should have added a few lines of formal advice [confirming] what was said at court.

Clients should have been advised on rights of appeal, even when the fee earner did not consider that an appeal would be advisable.

¹³² See Goriely *et al*, *op. cit.*.

¹³³ This guidance is discussed in Chapter 1 and was published as an annex to the *Public Defender Service: Review of the first year of operation 2001/02*, London, Legal Services Commission, August 2002 and is also available under the title 'Guidance on Code of Conduct' at http://www.legalservices.gov.uk/criminal/pds/doc_library.asp.

E: The Work/Assistance

This section deals with the work carried out by the lawyer in furtherance of all the communication and the advice given. The issues addressed were:

- 1) Completeness of Work
- 2) Effectiveness of Work in Achieving Client's Reasonable Objectives¹³⁴
- 3) Impact on Bail
- 4) Impact on Mode/Venue
- 5) Impact on the Process
- 6) Impact on Conviction
- 7) Impact on Sentence
- 8) Prejudice Caused to Client

This section uses different statistical approaches to evaluation. The peer reviewers' assessment of Completeness of Work (E.1) and Prejudice Caused to Clients (E.8) are both stated as percentages. A three-point scale rather than a 5 point scale is used to evaluate categories E.2-E.7 considering the impact of the suppliers' work. These impact categories all use the following scale:

- 1 = Better than Expected
- 2 = As Expected
- 3 = Worse than Expected

The results of this section are also a little different. Here the differences between the two modes of delivery are smaller and the overall results in the Crown Court suggest that private practice were better in this forum. There are far fewer significant results under these headings than any of the other major categories of peer review. Those that are significant largely occur at local level and largely show it is the PDOs that are better.

E.1 Completeness of Work

This question is concerned with whether the lawyer or firm had done sufficient work on the case having regard to the seriousness and complexity of the allegation, the nature of the case, etc. The issue of efficiency, and whether work was done that was not necessary, is dealt with separately (see Section F). The assessment in respect of

¹³⁴ This criterion was also included in the earlier investigation stage file peer review, but applying it and interpreting the results proved highly problematic for a number of reasons. First, outcomes at the investigation stage are determined by a large number of variables which, in the earlier study, could not be controlled for. Local police cultures can significantly affect individual decisions and decision-making. Given the relative position of power, police decisions may be unaffected by legal representation that is, in fact, highly competent. Second, it is often difficult to make an assessment of whether the result could have been affected by the performance of the lawyer, and circumstances may be such that there is little that a lawyer can do to affect the result. For example, overwhelming evidence that a person has committed a serious offence may mean that there is little a lawyer can do to affect charge and bail decisions. Third, information contained in a police station file was frequently insufficient to enable a judgment to be made. For these reasons, the results of the earlier investigation stage peer review relating to this criterion are not reproduced here.

this question differs from most of the other questions in that it had to be answered as either “yes” or “no”. In general there was a high level of “yes” answers, that is, that in the majority of cases all work that should have been done was done.

Table 4.10a The Work/Assistance, Magistrates' Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
Was all the work done that should reasonably have been done? (% yes)	96.7	83.3	** 95.2	52.0	78.3	63.6	77.8	81.5	* 96.7	71.4	61.5	52.6	** 84.7	67.2
Was work done effective in achieving the client's reasonable objectives?	2.5	2.3	2.4	2.7	2.4	2.4	2.3	2.7	2.2	2.8	3.0	2.7	2.4	2.6
What was the impact of the lawyer on a) Bail?	2.0	2.0	2.0	1.9	1.8	1.9	1.8	1.8	2.0	1.9	1.9	2.0	1.9	1.9
What was the impact of the lawyer on b) Mode/Venue	2.0	2.1	2.0	2.0	2.1	1.9	2.1	2.0	2.0	2.0	1.9	2.0	2.0	2.0
What was the impact of the lawyer on c) The Process	2.0	1.8	2.0	1.9	1.9	2.0	1.9	2.0	1.9	2.1	1.9	2.1	1.9	2.0
What was the impact of the lawyer on d) Whether convicted or not?	1.9	1.8	1.9	1.9	1.7	1.7	1.7	1.9	1.9	2.1	1.9	2.0	1.8	1.9
What was the impact of the lawyer on e) Sentence	2.0	1.4	1.9	1.5	1.3	1.8	1.6	1.8	1.7	2.0	1.5	1.8	1.7	1.7

Was the client prejudiced in any way by the work done? (% yes)	0.0	5.3	0.0	0.0	4.3	14.3	22.2	7.7	0.0	6.7	20.0	5.3	7.5	6.3
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Table 4.10b The Work/Assistance, Crown Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
Was all the work done that should reasonably have been done? (% yes)	95.0	75.0	** 95.7	50.0	63.0	79.2	85.7	77.3	81.3	65.6	* 50.0	78.6	77.1	71.4
Was work done effective in achieving the client's reasonable objectives?	2.3	2.3	2.5	2.6	2.7	2.6	2.1	2.8	2.4	2.9	3.0	2.3	2.5	2.6
What was the impact of the lawyer on a) Bail?	2.0	1.9	2.0	2.0	1.9	1.8	1.9	1.9	1.8	1.8	2.1	1.8	1.9	1.9
What was the impact of the lawyer on b) Mode/Venue	2.0	2.0	2.0	2.0	2.1	2.0	1.9	2.0	2.1	2.0	2.1	1.9	2.0	2.0
What was the impact of the lawyer on c) The Process	2.0	1.8	2.0	1.9	2.0	2.0	1.9	2.0	2.1	1.9	2.0	2.0	2.0	1.9
What was the impact of the lawyer on d) Whether convicted or not?	1.9	1.8	2.0	1.7	1.8	1.8	1.8	1.9	1.8	1.9	1.9	1.8	1.9	1.8
What was the impact of the lawyer on e) Sentence	1.9	1.7	1.8	1.4	1.8	1.7	1.5	1.6	1.6	1.9	1.8	1.5	1.7	1.7

Was the client prejudiced in any way by the work done? (% yes)	5.3	6.9	0.0	0.0	3.8	4.8	4.8	13.0	6.3	3.4	33.3	0.0	8.7	4.7
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Over all areas the performance of the PDOs was better than that of private practice in the magistrates' court. This difference was highly significant. The PDOs were slightly better in the Crown Court, but there the difference was not significant. It is interesting to note that while PDOs are less likely to complete all the work they reasonably should in the Crown Court (compared to their impressive performance in the magistrates' court sample), private practice (while still less reliable than PDOs) performed better in the Crown Court than they did in the magistrates' courts.

In the magistrates' court sample the PDO in Pontypridd was significantly better, and in Cheltenham, not only was the PDO highly significantly better, but it had done almost everything reasonably expected of it, while private practice were assessed as having carried out all the work they should have in done in just over half of the cases in the sample. In the Crown Court, private practice was significantly better in Swansea. In Cheltenham, the PDO greatly outperformed private practice and the difference was highly significant.

E.2 Effectiveness of Work in Achieving Client's Reasonable Objectives

This considers the effectiveness of the work done in achieving the clients' (reasonable) objectives, and therefore reflects the skill of the firm/office in defending their client having regard to what the objectives of the client were or were likely to be. The question refers to the client's *reasonable* objectives so that the firm would not be marked down simply because its client's objectives were unreasonable or unrealistic. Over all areas, the PDOs were more likely to do better than the peer reviewers expected in achieving their clients' reasonable objectives. This was the case in both the magistrates' court and Crown Court samples, although in neither sample was the difference significant.

In the magistrates' court sample, private practice were better than the PDOs in Birmingham and Swansea and equally good in Middlesbrough. In the other three regions it was the PDOs who were more likely to do better than expected.

A similar pattern was repeated in the Crown Court, although in Birmingham private practice suppliers were equally effective, and in Liverpool and Swansea they were better. The three regions where PDOs were better – Cheltenham, Middlesbrough and Pontypridd – are the same as the above.

Swansea PDO deserves special mention, because it did particularly badly, receiving the worst possible grade of 3 in both the magistrates' court and Crown Court samples.

E.3 Impact on Bail

In both the magistrates' court and Crown Court samples, private practice and PDOs were equally likely to have a slightly better than expected impact on bail, with all receiving a grade of 1.9.

In the magistrates' court sample, neither general mode of supplier was clearly better. Private practice were better in Cheltenham and Pontypridd, while the PDOs had a

greater impact in Liverpool and Swansea. They were rated as equally effective in Birmingham and Middlesbrough.

Although the overall results in the Crown Court showed that both modes of suppliers were equal, an examination of the local results suggests that private practice may be slightly better: They were rated better in Birmingham and Liverpool, but equal with the PDOs in the other areas.

E.4 Impact on Mode/Venue

As with the previous category, private practice and PDOs were equally likely to have an impact in the magistrates' court and Crown Courts, with all suppliers having exactly the impact on mode/venue that the peer reviewers expected (2.0).

In the magistrates' courts sample, there were two local areas where private practice performed better (Liverpool and Middlesbrough), two where PDOs were better (Birmingham and Swansea) and two where they were equally effective (Cheltenham and Pontypridd).

Looking at the local results for the Crown Court sample, private practice appears to be better. There was only one region where the PDO did slightly better. In two (Birmingham and Cheltenham) private practice were equal to the PDOs and in the three remaining areas, they were – albeit slightly – better.

E.5 Impact on the Process

In terms of impact on the process the overall results were quite different between the magistrates' court and Crown Court samples. In the magistrates' courts the PDOs were slightly, but clearly better, while in the Crown Courts the situation was reversed.

Birmingham and Cheltenham were the only local areas where private practice had a greater than expected impact on process in the magistrates' court. In all other areas it was the PDOs who were slightly better.

Middlesbrough was the only region where a PDO outperformed private practice on this criterion in the Crown Court. They did equally well in Liverpool and Swansea, and private practice were narrowly better in the three other localities.

E.6 Impact on Conviction

The overall impact of PDOs on convictions was slightly better than that of private practice in the magistrates' court. In the Crown Court it was private practice that was slightly better.

Looking at local area ratings for magistrates' courts, the PDOs appear to have done rather better than suggested by the overall results. Private practice were equally good in Cheltenham and Liverpool, but slightly worse in the other four regions.

The PDOs were better than private practice in the Crown Court in Middlesbrough and Pontypridd and equal in Liverpool. In the three other areas private practice were more

likely than the PDOs to have had an impact better than the peer reviewers had expected on conviction.

E.7 Impact on Sentence

This is yet another category where the overall results were the same for both suppliers in both courts (1.7).

In the magistrates' courts, private practice in Birmingham and Cheltenham were substantially better than the PDOs. In the other four regions the PDOs were better.

In the Crown Court PDOs were better in Middlesbrough and Pontypridd, but private practice had a greater impact on sentencing in the other four regions.

E.8 Prejudice Caused to Client

These results were recorded as percentages, with 0% representing no prejudice caused to the client by the suppliers. Overall, there was little difference between suppliers in the magistrates' court sample, although private practice were slightly better. One particularly poor result for the PDO in Swansea gives private practice superiority in the Crown Court.

Cheltenham stands out at the magistrates' court level; neither mode of supply caused any prejudice to their clients. In Pontypridd and Swansea private practice was better, while in the other areas it was the PDOs that were least likely to harm the interests of their clients in magistrates' courts. In Birmingham and Pontypridd the PDOs caused no prejudice.

In the Crown Court sample, Cheltenham distinguishes itself again, with neither type of supplier prejudicing clients. The PDOs were better in Birmingham, Liverpool and Middlesbrough. In Pontypridd private practice was better and in Swansea the result for the PDO was particularly concerning. While private practice caused no prejudice to clients, the peer reviewers found that Swansea PDO had prejudiced clients in almost a third of their files.

In this section, where impact of the work of criminal defenders is considered, there appears to be little overall difference between the two modes of provision at an all areas level. Impact appears to be about equal across the criteria. One serious issue stands out involving prejudice to clients in one-third of cases carried out in the Swansea PDO office.

Discussion

Given that the criteria required the peer reviewers to grade impact according to their expectations of the suppliers, an important first question is what does "as expected" mean? If the peer reviewers expect a high level of performance and outcome, then if their expectations are met perhaps the lawyers who are performing "as expected" are in fact doing rather well, because the expectations of the peer reviewers are high. Conversely, if reviewers do not have such high expectations, then the opposite would be true, and "as expected" would be sufficient but mediocre. To discover what the

peer reviewers' expectations might have been, requires a consideration of the reviewers themselves.

The peer reviewers were intentionally not selected only from the highest level of specialists but were "peers" who are operating at about the same level as other existing criminal defence practitioners. As a result:

- They know the political landscape of legal aid.
- They are aware of the public funding issues that are currently present.
- They will want to show their colleagues as doing well.
- They will want to complain about the lack of funding, the pressure in legal aid work, but show that their colleagues are still doing a good job despite these impediments.

The peer reviewers can differentiate between "good" and "better". This ability is evidenced by their other evaluations, throughout this chapter, which were carried out using the five-point scale. As most of the results are around or just under grade 2, this means that the impact of most suppliers' work was (slightly) better than expected. And, if we relate this back to their distribution of grades on the five-point scale, what the peer reviewers expected was probably something somewhat above "threshold competence", but not rising to the standards of "competence plus".

In assessing the completeness of work, peer reviewers were asked to suggest work, which should have been done on behalf of clients, but was absent from the file. A number of comments related to lack of, or limited instructions from the client, for example:

No proof of evidence even by the trial date despite the case having been proceeding for 14 months

No attempt take instructions re why made admission at police station while unrepresented.

Other comments concerned failure to give advice, either about the case or about appeal:

No written advice to client on anything other than next court hearing.

No advice on appeal. [PDO].

Sometimes, advice given was too late:

Client not advised till too late about video evidence against him.

In other cases peer reviewers were concerned that the clients' cases had not been properly investigated or pursued. Thus in one case, no medical report was obtained despite the fact that counsel had advised at an early stage that it should be obtained. In another case, apparently crucial evidence such as CCTV footage was not pursued, and in a further case there were

No written instructions, no mitigation taken, and no attempt to assess strengths/weaknesses of prosecution case” and the lawyer “missed crucial point re. signing on at police station.

A failure to communicate with the client was also apparent in a number of cases, giving rise to comments such as

Client not written to after initial hearing re. date of next hearing, advice and risk of custody

No outcome letter at all, that I could see.

All of this may give the impression that work often went unfinished, but as the peer reviewers’ findings indicate, the majority of files showed that all the work that might reasonably be expected had in fact been completed.

Peer reviewers addressed five questions, which sought specifically to identify the impact of the lawyer on a number of outcomes in relation to the case. It was an attempt to measure the ‘value added’ as a result of that client being represented by that firm/office – often a difficult judgement given the number of factors outside of the lawyer’s control in any particular case. Nevertheless, if we look, for example, at the peer reviewers’ comments regarding the lawyers’ impact on bail, we see that they are reflective of the suppliers’ generally high standard of work in this area:

Good results obtained on bail but this should've been a guilty plea and disposal on first occasion. [PP]

The hard work on this file reflected the excellent results on bail and sentence. [PP]

In a number of cases bail letters were insufficiently specific. If a client had been bailed with condition they should have been told what they were, and if unconditional bail had been granted this should have been specified. [PDO]

Despite client, did well to obtain bail on first appearance for robbery. [PP]

Some very good bail results in seemingly hopeless cases. [PP]

The peer reviewers were similarly positive about the involvement of lawyers in most of the other categories. Consider some of their comments about the impact of lawyers on sentencing:

There was encouraging evidence of negotiations with the Crown on reducing the gravity of charges. [PDO]

Outcomes were generally good, often as a result of Magistrates Court caseworkers taking the initiative in plea-bargaining. [PP]

The firm displays impressive Crown Court preparation by a number of caseworkers and some outcomes in such cases were remarkable. Some of the

work on the non-Crown Court files is of the highest standard. Here clients often received far better results than expected either in terms of pleas to reduce charges, discontinuance or on sentences. [PDO]

Often good written advice to clients and negotiation of charges down. [PDO]

Generally, better than expected results at court, Advocacy seems competent as far as can be ascertained from outcomes. [PP]

The supplier acted in the best interest of their clients and this was especially true when it came to sentencing. There was evidence that advocates tried to move cases from one court to another if they felt that a better result for the client could be achieved. [PDO]

Finally in this section, the peer reviewers assessed whether in any particular case the client had actually been prejudiced by the work done or not done by their lawyer. The reviewers' guidance indicated that they should only conclude that the lawyer had had a prejudicial effect on the client where this was clear from the file. As the findings indicate, reviewers found relatively little evidence that the clients' case had been prejudiced by the work of the suppliers.

There is a minimalistic approach to recording instructions but there is no evidence to suggest any client or outcome necessarily prejudiced by this. [PP]

In most files there have been a number of different fee earners and support staff working on files but any transmission seems to have been effortless and certainly has never prejudiced the client. [PDO]

On a number of files different fee earners dealt with the case at different times with good co-ordination and certainly no prejudice to the client. [PP]

Once again, I could find no agreed record of the client's instructions in the form of a proof of evidence. The client was not prejudiced, but on such a serious matter, in the Crown Court, one should have been prepared. [PDO]

The impact of each mode of provision seems fairly equal. Unlike the previous categories there is little discernible difference between PDOs and private practice except in the level of prejudice caused to their clients by one PDO.

F: Efficiency

The issues addressed at this stage were:

- 1) Efficiency of Work
- 2) Effectiveness of Use of Resources
- 3) Appropriateness of Disbursement

Table 4.11a Efficiency, Magistrates' Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
How efficiently was the work carried out?	2.6	2.4	2.4*	2.8	2.6	2.5	2.3*	2.7	2.3*	2.9	2.8	2.7	2.5*	2.8
Throughout the file, how effectively did the organisation use resources?	2.8*	2.3	2.5*	3.1	2.1	2.6	2.3*	2.8	2.7	2.9	3.1	3.0	2.6	2.7
Were any disbursements incurred appropriate? (%yes)	100	N/A	83.3	100	88.9	100	100	100	100	83.3	83.3	100	90.9	97.4

Table 4.11b Efficiency, Crown Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
How efficiently was the work carried out?	2.5	2.5	2.5	2.8	2.7	2.5	2.2	2.8	2.6	2.9	3.0	2.4	2.6	2.6
Throughout the file, how effectively did the organisation use resources?	2.8	2.3	2.4	3.1	2.5	2.5	2.3	3.2	2.6	3.2	3.0	2.8	2.6	2.8
Were any disbursements incurred appropriate? (%yes)	100	100	100	100	87.5	100	100	100	100	87.5	90.9	100	95.3	97.1

F.1 Efficiency of Work

Over all areas, the PDOs were significantly better than private practice in the magistrates' courts sample. In the Crown Court, however, there was no difference between the efficiency of the suppliers.

In Birmingham, Liverpool and Swansea private practice outperformed the local PDOs in the magistrates' court. In the other three regions the PDOs were significantly better and the differences between their ratings were greater than in those regions where private practice were the better suppliers. None of the results in the Crown Court were significant.

F.2 Effectiveness of Use of Resources

In both courts, the PDOs used resources more effectively over all areas.

Private practice was better in the magistrates' court in Swansea and, significantly, in Birmingham, but the PDOs were better in the other four regions and significantly so in Cheltenham and Middlesbrough.

In the Crown Court sample, suppliers performed equally well in Liverpool, while private practice was better in Birmingham. In all other regions it was the PDOs that used the resources most effectively, but none of the results in the Crown Court were significant.

F.3 Appropriateness of Disbursements

Peer reviewers recorded the appropriateness of suppliers' disbursements as percentages, rather than using the standard 1-5 gradings. The figures in the table represent the percentage of disbursements that were appropriate, so unlike the ratings, a higher number shows that the supplier has behaved more appropriately.

Overall private practice was marginally better in the Crown Court and slightly better again in the magistrates' courts. It is worth noting that none of the suppliers were judged to have accrued more than 16.7% inappropriate disbursements.

Discussion

The peer reviewers' comments emphasize the considerable range of performance in the different PDOs:

Efficient work throughout leading to quick and satisfactory conclusion. [PDO]

The case was progressed in an efficient manner throughout. [PDO]

It is not clear why no effort was made to see the client and his witnesses to proof them between the PDH and trial (some 2 months) until the day before the trial. [PDO]

Case could have progressed faster than it did. Supplier could have dealt with PBV on the client's instructions alone. No reason why case could not have been committed on day papers received at court. Surprised DJ allowed the adjournment. [PDO]

Even within offices there was a range of performance across the cases dealt with, as these two comments on files from the same PDO reveal:

Very efficient work throughout, contributing to the successful application to stay the proceedings. [PDO]

Numerous fee earners dealt with this case and nobody appeared to have a grip on it. [PDO]

Reviewers' comments sometimes indicate that the delays noted in some cases are appropriate, or not entirely the fault of the supplier.

It was absolutely correct to delay instructing an expert until further evidence received from the CPS at which stage it became irrelevant. [PDO]

The client's complaints about delay are entirely unjustified; the delays and listing mix-ups in this case were not the supplier's fault at all. [PDO]

There was a lot of delay and prevarication in the file not all caused by the changes of fee earner. [PDO]

There are a number of different aspects to a firm/office's use of resources. Guidance given to peer reviewers stated that consideration should be given to whether work was done that was not necessary, and also whether the firm/office made effective use of resources both inside and outside the firm, so for example, were agents or counsel instructed appropriately? Did the firm make effective use of experts? Overall reviewers seemed to regard the use of resources by both PDOs and private practice suppliers to be appropriate. The following comments are fairly typical:

Medical reports clearly appropriate and obtained at appropriate stage. [PDO]]

Experts were instructed in relation to firearms residue, blank cartridges and CCTV. This was indeed vital in this case. The instructions to the experts were first class both initially and in response to further developments/evidence from the Crown. [PDO]

The case was progressed efficiently. It was clearly appropriate to instruct the enquiry agent and medical expert. [PDO]

Preliminary visit to distant prison was largely unnecessary. Transcription of tapes was unnecessary. [However,] other work might have been pursued and was not, witness enquiries. [PP]

An even better use of resources was noted in a comment where some costs (but not others) were shared:

It was appropriate to instruct an expert in handwriting and ESDA and it is noted the cost was shared with a co-defending solicitor where there was no conflict over the issue. Also appropriate was the decision not to accede to the request to share instructing this expert with solicitors for a co-accused who requested this where there clearly was a fundamental conflict in respect of that issue. [PDO]

Comments about disbursements were generally positive.

G: Ethics

Tables 4.12a and 4.12b below examine the way in which suppliers dealt with any ethical problems arising from their work in the magistrates' and Crown Courts respectively. The specific issue the peer reviewers addressed was:

- 1) Where ethical issues arise, were they dealt with appropriately?

Table 4.12a Ethics, Magistrates' Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
Where ethical issues arise, were they dealt with appropriately ? (%yes)	90.9	90.0	80.0	76.9	100	50.0	100	N/A	100	60.0	72.2	20.0	86.7	68.6

Table 4.12b Ethics, Crown Court Sample

	Birmingham		Cheltenham		Liverpool		Middlesbrough		Pontypridd		Swansea		All areas	
	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP	PDO	PP
Where ethical issues arise, were they dealt with appropriately ? (%yes)	100	75.0	85.7	100	100	N/A	42.9	100	25.0	60.0	88.9	66.7	78.0	74.1

G.1 The Appropriateness of Dealing with Ethical Issues

This question is relevant where it is clear from the file that there was an ethical issue such as conflict of interests, client confidentiality, duty to the court, etc. It is presented as a percentage of the cases with ethical issues that were dealt with properly, so the higher the number, the better the supplier's performance.

Overall the PDOs were more likely to deal appropriately with ethical issues than were private practice. They were significantly better in the magistrates' courts and the difference was greater there also (almost 20%).

The only significant result at the local level underscores the overall trend, although the difference in the Swansea magistrates' court sample was much larger, with the PDO handling ethical issues appropriately in 72% of relevant cases compared to only 20% for private practice. The latter figure means that private practice in this area failed to deal with four fifths of ethical problems in an appropriate manner. However, it is notable that a high proportion of PDO sample files in Swansea (20 out of 50 in both courts) were identified as containing ethical issues, compared to only 8 out of 50 for private practice in the area.

The finding that the PDOs handled ethical issues appropriately more often than private practice serves to some extent to address concerns about the independence of a salaried defence service.

Discussion

There is little in the way of succinct discussion of the ethical issues in the peer reviewers' notes, but it is in dealing appropriately with ethical problems that the suppliers receive some of the worst ratings awarded over the entire peer review process. It is essential that conflicts of interest are confronted and dealt with properly, not merely to maintain professional standards but to protect the client, the integrity of the judicial system and the suppliers themselves. Here are examples of the sorts of ethical problems that came to the attention of peer reviewers:

This client approached [X] at court in relation to a transfer of rep. Without informing the solicitor instructed and acting under a Rep Order [X] attended (19th Feb) the client in prison and took a full proof of evidence. This is surprising conduct given the ethical position generally and indeed the absence of material upon which to take instructions. The court declined to transfer the Rep Order yet [X] attends the client in prison again (28th Feb) without notifying the solicitor who was acting under the existing order. This time the client was advised on the strengths or otherwise of the prosecution evidence. The Rep Order was not transferred until 26th March. Apart from the professional discourtesy and the fact that in most circumstances it is wholly inappropriate to see, proof and advise a client where someone else is acting this work was obviously un-funded although a letter to the client dated 19th February suggests that as he signed a document that day he was funded. The original solicitor was content for a transfer to take place but this kind of cavalier approach to professional ethics needs to be addressed. There is no evidence of any internal review taking place on this file, which may have brought this to light at an early stage. [PDO]

I was concerned to see a note from the client saying he would plead guilty although he didn't think he was. It is clear that mitigation was put forward on his behalf. One wonders what mitigation could ethically be advanced in these circumstances! This in reality is an issue I take with defence counsel rather than the supplier, but a note on file explaining this 'anomaly' would have been welcome. [PDO]

Some concerns as to sending out attendance notes of legal advice to client to his family but as all other ethical issues dealt with appropriately it may be the case that this was agreed and the failing is to note it at the time and perhaps get written authorisation from client. [PDO]

Conclusions

This chapter has reported on two peer review studies, one relating solely to work at the investigation or police station stage of cases and conducted at an early point in the research, after the Public Defender Service had been in operation for between one and two years, and the second based on two equal samples of magistrates' court and Crown Court cases. In both studies, the performance of the PDOs was compared with a sample of files drawn from private practitioners working in the same areas and relating to cases in the main police stations or courts served by the PDOs. Taken together, the two studies represent the largest study involving independent peer review of criminal defence files ever conducted.

The earlier study showed a variable pattern of results as regards the quality of work undertaken by the individual PDOs, and frequently differences between areas and PDOs were more marked than those between the two types of service provider. Nevertheless, the results overall tended to show that at this stage the PDOs were not performing less well in their police station work than private practice and in some respects better. The specific areas in which the PDOs performed well in comparison

with private practice were the adequacy of their police station pro forma, the layout of their files, timeliness of first contact with the client, and appropriateness of advice to clients on their strategy in police interviews. The latter finding is important given that PDO investigation stage clients tended to make no comment in police interviews more often than private practice clients. On the other hand, private practice tended to perform better than the PDOs in relation to legibility of files, information recording on files, and the appropriateness of decisions to attend in person at the police station and at police interviews. On the remaining specific criteria included in the first peer review study, there was either little to distinguish between the performance of PDOs and their private practice comparators taken as a whole, or there was insufficient information available to make a judgement

In terms of the adequacy of the overall level of service in police station cases, the PDOs generally performed somewhat better in this earlier study than private practice, and this was also the case for four of the six individual PDOs. The PDO in Pontypridd was assessed as providing an overall 'excellent' service in over half, and a 'good' service in almost all the rest, of its police station cases, and two other PDOs (Cheltenham and Swansea) had a majority of their cases assessed as 'good' or 'excellent'. The other three PDOs could not be said to have attained similar levels of service quality, although all had a majority of their files rated as at least competent in terms of overall performance.

There are a number of other features of the results of the first peer review that may be highlighted. First, there were some aspects of police station practice on which both the PDOs and private practice performed poorly. The most notable of these was in the failure to record the advice offered to suspects in police stations regarding their legal position. Although the PDOs performed significantly better than private practice in this respect, it was still the case that a majority of their files contained no record of such advice. In this respect, the Pontypridd PDO again stood out, with only 12% of its files containing no record of advice given to suspects on their legal position.

A second feature of the earlier peer review findings was the often significant regional variations in quality of service at police stations, regardless of whether the service had been provided by a PDO or private practice firm. This in turn is reflected in differences in quality performance between individual PDOs. It would be true to say that, while some of the PDOs had attained excellence, others lagged behind, perhaps often reflecting standards of service within their locales rather than a national ethos for the Public Defender Service as a whole. In this respect, the PDS is unlike most private practices, in that it does benefit from common systems, e.g. in terms of pro forma and file organisation and layout, across all of its offices. Variations in the quality of service between PDOs is therefore likely to be a function of how these common systems are implemented locally and the lack of more centralised professional management of the service during its initial stages of operation.

In this latter respect, the second peer review exercise reported in this chapter shows much more consistent results across five of the six PDOs included in the research. There is also a clear pattern of these PDOs, and the service overall, performing better or at the very least at the same level as private practice in terms of almost all aspects of their case handling. In terms of the individual offices, three stood out as having

performed significantly better than private practice on a number of specific measures relating to file completeness, communications, fact gathering, and the appropriateness of the advice and assistance given to the client. These were the PDOs in Cheltenham, Middlesbrough and Pontypridd.

The one exception among the PDOs in the second peer review was the Swansea office, which frequently performed worse than private practice in various aspects of their case handling. This finding contrasts with the generally good performance of the Swansea PDO in the earlier study which focussed solely on the investigation stage. The two sets of findings are not necessarily inconsistent: the office could have performed well in the early study due to particular personnel working in the police station but not have carried this through to its management of cases in the magistrates' courts and the Crown Court. This office also experienced considerable changes in personnel, both when some staff shifted to the Pontypridd PDO when it opened in September 2002 and later when the original office head left the service.

Two other features of the second peer review results can be noted. First, although there were some significant differences in performance between the PDOs and private practice in the Crown Court, again with the PDOs for the most part performing better, in general such differences were greater at the investigation and magistrates' court stages of cases. Secondly, despite these differences in performance on various measures of case processing and handling, the study found very few significant variations between the PDOs and private practice in terms of specific impacts on outcomes. It may be that this finding demonstrates a need for more work in developing outcome measures for criminal defence work. On the other hand, it may also suggest that once a certain level of quality in terms of case handling is reached, outcomes tend to be determined more by factors outside the control of the criminal defence provider and relating to the wider criminal justice system.

Chapter 5

Costs of Public Defender Offices

This chapter examines the cost of the Public Defender Offices (PDOs), both in general and in comparison with private practice solicitors undertaking legally-aided criminal defence work in the same localities. We originally explored two ways of carrying out the latter comparison, one based on the ‘cost to the public purse’ and the second on the ‘cost to the provider’ of criminal legally-aided defence services.¹³⁵ Whilst the ‘cost to the public purse’ approach is the most meaningful comparison for our purposes (indicating actual costs to the Treasury of the two forms of service), supplementing this with a ‘cost to the provider’ analysis would help to explore the underlying cost base and sustainability of two types of provision. However, it proved impossible to obtain sufficient data from private practice firms about their cost base in terms of staff numbers and salaries, office overheads, etc. to enable the ‘costs to the provider approach’ comparison to be made.

The ‘cost to the public purse’ method compares the costs paid by the Legal Services Commission (LSC) to private practice firms for the conduct of criminal legal aid cases, with that incurred by the LSC for similar cases undertaken by the PDOs. Data on the costs paid to private practice for criminal legal aid cases in police stations and magistrates’ courts¹³⁶ are readily available from SPOCC. It should be noted that SPOCC data cover only the costs paid to firms and not other costs to the public purse of administering such payments and the provision of criminal legal aid services more generally, such as those incurred in the processing of contract claims, the conduct of cost and quality audits of both private practice firms and PDOs, and the administration of local duty solicitor schemes.³

PDOs have also been required, as part of this research, to file claims under SPOCC for the cases they have completed, including a calculation of the costs they would have been eligible for had they been paid for these cases under criminal contract rates.⁴ However, these claims are ‘notional’ in two respects. First, they do not form the basis for the payment of costs to the PDOs. Rather, the PDOs have been funded directly from the LSC for all of their costs, including staff salaries, accommodation, office expenses, computers, and expenses of cases such as travel costs and disbursements. Secondly, it follows from this that the costs entered on SPOCC claims by PDOs do not represent the actual costs to the LSC of the cases conducted by them. It is necessary instead to calculate the costs of these cases through some method

¹³⁵ These two methods are described in more detail in L. Bridges, et.al., *Methods for Researching and Evaluating the Public Defender Service*, Legal Research Institute (University of Warwick) and Institute of Advanced Legal Studies (London), February and August 2002 (http://www.legalservices.gov.uk/docs/pds/methodology_paper.pdf).

¹³⁶ We have had to adopt a different method for comparing cost on Crown Court cases, which is discussed below.

³ For reasons discussed below, our calculations of the cost of private practice cases do not include such central administrative costs of criminal contracting.

⁴ This practice was continued until April 2005.

whereby the direct expenditure by the LSC on the PDOs is divided between the cases which they have completed.

The most obvious way of distributing PDO cost is on the basis of the time that they spend in completing cases. Unfortunately, although the costs paid under contracts are calculated on the basis of standard rates paid for the time and other inputs into each case, since the advent of criminal contracting for such services in 2001, firms (and the PDOs) have not been required routinely to report information on time and other inputs on the SPOCC claim form and therefore these data are not available to the Legal Services Commission on a systematic basis. Nevertheless, to assist the research and the management of the PDS, PDOs have been required from the outset separately to record the amount of time spent on each case which they conduct.⁵ For an initial period of just over a year, these data were recorded on each individual case file but subsequently time recording was incorporated into the service's computerised Case Management System (CMS).⁶

Data on time have been used for two purposes. The first has been to calculate an overall 'cost of time' figure for each PDO, by dividing the costs of each PDO for each year covered by the research by the total amount of time spent by that office on casework in the year. The second has been to provide a method for attributing these costs to individual cases. This has been done by multiplying the time recorded on CMS for individual cases by the overall 'cost of time' figure for each office.⁷ This provides an estimate of the actual costs of PDO cases, as distinct from the 'notional' costs entered under SPOCC, which can then be compared with the costs of private practice claims in the same areas.

The above provides only an outline of the method of cost comparison adopted in this research. At each stage, it has been necessary to make a number of assumptions which are explained more fully below. We look first at the issue of time spent by PDOs on cases, including in relation to the staffing of each office. We then go on to examine the cost of the PDOs and the calculation of their 'cost of time'. Finally, we carry out the calculation of the cost of PDO cases based on time spent on them and compare this with the costs paid to private practice for various types of legal aid case.

⁵ Private practice firms must also record this information on their own case files and make it available to the LSC auditors when required. The lack of a centralised source of data on the time spent on cases by private practice has limited the extent to which we have been able to compare the efficiency (as distinct from the cost effectiveness) of the two forms of service provision in terms of how long it takes them to deal with comparable cases. Some comparative time data has been obtained from private practice through our own case file samples (see Chapter 2), and further reference is made to this basis of comparison of the two types of service later in this chapter.

⁶ The intention was that the data recorded during the initial period of operation would eventually be transferred onto CMS, but in the event it proved necessary to mount a special data collection exercise to obtain information direct from the case files on the amount of time spent on these cases. This covered between 300 and 400 files in each of the four initial PDOs, including work done both in 2001-2 and early 2002-3. These data have subsequently been combined with that derived from CMS.

⁷ Where work on a particular case has been spread over more than one year, different 'cost of time' figures have been used for each year in order to calculate the total cost of the case.

Time Spent on Cases

(i) Time recording in PDOs

PDOs have recorded their work under the headings of 'chargeable', 'non-chargeable' and 'pro bono', with further divisions under each heading between time spent, letters written and telephone calls made in respect of each case. In common with private practice, time spent on cases has been recorded on CMS in six minute units,⁸ with each letter written and telephone call made counting for one six minute unit.⁹

The distinction between chargeable, non-chargeable and pro bono work is important. Chargeable work represents work which normally would be billable either to the LSC under criminal (or civil) legal aid or otherwise to a private client. Of course, the PDOs were generally restricted to carrying out only such work that would normally be eligible for criminal legal aid, and therefore were not in a position either to undertake civil legal aid work or to bill privately for any work undertaken. They were allowed to carry out a small amount of pro bono work as a means of recruiting or retaining clients. In this latter respect, their practices were similar to those of many private practitioners, who will occasionally carry out criminal work free for established or potential clients who they would normally expect to bring them legally-aided work. The total amount of pro bono work recorded in the PDOs covered by the research in 2003-4 (when time recording was probably most accurate) was 2.5% in Birmingham, 2.6% in Liverpool, 6.2% in Middlesbrough, 2.9% in Swansea/Pontypridd and 2.6% in Cheltenham. For our purposes, pro bono work has been treated as a form of non-chargeable work.

Non-chargeable work can be of two types. First, it can involve work on cases that are otherwise legally-aided but where the specific item of work is not eligible for payment under legal aid. This can be termed as case-related non-chargeable work. Such non-chargeable work is common to both private practice and to PDOs, and we have no reason to believe that the incidence of case-related non-chargeable time should have been greater in the PDOs than in private practice.¹⁰ Indeed, if this were the case it would indicate that PDOs would have been using their special funding position, of having their costs paid directly by the LSC rather than having to claim

⁸ The normal practice in both private practice firms and the PDOs is to round up any fraction of six minutes to the next whole six minute unit. However, our understanding is that the PDS at an early stage decided to record direct case work time exactly and not in six minute units. This is likely to have resulted in a slight under-recording of total time spent on cases compared with private practice.

⁹ For cases not recorded on CMS during the initial period of operation of the PDS, it was often not possible to determine the exact number of telephone calls made in police station advice cases, especially where a standard fixed fee was recorded covering all telephone advice. Each such standard fee was also counted as representing six minutes. It is also important to note that certain types of work were not recorded on CMS in terms of time spent on them. This was the case for time spent on standby as police station duty solicitor and acting as a court duty solicitor, both of which were not separately recorded on CMS until June 2003. Another method has therefore had to be adopted to take account of these forms of work (see below).

¹⁰ In 2003-4, when recording of non-chargeable time by the PDOs appears to have been most comprehensive, between 2.9% and 14.3% of all non-chargeable time in the PDOs included in the research was devoted to 'production of letters/documents' or to 'time spent on telephone calls'.

them on a case-by-case basis, in order to undertake types of work for clients that would normally be outside the scope of legal aid.

The second type of non-chargeable time is that spent on work that is not directly related to specific cases, such as general office or practice administration (including preparing legal aid claims and other bills), training for staff, etc. Again, such work is common both to private practice and the PDOs, although here it is arguable that the PDOs may have been required to undertake more non-case related non-chargeable work than would normally be expected in private practice. Certainly during the initial operation of the PDOs the office heads and other staff would have been involved in a great deal of non-case related work in setting up the offices, recruiting staff, and establishing administrative systems.¹¹ Office heads were also required to attend meetings with the LSC relating the general management and development of the service as a whole. A certain amount of PDO staff time has also had to be devoted to the requirements of the research, including preparing and filing SPOCC claims. Finally, some of the PDOs have become involved in general criminal justice initiatives in their areas.¹²

The issue that this raises for the research is to what extent non-chargeable time should be taken into account in calculating cost of time and of cases in the PDOs, in comparison with private practice. There are problems associated with any attempt to take account of non-chargeable time in our calculations. Practices of the PDOs varied quite considerably, both between offices and over time, as regards the recording of non-chargeable time. In 2001-2, non-chargeable time accounted for under 3% of all time recorded by the PDOs included in the research, and in 2002-3 this increased to just under 13%. However, in 2003-4 non-chargeable time constituted just under half of all time recorded by the PDOs. These variations probably reflect both improvements in the consistency of time recording by the PDOs and a general change in practice in the later year whereby staff were required to account for all their working time and not just that related to specific cases or other types of work.¹³

Beyond these methodological problems, it has been decided to base our calculations only on chargeable time and not to include any non-chargeable time. The main reason for this is that we are seeking to address the question of how much it has cost the public purse to obtain criminal legal aid services through a salaried service in comparison with what it would cost to obtain similar services from private practice. By definition, non-chargeable work falls outside the scope of what would be eligible

¹¹ In interviews with PDO staff, it was generally felt that the administrative and 'bureaucratic' demands on them were greater than these staff had previously experienced when working in private practice. See Chapter 7 for further discussion of these interviews.

¹² Again, in 2003-4, between 7.1% and 13.8% of non-chargeable time recorded in each of the PDOs included in the research was devoted to management, administration, supervision, practice development and marketing; between 3.3% and 17% to attendance at meetings; between 6.9% and 11.6% to staff training, and between 17.2% and 28.6% was taken up with staff holidays and sickness. However, by far the largest proportion of non-chargeable time (between 25.8% and 48.9%) was recorded as 'other'. Time spent directly with the researchers did not account for more than 0.6% of non-chargeable time in any of the offices.

¹³ The latter change is illustrated by the fact that in 2002-3 the research PDOs recorded an average of 820 hours per fee-earning member of staff, whereas in 2003-4 this increased to an average of 1738 hours recorded per member of staff. Of this increase of 918 hours per staff recorded between the two years, 748 hours were attributable to an increase in the recording of non-chargeable time.

for payment under criminal legal aid. As noted above, so far as case-related non-chargeable time is concerned, although there are no data available on this from private practice, we have no reason to believe that PDOs would have devoted more non-chargeable time to cases than their private practice counterparts. Equally, both sectors will have incurred non-case related, non-chargeable time on office administration, training, etc. However, as discussed above, it is arguable that the PDOs have engaged in other forms of non-case related, non-chargeable work to a greater extent than might normally be expected in private practice. and under our methodology the costs of this work has been added into and therefore increased direct case costs for the PDOs. However, we have no means of estimating the extent of such work or comparing it with what would normally be incurred in private practice.

(ii) Chargeable time in PDOs

Bearing these factors in mind, Table 5.1 presents data relating to the chargeable and non-chargeable (with the latter including pro bono) time recorded by each of the PDOs included in the research during the first three years of operation of the service (2001-2004), with more abridged data on chargeable time in each office for the subsequent two years (2004-2006) which strictly fell outside the period of the research.¹⁴ As will be seen, three of the initial four PDOs (Birmingham, Liverpool and Middlesbrough) each recorded between 1500 and 2000 hours of chargeable time in their first year of operation, whereas the Swansea PDO recorded 3326 chargeable hours. This reflected both the early success of the Swansea PDO in recruiting clients in comparison with the other offices and the heavy dependence of the other offices during this period on duty solicitor work for obtaining clients (see Chapter 2).

In their second year of operation, these initial four PDOs all recorded significant increases in chargeable time. The greatest increase was in Liverpool where recorded chargeable time grew by 215% between 2001-2 and 2002-3, followed by the Middlesbrough PDOs with a 189% increase and the Birmingham PDO with a 125% increase in recorded chargeable time between the two years. By this time, the Pontypridd PDO had been opened as a 'branch office' of the Swansea PDO, and the two offices combined achieved a 136% increase in chargeable time compared with that recorded in the Swansea PDO the previous year. Also, the Cheltenham PDO opened in late 2001-2, and in what was effectively its first full year of operation in 2002-3 it recorded nearly 4500 chargeable hours,¹⁵ which was more than any of the other PDOs in its opening year.

The data show that, other than in the Birmingham PDO, this growth in chargeable time continued into 2003-4, although at a slower rate than in the previous year. Between 2002-3 and 2003-4, chargeable time increased by 43% for the Liverpool PDO, by 10% in Middlesbrough, 16% in Swansea/Pontypridd, and by 30% in Cheltenham (in what was effectively the second year of operation of this office). In

¹⁴ Because the Cheltenham PDO came into operation only late in 2001-2, we show it in the tables in this chapter after the other PDOs included in the research. Also, we have included data on time and costs for this office for the short period it was open in 2001-2 in the figures for 2002-3, its first full year of operation. Data on the Swansea and Pontypridd PDOs were combined on CMS for some time, and we have therefore shown this in a number of tables as one combined office for the purposes of analysing time and costs.

¹⁵ This includes 10.77 hours of chargeable time carried forward from 2001-2.

the Birmingham PDO, however, the amount of chargeable time recorded in 2003-4 was actually 16% less than in the previous year, although there appear to have been significant staff vacancies in this office during the year (see below).

Although falling outside the research period, the figures for 2004-5 show that recorded chargeable time reduced by 3% in the Birmingham office and by 2% in the Swansea and Pontypridd offices. These reductions were despite the fact that these offices had more staff in 2004-5 than the previous year, in the case of the Birmingham PDO significantly so (see below), and suggest that these offices at least had temporarily reached a plateau in the number of clients they were attracting and cases being conducted. Both the offices in Liverpool and Middlesbrough continued to show an increase in chargeable hours recorded in 2004-5. In Liverpool, where there was also a significant increase in staff, chargeable hours increased by 4% over the previous year. In Middlesbrough chargeable hours increased by 10%, although this may be related to the fact that the data for this year combine the returns for both the original Middlesbrough office and the Darlington branch office, whereas the figures for previous years relate solely to the Middlesbrough office. The Cheltenham PDO, in what was effectively its third full year of operation, recorded a further 20% annual increase in chargeable hours in 2004-5.

Figures for 2005-6 show very sizeable increases in chargeable hours recorded at all the PDOs included in the research. During this year, the Birmingham PDO recorded a 59% increase in chargeable hours over the previous year, the Liverpool PDO a 53% increase, the Middlesbrough and Darlington PDOs a 46% increase, and the Cheltenham PDO a 70% increase. Growth in chargeable hours in the Swansea and Pontypridd PDOs during 2005-6 was less dramatic, amounting to a 11% increase in comparison with the previous year. In the Birmingham PDO and the Middlesbrough and Darlington PDOs, the growth in recorded chargeable hours in 2005-6 was associated with slight decreases in staff, but in the others there was an increase in staff working in the offices between 2004-5 and 2005-6 (see below). The growth in chargeable hours recorded over this period was also likely to be a product of the development of a central business team and of new forms of performance targets for each of the PDOs.¹⁶

¹⁶ These are discussed in Chapter 1.

Table 5.1 Annual Recorded Chargeable and Non-Chargeable Time in Public Defender Offices, 2001-2005

	Birmingham	Liverpool	Middlesbrough	Swansea and Pontypridd	Cheltenham	All Research Offices
2001-2						
Chargeable	1,992.29	1,548.4	1,596.34	3,326.11		8,463.14
Non-chargeable	40.43	71.27	33.74	70.41		215.85
2002-3						
Chargeable	4,488.62	4,874.49	4,608.59	7,849.08	4,488.68	26,309.46
Non-chargeable	865.64	151.73	746.78	785.88	1333.20	3,883.23
2003-4						
Chargeable	3,766.76	6,987.31	5,076.98	9,077.90	6,438.15	31,347.10
Non-chargeable	2,460.31	6,305.39	6,484.98	8,449.47	6,448.76	30,148.91
2004-5						
Chargeable	3,658.20	7,289.2	7,392.76	8,871.77	8,337.39	35,549.32
2005-6						
Chargeable	5,800.09	11,162.03	10,798.93	9878.86	14,215.17	51,855.08

Staffing and Utilisation of Staff Time in PDOs

The above data need to be related to staffing levels within the PDOs. Initially, it was planned for each PDO to have a senior solicitor appointed as office head, two or three further solicitors, and a similar number of accredited police station representatives. This decision was based on the PDOs needing rapidly to build a client base from scratch whilst being able to provide a fully comprehensive service, and on concerns that there might be a reluctance among other local private practice providers to cooperate with the PDOs at least at the outset of the service.¹⁶ The staffing model adopted is very likely to differ significantly from that on which private practice firms might be expected to seek to establish a new office, where staffing would be limited initially to the numbers of fee-earning staff sustainable by a limited client base, with further staff being engaged as the number of clients and cases gradually increased. It is also the case that new private practice firms are often created out of spin-offs from, and even splits of, existing firms and therefore start with some established clients of the solicitors concerned.

In this latter respect, it may be noted that it was primarily in Swansea and Liverpool among the initial PDOs that senior staff were recruited from the general local area and therefore had some local following among clients to build upon. The Cheltenham PDO, established a year later, although its original head was recruited from outside the area, did have other staff who had previously practised within the locality. The PDO opened during 2002-3 in Pontypridd was established as a branch of the Swansea PDO and therefore began with an established client base transferred from Swansea.

Table 5.2 shows the levels of fee-earning (shown in terms of full time staff equivalents) of each PDO during the research period covering the first three years of operation of the service, again with additional data relating to the following two years. The figures take account of staff vacancies that arose from time to time during the course of these years. As will be seen, three of the four initial offices started with a model that involved a mixture of solicitors and accredited representatives, although these three offices varied in the extent to which they retained their initial staff even throughout the first year. The Birmingham PDO started with a different staffing structure, consisting only of solicitors but with no accredited representatives, although the original staff included one member initially recruited as an accredited representative but who at the time of his employment was completing his qualification as a solicitor. This staffing model was retained through the first three years by the Birmingham PDO, with solicitor staff later being joined by trainee solicitors as part of a deliberate staffing policy. Only in 2004-5 did the Birmingham PDO take on an accredited police station representative.

Otherwise, the staffing model of solicitors supported by accredited representatives was maintained in all the offices, including Cheltenham when it opened in Spring 2002, with all offices gradually building their staffing numbers from the first year onwards. The Swansea PDO also took on a trainee solicitor in its second year of operation, as did the Cheltenham PDO in 2004-5. The only significant exception to this was in Birmingham where continuing staff recruitment problems meant that

¹⁶ These issues are discussed more fully in Chapter 1.

¹⁷ This includes the office head who in every case has been a senior solicitor, other solicitors, accredited representatives and trainee solicitors.

overall numbers dropped between 2002-3 and 2003-4, recovering somewhat in 2004-5 but reducing again in 2005-6.

Table 5.2 also shows the average number of chargeable hours recorded in each office per fee-earning member of staff over the five years. Given the initial staffing model adopted and the need to recruit a client base from scratch, it is perhaps not surprising that none of the initial four PDOs achieved a very high average number of chargeable hours per member of fee earning staff in their first year of operation. This ranged between 400 and 450 chargeable hours per staff member in the Birmingham, Liverpool and Swansea offices, down to an average of only 334 chargeable hours in Middlesbrough in 2001-2. The Cheltenham PDO was the most successful in its first full year of operation, in 2002-3, with 573 average chargeable hours recorded per member of staff. By this time, all the other PDOs had significantly increased their average number of chargeable hours per staff, with Birmingham averaging 659 chargeable hours per staff, Middlesbrough and Swansea/Pontypridd PDOs both achieving an average of over 700 hours and the Liverpool PDO an average of nearly 950.

By 2003-4, three of the PDOs (Liverpool, Swansea/Pontypridd and Cheltenham in only its second full year of operation) were averaging close to or in excess of 900 chargeable hours per fee earning member of staff. The Middlesbrough PDO had also increased its previous year's average but less significantly, to just under 800 average chargeable hours. The Birmingham PDO also nearly achieved an average of 800 average chargeable hours, although on the basis of fewer total chargeable hours recorded, thus reflecting their reduced staffing numbers in this year.

In 2004-5, three of the four original PDOs (now in their fourth year of operation) experienced a decrease in average chargeable hours per fee earning member of staff. This appears to have been the result of a deliberate policy to increase solicitor staff in some of the offices in order to boost the number of clients recruited especially through duty solicitor referrals, which did not prove immediately successful. The most dramatic decline was in Liverpool, where a combination of a small increase in overall chargeable hours recorded (+4%) and an increase of staff numbers by a third, meant that the average per staff member reduced from nearly 900 to just under 700 chargeable hours. The Birmingham PDO also recorded a decline in chargeable hours per staff member for similar reasons. The average chargeable hours per staff member in the Swansea and Pontypridd PDOs decreased from nearly 1,000 in 2003-4 to just under 900 in 2004-5. Only the Middlesbrough PDO, of the four original offices, showed a continuing increase in average chargeable hours per staff in 2004-5, although this may have been a function of these figures including those for the Darlington branch office in this year.¹⁸ The Cheltenham PDO, in its third full year of operation, increased its chargeable hours per fee earner by a further 20% over the previous year and was thus the first of all the PDO to record an average of more than 1,000 chargeable hours per fee earner in a year.

One question is what norm, in terms of average chargeable hours per fee earner, the PDOs should be working toward. In fact, no such target was set during their initial

¹⁸ Both the chargeable hours and staff from the Darlington office are included with Middlesbrough in 2004-5 and 2005-6.

period of operation, in recognition of the difficulties they were likely to encounter in recruiting up to a full client base. Latterly the service has adopted a target of 1,100 chargeable hours per fee earner, comparable to that which has been used by the Legal Services Commission in other areas such as contracting with not-for-profit providers for civil legal aid. Evidence collected recently by Frontier from a survey of over 300 firms with legal aid contracts (covering both civil and criminal legal aid) showed that just under 10% achieved fewer than 800 chargeable hours per fee earner, with a further 17% between 800 and 999 chargeable hours per fee earner. On the other hand, approximately a quarter of the firms in this survey were producing in excess of 1,400 chargeable hours per fee earner in a year. There was also evidence in the survey that criminal legal aid firms tended to achieve higher average chargeable hours per fee earner than those operating in other types of legal aid.

Although there are problems with the Frontier Economics survey,¹⁹ it would therefore appear that by 2004-5 four of the PDOs included in this research were operating at a level that would have placed them in the bottom quartile of legal aid firms in terms of the number of chargeable hours achieved per fee earner, with two (Birmingham and Middlesbrough) being in the bottom 10%. The Cheltenham PDO, on the other hand, had by the end of its third full year, achieved an average of chargeable hours per fee earner close to the median for legal aid firms, although possibly somewhat lower than this when compared with firms specialising in criminal legal aid.

The most recent figures for chargeable hours recorded by the PDOs, for 2005-6, show a dramatic improvement, with the Birmingham PDO achieving 1,450 chargeable hours per fee earner during the year; the Cheltenham PDO around 1,300, Liverpool PDO just over 1,200; and the Middlesbrough PDO between 1,100 and just over 1,200 (depending on whether or not trainees are included in the calculation). Only the Swansea/Pontypridd PDOs, with between 700 and just over 800 chargeable hours per fee earner for 2005-6, failed to record an increase from the previous year.²⁰ This suggests that two of these PDOs (Birmingham and Cheltenham) will be in the top quartile of criminal defence offices in respect of chargeable hours per fee-earner, three (Middlesbrough, Liverpool and Pontypridd) in the middle two quartiles, and one (Swansea) in the bottom quartile.

What is unclear from these data is how far improvements in the number of chargeable hours per fee earner are the product of the PDOs recruiting more clients and/or undertaking more cases than in earlier years; the better recording of and therefore increases in the time actually spent on cases; or some combination of both of these factors. If the increases primarily reflect improved recording practices rather than an increased number of clients and/or cases, this would not imply any significant reduction in case costs. On the other hand, an increase in clients and/or number of

¹⁸ *A market analysis of legal aided services provided by solicitors*, London, Frontier Economics Ltd, December 2003 (available at www.dca.gov.uk).

¹⁹ The response rate was low and biased towards larger firms. Whilst one might surmise that this may lead to an estimate of higher levels of chargeable time, it is also fair to say that the PDOs were of a size which would make this group a better comparator, than a completely representative sample of the population of all legal aid firms large and small.

²⁰ The separate figure for the Pontypridd PDO is 1,123 chargeable hours per fee earner and for Swansea between 570 and 680.

cases would mean that average case costs may have been significantly reduced from earlier years. We compared the percentage increases in chargeable hours per staff in 2005-6 with the rate of increase in the number of new cases recorded per in each of the PDOs during the same period. This shows that while chargeable hours per staff in the Birmingham PDO in 2005-6 were 80% higher than in the previous year, the number of new cases taken on per fee earner was only 42% higher. In the Liverpool PDO, where number of chargeable hours per fee earner was 75% higher than the previous year, the number of new cases recorded per staff was only 35% higher. Again, in the Middlesbrough PDO chargeable hours per fee earner increased by 40% but new cases per fee earner by only 15%. In the Cheltenham PDO the number of chargeable hours per fee earner increased by 20% and the number of new matters per fee earner by 12%. These figures suggest that, in all of the PDOs where there was an increase in chargeable hours recorded per fee earner, this was not matched by the same level of increase in new matters opened per fee earner, and that perhaps as much as half of the increase in chargeable hours would be attributable to better time recording practices. However, this would still mean that the remainder of the increase in chargeable hours does represent a real increase in productivity per staff and therefore a reduction in costs per case.

²⁰ In each case using the number of solicitors/barristers and accredited representatives (but excluding trainees) as the base for the calculations.

Table 5.2 Annual Staffing Levels and Utilisation of Staff Time in Public Defender Offices, 2001-2005

	Birmingham	Liverpool	Middlesbrough	Swansea Pontypridd	and Cheltenham (1)	All Research Offices
2001-2						
Fee Earning Staff (ftes)						
Solicitors/Barristers	3.03	1.78	3	3.65		11.46
Accredited Representatives		1.84	1.78	3.4		7.02
Trainee Solicitors	1.48			0.73		2.21
Total (excluding trainees)	3.03	3.62	4.78	7.05		18.48
Total (including trainees)	4.51	3.62	4.78	7.78		20.69
Chargeable Time						
Total	1,992.29	1,548.4	1,596.34	3,326.11		8,463.14
per fee earner (excluding trainees)	657.5	427.7	334.0	471.8		458.0
per fee earner (including trainees)	441.7	427.7	334.0	427.5		409.0
2002-3						
Fee Earning Staff (ftes)						
Solicitors/Barristers	4.81	2.98	3.91	5.94	5.04	22.68
Accredited Representatives		2.16	2.18	3.98	2.8	11.12
Trainee Solicitors	2			1		3
Total (excluding trainees)	4.81	5.14	6.09	9.92	7.84	33.8
Total (including trainees)	6.81	5.14	6.09	10.92	7.84	36.8
Chargeable Time						
Total	4,488.62	4,874.29	4,608.59	7,849.08	4,488.68	26,309.26
per fee earner (excluding trainees)	933.2	948.3	756.7	791.2	572.5	778.4
per fee earner (including trainees)	659.1	948.3	756.7	718.8	572.5	714.9

2003-4						
Fee Earning Staff (ftes)						
Solicitors/Barristers	2.75	4.89	3.42	5.85	4.17	21.08
Accredited Representatives		3	3	3.33	2.91	12.24
Trainee Solicitors	2			0.07		2.07
Total (excluding trainees)	2.75	7.89	6.42	9.18	7.08	33.32
Total (including trainees)	4.75	7.89	6.42	9.25	7.08	35.39
Chargeable Time						
Total	3,766.76	6,987.31	5,076.98	9,077.9	6,438.15	31,347.1
per fee earner (excluding trainees)	1,369.7	885.6	790.8	988.9	909.3	940.8
per fee earner (including trainees)	793.0	885.6	790.8	981.4	909.3	885.8
2004-5						
Fee Earning Staff (ftes)						
Solicitors/Barristers	4.12	6.42	5.38	6.71	4.2	26.83
Accredited Representatives	0.42	4	3	2.75	3.08	13.25
Trainee Solicitors	0.5	0	0	0.42	0.33	1.25
Total (excluding trainees)	4.54	10.42	8.38	9.46	7.28	40.08
Total (including trainees)	5.04	10.42	8.38	9.88	7.61	41.33
Chargeable Time						
Total	3,658.2	7,289.2	7,392.76	8,871.39	8,337.39	35,549.32
per fee earner (excluding trainees)	805.8	699.5	882.2	937.8	1,145.2	887.0
per fee earner (including trainees)	725.8	699.5	882.2	897.9	1,095.6	860.1

2005-6						
Fee Earning Staff (ftes)						
Solicitors/Barristers	4.0	6.75	6.0	9.92	5.8	32.47
Accredited Representatives	-	2.35	2.92	2.0	4.53	11.8
Trainee Solicitors	-		1.5	1.5	0.8	3.8
Total (excluding trainees)	4.0	9.10	8.92	11.92	10.33	44.27
Total (including trainees)	4.0	9.10	9.52	13.42	11.13	48.07
Chargeable Time						
Total	5,800.09	11,162.03	10,798.93	9,878.86	14,215.17	51,855.08
per fee earner (excluding trainees)	1,450.0	1,226.6	1,210.6	828.8	1,376.1	1,171.3
Per fee earner (including trainees)	1,450.0	1,226.6	1,134.3	736.1	1,277.2	1,078.7

Costs of the Public Defender Offices

Data were provided by the Legal Services Commission on various costs associated with the setting up and running of the Public Defender Service in each of its initial three years of operation. These data included separate annual outturn figures for each of the PDOs, including the two offices not covered by the research (Chester and Darlington). In addition, annual outturn figures were provided for the central 'policy and legal' costs incurred by the LSC in the direct administration of the PDS, including the salary costs of central staff directly employed within the PDS. These central costs included internal recharges for central services associated with the initial recruitment of staff and procurement and setting up of offices.²¹

However, no attempt has been made to apportion the costs of other LSC staff, particularly working within the Criminal Defence Service, who might have contributed to the setting up and administration of the PDS in these years. As noted previously, such staff also contribute to the administration of the contracting system under which private practice firms provide criminal legal aid services, and any attempt to apportion their costs to the PDS would have necessitated also providing an estimate of the central costs of administering criminal contracts as well.²² It was therefore decided to base our calculations of costs of both the PDS and private practice criminal legal aid services on the direct costs associated with these two forms of service and to exclude indirect costs associated with central administration of the Criminal Defence Service as a whole.

Each outturn statement divides costs between running costs (including salary costs, communications, office supplies and machinery rental and maintenance, travel and subsistence, training and recruitment, publicity and publications, and miscellaneous items such as professional membership fees). Accommodation costs (e.g. office rental) are shown separately, as is capital expenditure for fixture and fittings, furniture and equipment, and computers (including both hardware and software).

(i) Running costs

The running costs figure for each office include sums directly associated with case work such as salaries and items which would be charged as disbursements by private practice, such as travel costs and payments to counsel and experts. The latter have not been separated out for the purposes of our calculations but included in the overall costs of the PDOs and subsequent 'cost of time' figures for each office. Therefore, when comparisons are drawn between PDO case costs and those of private practice for legally-aided criminal defence work, it is important to note that the cost of disbursements have also been included for private practice in their cost per case figures. This does not apply to counsel's fees in Crown Court cases, where such fees for both PDS and private practice cases are paid directly from the legal aid authorities to counsel (see below).

²¹ Private practice firms, particularly those with multiple offices, are likely to incur similar central administrative costs.

²² For example, the introduction of contracting for criminal legal aid in 2001 required the setting up of a new data management system to process contract claims and administer payments to private practice firms.

For the purposes of calculating a cost of time for each PDO, salary and running costs associated with central staff specifically and exclusively employed to service the PDS have been distributed across each of the PDOs operational in a given year on the basis of that office's percentage share of the total local running costs of the same year. This means that in 2001/2 central running costs were divided between five offices (Birmingham, Liverpool, Middlesbrough, Swansea and), while in 2002/3 they were distributed across these offices and three others (Pontypridd, Chester and Darlington). A small element of central running costs incurred pre-April 2001 were included in the 2001/2 costs for the PDOs.

As noted previously, certain types of service provided by the PDOs, including police station duty solicitor standby and court duty solicitor work, were not recorded in terms of the time spent on them on files or the Case Management System during the periods covered by the research. In order to account for such work in subsequent 'cost of time' calculations, it has been necessary to deduct a notional value for it from the costs of each PDO, based on the value of claims filed by the PDOs for each of these services and entered onto SPOCC. The whole of the value of police station standby claims has been deducted in each year, while for court duty solicitor work the total value of claims in 2001-2 and 2002-3 and one-sixth of those for 2003-4 have been deducted. These deductions are shown separately in the tables below.

(ii) Capital and one-off costs

A major consideration in determining the cost of the PDOs is how capital and other one-off costs of setting up the service are to be included. It would clearly be unrealistic that the total of such costs should be included in the year in which the expenditure was initially incurred. Instead, one would expect such costs to be depreciated or written off over a period of time. Although the period of such depreciation/write-off may vary according to the particular type of expenditure (e.g. fixtures and fittings, computers), we have assumed a standard four year depreciation period for all such items.²³ This corresponds with the period of the initial public defender experiment and research evaluation.

Equally, a judgement has been required as to which of the various PDOs that became operational during the first two years of the service such capital and one-off costs should be attributed. For example, in the case of the costs incurred centrally pre-April 2001 on human resources and office procurement services from the LSC, it is clear that these related solely to the four initial PDOs in Birmingham, Liverpool, Middlesbrough and Swansea. On the other hand, a large item of expenditure during the first year of the service related to the setting up of the computer and Case Management System for the service as a whole. Although this initially applied to only the four offices opened in that year, it was subsequently extended to other offices (Cheltenham and Pontypridd within the research, and Chester and Darlington outside

²² Although because the Cheltenham office opened only late in this year, these costs have been shown in the tables below as in 2002-3.

²³ We were advised that the standard period of depreciation used by the LSC and for other Government agencies varies between three and five years, according to the type of capital expenditure involved. We have no evidence as to the period over which private practice firms might similarly write off capital expenditure. Of course, this element of cost only applies to the 'high' estimate of PDS costs set out below, as the 'low' estimate relates only to running costs.

the research). It therefore seems right that the central costs of computing should be spread and written off across all eight of the offices that will have used the system during the initial four year period of operation of the PDS.

The following is a brief explanation of how each item of capital or one-off expenditure has been treated:

(a) Local capital expenditure

This has been attributed to the relevant PDO and written off over a four year period from the year of the initial expenditure.

(b) Central computer costs

The central computing costs have been distributed across all eight offices opened during the initial two years of the service, in proportion to the office's share of the total of local computing costs during this period. These have then been written off over a four year period from the year of initial expenditure.

(c) Other capital and one-off costs

These include the costs of LSC human resources and office procurement services in relation to the setting up of the initial PDOs. These costs have been shared evenly between these four offices. Other items of expenditure have been proportioned across all eight offices. All such costs have been written off over a four year period from the year of initial expenditure.

There are two other aspects of the treatment of capital and one-off costs to be noted. First, there was an element of central computer costs during the first year that can be considered as 'wasted'. This was the result of an initial policy decision to provide each PDO with its own 'stand alone' local computer network. This policy was subsequently changed in favour of linking all PDOs into the LSC's central computer network.²⁴ The costs associated with the development of local systems have been separately identified and shown in the tables below. These wasted costs have been written off over four years across all eight offices.

Finally, we have applied a capital interest charge of 6% per annum in 2001-2 and 2002-3 and of 3.5% in 2003-4, which is a standard practice in government accounting for capital made available to public bodies. This has been charged annually to the outstanding capital and one-off costs (i.e. less the amount written off or depreciated) in each year. The outstanding capital has been calculated as an average of the amount outstanding at the beginning and at the end of each financial year. This would be the equivalent of interest paid on borrowing for capital expenditure that might be incurred in private practice.

²⁴ For further details, see Chapter 1.

(iii) Data on Costs of the PDOs

Based on the above assumptions, Table 5.3 shows the breakdown of costs of the PDOs across each of the first three years of operation of the service. There are a number of general observations that are worth making about these costs. First, by far the largest element of overall costs of the PDOs in these years were local running costs such as salaries, rent and disbursements. Local running costs accounted for between 77% and 81% of overall costs of the initial four PDOs in 2001-2, with the share of central running costs further accounting for between 6% and 7% of the overall costs of each office in this year. In 2002-3 local running cost constituted 85% of overall costs in each of the initial four PDOs and 82% in the Cheltenham PDO, with the share of central running costs accounting for a further 5% to the overall costs of each office in this year. In 2003-4, local running costs accounted for between 79% and 84% of the overall costs of each PDO, with the share of central running costs accounting for nearly another 8% to the overall costs of each office.

Once capitalised over the four year experimental period of the PDS, capital and set up costs (including wasted computer costs and the Government capital charge) amounted to between 10% and 17% of annual overall costs of any PDO in these years. To the extent that there is a cost differential between PDOs and private practice (see below), it would therefore seem that this is only partially attributable to the fact that the former were being established as an entirely new service requiring extensive start-up costs and capital investment at the outset. Rather, the main driver of PDS costs has been its day-to-day operational expenses.

In this respect, the initial staffing policy of the PDOs, of providing them with a full complement of solicitors and accredited representatives to provide a comprehensive, 24-hour a day service to clients, has been a major contributory factor to these costs. For example, in 2003-4, staff costs alone accounted for 49% and 56% of the overall costs, and between 62% and 68% of the running costs, of each of the PDOs. The number of staff also influenced the size of office accommodation required, and it is also arguable that both in their location and standards of accommodation, the PDO offices were more expensive than might normally have been expected in private practice. In 2003-4, accommodation costs represented between 6% (for Swansea and Pontypridd) and 14% (for Birmingham) of overall costs, and between 7% and 18% of running costs, of the various PDOs.

Table 5.3 Annual Costs of the Public Defender Offices, 2001-2004

2001-2					
	Birmingham	Liverpool	Middlesbrough	Swansea	All Research Offices
	£	£	£	£	£
Running costs					
local (1)	308,509	387,512	332,413	375,943	1,404,377
less court duty and standby(2)	-13442	-5046	-8642	-5416	-32546
share of central costs (3)	25,898	32,727	28,035	31,674	118,334
Sub-total	320,965	415,193	351,806	402,201	1,490,165
Depreciation of capital and other one-off costs (4)					
local capital costs	48,328	34,963	42,884	61,273	187,448
central computing costs (5)	7,915	7,957	7,454	12,857	36,183
other central capital and one-off costs (6)	7,233	7,233	7,233	7,233	28,932
Sub-total	63,476	50,153	57,571	81,363	252,563
Running + capital/start-up costs	384,441	465,346	409,377	483,564	1,742,728
Government charge on outstanding capital (7)	13,490	10,852	12,952	20,688	57,982
Running + capital/start-up costs + Govt charge on outstanding capital	397,931	476,198	422,329	504,252	1,800,710
(wasted computer costs) (8)	3,884	4,005	3,752	6,472	18,113
(charge on wasted computer costs)	837	841	788	1,359	3,825
Total costs less wasted computer costs	393,210	471,352	417,789	496,421	1,778,772

2002-3						
	Birmingham	Liverpool	Middlesbrough	Swansea and Pontypridd	Cheltenham	All Research Offices
	£	£	£	£	£	£
Running costs						
local (1)	456,384	481,143	495,553	661,124	449,239	2,543,443
less court duty and standby (2)	-21,617	-1,490	-11,246	-12,545	-3,792	-50,690
share of central costs (3)	26,748	28,115	29,027	38,753	26,881	149,524
Sub-total	461,515	507,768	513,334	687,332	472,328	2,642,277
Depreciation of capital and other one-off costs (4)						
local capital costs	48,798	36,759	49,257	62,722	49,753	247,289
central computing costs (5)	8,744	8,791	8,235	9,253	7,228	42,251
other central capital and one-off costs (6)	7,245	7,245	7,245	7,245	178	29,158
Sub-total	64,787	52,795	64,737	79,220	57,159	318,698
Running + capital/start-up costs	526,302	560,563	578,071	766,552	529,487	2,960,975
Government charge on outstanding capital (7)	9,815	8,079	10,141	12,076	16,278	56,389
Running + capital/start-up costs + Govt charge on outstanding capital	536,117	568,642	588,212	778,628	545,765	3,017,364
(wasted computer costs) (8)	3,984	4,005	3,752	4,216	3,985	19,942
(charge on wasted computer costs)	598	601	563	783	622	3,167
Total costs less wasted computer costs	531,535	564,036	583,897	773,629	541,158	2,994,255

2003-4						
	Birmingham	Liverpool	Middlesbrough	Swansea and Pontypridd	Cheltenham	All Research Offices
	£	£	£	£	£	£
Running costs						
local (1)	400,990	565,215	447,245	853,310	479,551	2,746,311
less court duty and standby (2)	-2,793	-2,514	-4,699	-8,227	-2,643	-20,876
share of central costs (3)	39,391	53,624	43,363	79,112	47,004	262,494
Sub-total	437,588	616,325	485,909	924,195	523,912	2,987,929
Depreciation of capital and other one-off costs (4)						
local capital costs	49,498	37,006	49,301	63,173	47,177	246,155
central computing costs (5)	8,864	8,912	8,348	14,362	3,846	44,332
other central capital and one-off costs (6)	7,245	7,245	7,245	7,245	7,245	36,225
Sub-total	65,607	53,163	64,894	84,780	58,268	326,712
Running + capital/start-up costs	503,195	669,488	550,803	1,008,975	582,180	3,314,641
Government charge on outstanding capital (7)	3,462	2,900	3,654	6,943	4,254	21,213
Running + capital/start-up costs + Govt charge on outstanding capital	506,657	672,388	554,457	1,015,918	586,434	3,335,854
(charge on wasted computer costs)	209	211	197	380	91	1,088
(wasted computer costs) (8)	3,984	4,005	3,752	6,517	1,729	19,987
Total costs less wasted computer costs	502,464	668,172	550,508	1,009,021	584,614	3,314,779

Notes to Table 5.3

- (1) All local office costs, including accomodation and disbursements.
- (2) Not recorded in chargeable time figures for year. Deduction based on notional claims for costs registered on SPOCC for these services in the year.
- (3) Distributed across offices on basis of each offices % share of total local running costs.
- (4) Depreciated over 4 years from year of initial expenditure.
- (5) Distributed across offices on basis of each office's % share of total local computer costs.
- (6) Includes central HR and office procurement costs on initial four offices.
- (7) Based on 6% of average of outstanding capital at beginning and end of year in 2001-2 and 2002-3 and 3.5% in 2003-4.
- (8) See text for explanation of wasted computer costs.

The Cost of PDO Time

Using the above time and cost data, it is possible to calculate a number of 'cost of chargeable time' figures for each of the PDOs included in the research. These calculations are shown in Table 5.4 below. The different 'cost of time' calculations are based on:

(i) Running costs only

This is based on each office's annual running costs, including accommodation costs and share of central running costs. It does not include any capital or one-off costs of the service. This forms the basis of the 'low cost' comparison between PDO and private practice average case costs in the following sections of this chapter.

(ii) Running + capital and set up costs

This includes the annual running costs as above, plus the amount of capital and one-off costs written off or depreciated in each year. It does not include either the Government interest charge on outstanding capital or wasted computer set up costs. As will be seen by a comparison with the 'running costs only' calculations, the capital and set up costs of the service accounted for as little as 8% and at most 17% of these combined costs for any of the PDOs in any of the three years.

(iii) Running + capital/set-up costs + Government charge on outstanding capital

This is the same figure as in (ii) above, but with the capital interest charge included. It is provided to demonstrate the relatively marginal impact of the capital interest charge on the hourly rate. It provides the highest estimate of PDO costs.

(iv) Running + capital/set-up costs + Government charge on outstanding capital, less wasted costs computer costs (Total costs less wasted computer costs).

This is the same figure as in (iii) above, but with the wasted computer costs, incurred during the first year in setting up 'stand alone' computer networks in each PDO, excluded. Again, the deduction of these wasted computer costs has only a marginal effect on the overall 'cost of time' figure for each office. It is arguable that this estimate of 'cost of time' provides the fairest basis for comparison with private practice costs, as private practice would also incur capital costs and interest charges on loans but would not necessarily incur additional costs of installing the wrong type of computer system. This forms the basis of the 'high cost' comparison between the PDOs and private practice average case costs in the following sections of this chapter.

Table 5.4 Annual Costs of Chargeable Time in Public Defender Offices, 2001-2004

2001-2002					
	Birmingham	Liverpool	Middlesbrough	Swansea	All Research Offices
Total chargeable time (hours)	1992.29	1548.4	1596.34	3326.1	8463.14
Running costs only	£320,965	£415,193	£351,806	£402,201	£1,490,165
hourly rate ('low estimate')	£161.10	£268.14	£220.38	£120.92	£176.08
Running + capital/start-up costs	£384,441	£465,346	£409,377	£483,564	£1,742,728
hourly rate	£192.96	£300.53	£256.45	£145.38	£205.93
Running + capital/start-up costs + Govt charge on outstanding capital	£397,931	£476,198	£422,329	£504,252	£1,800,710
hourly rate	£199.74	£307.54	£264.56	£151.60	£212.77
Total costs less wasted computer costs	£393,210	£471,352	£417,789	£496,421	£1,778,772
hourly rate ('high estimate')	£197.37	£304.41	£261.72	£149.25	£210.18

2002-2003						
	Birmingham	Liverpool	Middlesbrough	Swansea and Pontypridd	Cheltenham	All Research Offices
Total chargeable time (hours)	4,488.62	4,874.49	4,608.59	7,849.08	4,488.68	26,309.46
Running costs only	£461,515	£507,768	£513,334	£687,332	£472,328	£2,642,277
hourly rate ('low estimate')	£102.82	£104.17	£111.39	£87.57	£105.23	£100.43
Running + capital/start-up costs	£526,302	£560,563	£578,071	£766,552	£529,487	£2,960,975
hourly rate	£117.25	£115.00	£125.43	£97.66	£117.96	£112.54
Running + capital/start-up costs + Govt charge on outstanding capital	£536,117	£568,642	£588,212	£778,628	£545,765	£3,017,364
hourly rate	£119.44	£116.66	£127.63	£99.20	£121.59	£114.69
Total costs less wasted computer costs	£531,535	£564,036	£583,897	£773,629	£541,158	£2,994,255
hourly rate ('high estimate')	£118.42	£115.71	£126.70	£98.56	£120.56	£113.81

2003-2004						
	Birmingham	Liverpool	Middlesbrough	Swansea and Pontypridd	Cheltenham	All Research Offices
Total chargeable time	3,766.76	6,987.31	5,076.98	9077.9	6,438.15	31,347.1
Running costs only	£437,588	£616,325	£485,909	£924,195	£523,912	£2,987,929
hourly rate ('low estimate')	£116.17	£89.20	£95.71	£101.81	£81.38	£95.32
Running + capital/start-up costs	£503,195	£669,488	£550,803	£1,008,975	£582,180	£3,314,641
hourly rate	£133.59	£95.81	£108.49	£111.15	£90.43	£105.74
Running + capital/start-up costs + Govt charge on outstanding capital	£506,657	£672,388	£554,457	£1,015,918	£586,434	£3,335,854
hourly rate	£134.51	£96.23	£109.21	£111.91	£91.09	£106.42
Total costs less wasted computer costs	£502,464	£668,172	£550,508	£1,009,021	£584,614	£3,314,779
hourly rate ('high estimate')	£133.39	£95.63	£108.43	£111.15	£90.80	£105.74

Using the 'total costs less wasted computer costs' figure as the basis a 'high' estimate of PDS costs, Table 5.5 below shows a year-on-year comparison of the 'cost of chargeable time' in the various PDOs. During their first year of operation, the 'cost of chargeable time' in each of the initial four PDOs varied widely, ranging from a high of just over £300 per hour in Liverpool to a low of just under £150 per hour in Swansea. Average hourly costs in all of these offices reduced considerably in their second year of operation, with the greatest reduction being in Liverpool, from over £300 down to £115 per hour (-62%). Average hourly costs were more than halved in the Middlesbrough PDO between its first and second year of operation, while those in the Birmingham PDO were cut by 40% and those in the Swansea/Pontypridd PDO by a third. The Cheltenham PDO in its first full year of operation, in 2002-3, had relatively low costs in comparison with the other PDOs, of £120 per hour, reflecting its early success in recruiting clients. However, this rate of improvement levelled off and in some instances was reversed in 2003-4, with the average hourly costs of the Birmingham PDO increasing from the previous year by 11% and those of the Swansea/Pontypridd PDO by 13%. The Liverpool and Middlesbrough PDOs only further reduced their average hourly costs by 17% and 14% respectively, while the Cheltenham PDO, in its second full year of operation, reduced its average hourly costs by 25% compared with the previous year. Similar trends are also shown in Table 5.5 in terms of a 'low' estimate of PDS costs based on 'running costs only'.

Although not directly comparable, it is interesting to compare these hourly costs figures for the PDS with the hourly rates that would be paid to private practice solicitors for undertaking various forms of criminal legal aid work.²⁵ These are shown in Table 5.6 as applicable during 2003-4. Although in certain exceptional cases in the magistrates' court and the Crown Court up to 100% enhancement is allowed on the published rates (200% in serious fraud cases), in the vast majority of ordinary cases the hourly rates paid to private practice under contracts or Crown Court legal aid are significantly lower than the average hourly costs of the PDOs.

²⁵ The hourly cost figures for the PDS include all their costs, whereas the hourly rates for private practice cover only part of the costs they might be paid for undertaking various forms of cases. For example, private practice might additionally be allowed unit costs for specific items of work such as letters written and telephone calls made and will be separately reimbursed for disbursements on cases.

Table 5.5 Cost of Chargeable Time of PDOs, 2001-2004

	Birmingham	Liverpool	Middlesbrough	Swansea and Pontypridd	Cheltenham	All Research Offices
	£	£	£	£	£	£
‘High cost’ estimate						
2001-2	197.37	304.41	261.72	149.25		210.18
2002-3	118.42	115.71	126.70	98.56	120.56	113.81
2003-4	133.39	95.63	105.43	111.15	90.80	105.74
‘Low cost’ estimate						
2001-2	161.10	268.14	220.38	120.92		176.08
2002-3	102.82	104.17	111.39	87.57	105.23	100.43
2003-4	116.17	99.59	108.04	114.06	92.25	95.32

Table 5.6 Legal Aid Hourly Rates payable to Private Practice, 2003-4

Investigation Stage			
Advice and assistance			
Preparation	£49.90		
Travel and waiting	£26.30		
Police Station			
Attendance on client or others			
Duty solicitor ordinary case	£52.00-£69.50		
Duty solicitor serious offence	£60.00-£80.00		
Own solicitor	£52.00		
Travel and waiting			
Duty solicitor	£52.00-£69.05		
Own solicitor	£28.80		
Proceedings Stages			
Magistrates' courts			
Duty solicitor			
Advice and assistance	£53.85-£67.30		
Travel and waiting	£26.30		
Advice and assistance			
Preparation	£49.70		
Advocacy	£62.35		
Travel and waiting	£26.30		
Representation order			
Preparation	£49.70		
Advocacy	£62.35		
Attendance on counsel	£34.00		
Travel and waiting	£26.30		
Crown Court			
Category of fee earner	A	B	C
Preparation	£53.00	£45.00	£29.75
Attendance	£42.25	£34.00	£20.50
Travel and waiting	£25.75	£24.75	£12.50

Comparison of Costs between PDOs and Private Practice

(i) Police stations and magistrates' courts

We now turn to the question of how PDO costs compare with those of private practice firms undertaking similar types of case under criminal legal aid. As noted earlier, since the introduction of general contracting for criminal legal aid in 2001, solicitors have not been required to report the actual time spent on cases to the Legal Services Commission. Rather, they return a claim for their and other expenses (disbursements) associated with the case. The 'cost to the public purse' of these private practice cases is the amount of money paid for the case under the contract to the firm by the Legal Services Commission.²⁷

PDOs were also required during the period of the research to return similar claims, based on the amount of costs they would have been eligible for if operating under a criminal contract. Of course, in the case of the PDOs these claims were only notional, as their actual cost were paid directly by the LSC and not on a case-by-case basis under contracts. However, the requirement on them to report cases through the contract reporting system (SPOCC) enabled the researchers to identify the cases handled by the PDOs. We then matched these with the data recorded on the PDS Case Management System showing the amount of time (including an allowance for letters and telephone calls) associated with these cases. The actual (as distinct from the notional) costs of each PDO case was then calculated by multiplying the time spent on the case in each of the three years of our survey by the relevant 'cost of chargeable time' figure for each PDO in those years.²⁸ For this purpose, two 'cost of chargeable time' estimates have been used: a 'low' figure based on running costs only

²⁶ These costs are related, either directly or indirectly through translation into standard fees, to the amount of time spent on the case, but it is left to the solicitor to translate this into a cost claim based on the time recorded on the case file but not to report the time as such to the LSC.

²⁷ As discussed earlier, we have not included the general costs associated with the running of the CDS under the Legal Services Commission's budget, as these costs would have been related to both PDS and contracted private practice.

²⁸ For example, if a case in a PDO involved y hours in 2001-2 and z hours in 2002-3, the cost of the case was calculated as y multiplied by the hourly cost of chargeable time for that PDO in 2001-2 plus z multiplied by the hourly cost of time for that PDO in 2002-3. Where cases are grouped by year for reporting purposes, this has been done on the basis of the year when the claim was reported and processed through SPOCC.

and a 'high' figure based on all costs associated with the PDS (including capital/set-up costs and the Government charge on outstanding capital, less the 'wasted' computer costs). The actual cost of PDO cases under these two estimates can then be compared with the amount paid under criminal contracts to private firms for conducting similar types of case.

Unfortunately, it was not always possible to match the cases reported by PDOs under SPOCC with those recorded on the PDS Case Management System. This was particularly the case in the initial year of operation of the PDOs, when CMS was not up and running and therefore few case details were recorded on it. For this reason, the comparison of costs between private practice and the PDOs in this first year tends to be based on relatively few PDO cases and therefore must be treated with some caution. The calculation of PDO average case costs in 2002-3 and 2003-4 are based on larger numbers of cases and are therefore more reliable.

For the purpose of our analysis, comparisons of average case costs were made in various categories of case. These included (i) investigation stage cases where there was a full attendance by the legal advisor at the police station (i.e. excluding telephone advice only cases); (ii) proceedings cases involving only advice and assistance (i.e. without representation in court) (iii) proceedings cases which concluded at the magistrates' court at an early hearing; and proceedings cases in the magistrates' courts which resulted in a claim for (iv) a lower standard fee, (v) a higher standard fee or (vi) a non-standard fee.²⁹

Table 5.7a shows the average cost of cases in these various categories in each of the three years of our analysis across the research PDOs as a whole, compared with those incurred by private practice in the same areas, based on the 'high' estimate of PDO costs (which we regard as the most realistic basis for calculating PDO costs). Table

²⁹ Under criminal contracting, solicitors claim separately for the 'investigation' (police station) and 'proceedings' (magistrates' court) stage of each case, but must include all work done at each of these stages in a single claim for that stage. Different levels of standard fees are paid in magistrates' court proceedings cases based on the 'core cost' incurred, which in turn are primarily on the amount of time spent on the case (e.g. a lower standard fee for a case that involves between £0 and £y 'core costs'; a higher standard fee for a case that involves between £y and £z 'core costs'; and a non-standard fee based directly on the amount of 'core costs' incurred on the case where these exceed £z). However, the total cost of such cases include both the standard fee and any additional allowable expenses of the case.

5.7b translates the average cost figures into ratios, showing the extent by which PDO costs exceeded those of private practice. Thus, in 2001-2 PDO average costs across all research offices were just over twice as high as those of private practice for lower standard fee claims in the magistrates' courts, over two and half times higher for police station attendance claims, and over three times higher for advice and assistance only and early hearing claims in magistrates' courts. Data on PDO costs in the other categories were insufficient to make valid comparisons. These cost differentials between PDOs and private practice narrowed in the second year of operation of the service, but PDO average costs were still between 1.5 times and twice as high as those for private practice in all categories where sufficient data are available. The picture in the third year of operation is mixed compared with the previous year, with costs differentials in some categories decreasing slightly but increasing in other categories. However, the 2003-4 figures show a remarkable consistency, with the PDO average costs being between 1.69 and 1.76 times higher than private practice in all categories of claim other than non-standard fee cases in magistrates' courts, where the difference was slightly lower at just under 1.6 times higher.

Table 5.7a Cost of Cases in Public Defender Offices ('High' Estimate) and Private Practice Firms by Type of Cases and Year Case Concluded, 2001-4

		PS attendance claims			Free Standing A&A (proceedings)			Early Hearings		
		Mean	S.D.	N	Mean	S.D.	N	Mean	S.D.	N
2001-2	PDS	£602	£467	55	£241	£174	3	£399	£451	14
	PP	£230	£164	37567	£77	£50	2357	£120	£83	1490
2002-3	PDS	£395	£384	1300	£168	£165	146	£180	£166	197
	PP	£243	£173	45292	£82	£62	3541	£116	£73	1727
2003-4	PDS	£414	£340	1675	£134	£142	246	£181	£122	197
	PP	£245	£174	46209	£79	£69	2827	£106	£64	1397

		Lower St. Fee			Higher St. Fee			Non-st. Fee		
		Mean	S.D.	N	Mean	S.D.	N	Mean	S.D.	N
2001-2	PDS	£658	£605	18	.	.	0	.	.	0
	PP	£318	£125	30385	£815	£251	4684	£1,579	£2,045	895
2002-3	PDS	£572	£426	790	£1,591	£569	56	£1,157	.	1
	PP	£328	£281	43259	£842	£252	8067	£1,705	£1,376	2262
2003-4	PDS	£578	£395	1068	£1,427	£745	165	£2,724	£1,538	35
	PP	£328	£133	43846	£841	£261	7688	£1,712	£1,568	2372

Table 5.7b
 Ratio of Average Cost of Cases in Public Defender Offices ('High' Estimate) to
 Average Costs in Private Practice Firms (=1) by Type of Case and Year Case
 Concluded, 2001-4

	Police Station Attendant e claims	Free Standing A&A (proceedings)	Early Hearings	Lower St. Fees	Higher St. Fees	Non- st. Fees
2001 -2	2.62	3.13	3.33	2.07		..
2002 -3	1.63	2.05	1.55	1.74	1.89	
2003 -4	1.69	1.70	1.71	1.76	1.70	1.59

Table 5.8a provides a more detailed breakdown of investigation stage attendance case costs for each of the research PDOs, compared with local private practitioners, based on cases completed over the whole three years of our study and the 'high' and 'low' estimates of PDO costs. This shows that, based on the 'high' estimate of PDO costs, the average cost of police station attendances by the Middlesbrough PDO was 2.75 times higher than local private practice, while in the remaining areas the average cost of PDO police station attendances was between 1.87 and 1.99 times higher than local private practice in those areas. Based on the 'low' estimate of PDO costs, average police station attendance cost for the Middlesbrough PDO were 2.4 times higher than those of local private practice, while in the other areas average PDO police station attendance costs were between 1.64 and 1.8 times higher than those of private practice in their areas.

Table 5.8b shows the breakdown of case costs in the various categories of proceedings claims for each of the PDOs (based on the 'high' estimate of their costs) and private practice over the whole three years, while Table 5.8c translates these data relating to average costs into ratios showing the extent by which PDO costs exceeded those for local private practice. These calculations take no account of differences in caseload (which we do below using multivariate analysis) but they illustrate neatly if a little crudely the extent of difference between the two services. Thus, across the six research PDOs and five proceedings claims categories, there were 17 instances where PDO costs, based on the 'high' estimate, were more than twice as high as those from private practice, and only one instance where PDO costs fell below 1.5 times higher than private practice.

Tables 5.8d and 5.8e repeat the above analysis but this time using the 'low' estimate of PDO costs, based on annual running costs alone and with no allowance for capital or set-up costs or charges. This is provided in order to demonstrate that, even on this analysis, PDO average costs in a third of instances were still more than twice those of local private practice, and in only five instances fell below 1.5 times greater than private practice.

Table 5.8a Costs of Investigation Stage Attendance Cases for PDO ('High' and 'Low' Estimates) and Private Practice in Six Areas, 2001-4

		Lower costs estimate			Higher costs estimate		
		Mean	N	Std. Deviation	Mean	N	Std. Deviation
Birmingham	PDS	£422	426	£321	£487	426	£369
	PP	£258	68,483	£171	£258	68,483	£171
Liverpool	PDS	£411	518	£356	£453	518	£394
	PP	£242	24,685	£176	£242	24,685	£176
Middlesbrough	PDS	£428	663	£321	£489	663	£368
	PP	£178	14,462	£139	£178	14,462	£139
Pontypridd	PDS	£435	291	£320	£480	291	£356
	PP	£241	3,817	£153	£241	3,817	£153
Swansea	PDS	£439	513	£513	£489	513	£572
	PP	£248	10,799	£186	£248	10,799	£186
Cheltenham	PDS	£361	738	£324	£407	738	£368
	PP	£212	18,225	£163	£212	18,225	£163

Table 5.8b

Costs of Proceedings Stage Cases for PDO ('High' Estimate) and Private Practice in Six Areas, 2001-4

		Free standing advice and assistance			Early Hearings			Lower Std. Fee			Higher Std. Fee			Non-std. Fee		
		Mean	S.D.	N	Mean	S.D.	N	Mean	S.D.	N	Mean	S.D.	N	Mean	S.D.	N
Birmingham	PDS	£223	£180	36	£409	£323	6	£783	£552	349	£2,021	£726	38	£3,042	£1,734	11
	PP	£91	£64	3260	£143	£84	1797	£345	£134	67038	£871	£249	13381	£1,807	£1,802	3532
Liverpool	PDS	£118	£100	128	£204	£212	226	£606	£404	506	£1,721	£1,049	46	£2,751	£762	2
	PP	£73	£55	2500	£90	£58	1517	£313	£337	27178	£785	£256	5248	£1,528	£1,657	1727
Middlesbrough	PDS	£175	£192	41	£153	£89	56	£637	£437	333	£1,492	£600	49	£2,392	£680	13
	PP	£64	£63	1147	£110	£61	17	£283	£105	13207	£766	£253	1164	£1,412	£1,162	335
Swansea	PDS	£185	£157	130	£268	£150	27	£553	£421	230	£1,459	£701	32	£4,252	£2,601	6
	PP	£79	£44	1104	£114	£64	786	£314	£138	3937	£802	£276	960	£1,874	£2,089	215
Pontypridd	PDS	£162	£274	48	£234	£188	22	£586	£393	218	£1,502	£660	33	£3,345	£1,007	4
	PP	£70	£85	569	£90	£63	446	£282	£106	12131	£779	£266	1230	£1,521	£736	225
Cheltenham	PDS	£173	£146	25	£231	£169	79	£671	£503	313	£1,565	£737	41	£3,331	£2,165	8
	PP	£70	£85	569	£90	£63	446	£282	£106	12131	£779	£266	1230	£1,521	£736	225

Table 5.8c Ratio of Average Proceedings Stage Cost between PDO ('High' Estimate) and Private Practice (=1) in Six Areas, 2001-4

		Free standing advice and assistance	Early Hearings	Lower Std. Fee	Higher Std. Fee	Non-std. Fee
Birmingham	PDS	2.45	2.86	2.27	2.32	1.68
Liverpool	PDS	1.62	2.27	1.94	2.19	1.80
Middlesbrough	PDS	2.73	1.39	2.25	1.95	1.69
Swansea	PDS	2.34	2.34	1.76	1.82	2.27
Pontypridd	PDS	1.82	3.08	1.61	1.62	1.91
Cheltenham	PDS	2.47	2.57	2.38	2.01	2.19

Table 5.8d

Costs of Proceedings Stage Cases for PDO ('Low' Estimate) and Private Practice in Six Areas, 2001-4

		Free standing advice and assistance			Early Hearings			Lower Std. Fee			Higher Std. Fee			Non-std. Fee		
		Mean	S.D.	N	Mean	S.D.	N	Mean	S.D.	N	Mean	S.D.	N	Mean	S.D.	N
Birmingham	PDS	£194	£157	36	£348	£265	6	£682	£481	349	£1,759	£631	38	£2,653	£1,518	11
	PP	£91	£64	3260	£143	£84	1797	£345	£134	67038	£871	£249	13381	£1,807	£1,802	3532
Liverpool	PDS	£107	£91	128	£184	£188	226	£552	£366	506	£1,572	£966	46	£2,538	£704	2
	PP	£73	£55	2500	£90	£58	1517	£313	£337	27178	£785	£256	5248	£1,528	£1,657	1727
Middlesbrough	PDS	£152	£165	41	£135	£78	56	£558	£381	333	£1,313	£524	49	£2,112	£603	13
	PP	£64	£63	1147	£110	£61	17	£283	£105	13207	£766	£253	1164	£1,412	£1,162	335
Swansea	PDS	£166	£140	130	£244	£138	27	£497	£380	230	£1,320	£639	32	£3,869	£2,419	6
	PP	£79	£44	1104	£114	£64	786	£314	£138	3937	£802	£276	960	£1,874	£2,089	215
Pontypridd	PDS	£147	£251	48	£215	£173	22	£533	£357	218	£1,369	£601	33	£3,053	£918	4
	PP	£89	£56	306	£76	£41	132	£365	£146	4486	£927	£223	311	£1,749	£1,283	75
Cheltenham	PDS	£153	£130	25	£205	£150	79	£594	£445	313	£1,397	£659	41	£2,978	£1,959	8
	PP	£70	£85	569	£90	£63	446	£282	£106	12131	£779	£266	1230	£1,521	£736	225

Table 5.8e Ratio of Average Proceedings Stage Cost between PDO ('Low' Estimate) and Private Practice (=1) in Six Areas, 2001-4

	Free standing advice and assistance	Early Hearings	Lower Std. Fee	Higher Std. Fee	Non-std. Fee
Birmingham	2.13	2.43	1.98	2.02	1.47
Liverpool	1.47	2.04	1.76	2.00	1.66
Middlesbrough	2.38	1.23	1.97	1.71	1.50
Swansea	1.65	2.83	1.46	1.48	1.75
Pontypridd	2.10	2.14	1.58	1.65	1.53
Cheltenham	2.69	2.28	2.11	1.79	1.96

Finally, we subjected these data on the relative costs of PDO and private practice cases to multivariate analysis, the purpose of which was to control for any influences on these differences that might be attributable to factors such as case complexity, offence type, and location of the police station or magistrates' court served.³⁰ This provides the best comparison between PDO and private practice costs. The results are shown in Appendix 5.1. These strongly support the existence of very significant differences in costs between PDOs and private suppliers, using our CMS-derived estimates of PDO costs. After controlling for case complexity and location, costs were found to be significantly higher in all PDOs by comparison with private practice claims. This was true for both investigation claims and magistrates' court proceedings claims. The costs per investigation claim were between £152 and £216 higher (depending on the particular PDO) than in private practice, even using the 'low' estimate of PDO costs. The costs per magistrates' court claim were between £74 and £349 higher (again depending on the particular PDO) than in private practice, again using the 'low' estimate of PDO costs. On average, PDO investigations are predicted to cost between 71% and 93% more than the predicted private practice average (£240.83). PDO magistrates' court proceedings cases are predicted to cost between 41% and 58% more than the predicted private practice average (£450.42).

We have discussed earlier in this chapter some of the underlying factors which will have contributed to these large cost differentials between PDOs and private practice, such as the relatively high staffing levels and support costs of PDOs and their slow build up of clients and cases resulting in fewer chargeable hours being completed per staff than might normally be expected in private practice. Another factor that might be thought to have contributed to the high average case costs in PDOs is that they could have devoted more time to cases than would be the norm in private practice, especially as their low case numbers would have given staff greater freedom to do so. It is possible to test this possibility by comparing the amount of the notional claims entered on SPOCC by PDOs with the costs actually claimed in similar cases by private practice. As both sets of claims are related, either directly through hourly rates or indirectly through standard fees, to the time spent on the case, they can provide a reasonable proxy for comparing the time spent on cases as between PDOs and private practice.

We subjected the data relating to SPOCC claims for both investigation and magistrates' court proceedings cases to multivariate analysis similar to that carried out above, i.e. controlling for the number of defendants, whether the claim was for a youth or duty solicitor case, supplier size (as measured by the number of claims made), and type of offence. In addition each regression controlled for the location of the local police station (for investigation claims) or the court (for proceedings claims) (see Appendix 5.2). With investigation claims, it was shown that costs notionally claimed under SPOCC for PDOs tended to be lower than private practice in Birmingham and Liverpool, higher in Middlesbrough, and no different in the remaining areas. With magistrates' court

³⁰ The specific variables included in this analysis were the number of defendants involved in the case, whether the case involved youth court or duty solicitor work, supplier size (as measured by the total number of claims filed by each supplier), type of offence, location of the police station (investigation claims) or magistrates' court (proceedings claims).

proceedings claims, all the research PDOs reported lower SPOCC costs than private practice in their areas, with the exception of Cheltenham where there was no difference between the PDO and private practice. Although costs reported under SPOCC are at best only a proxy for time actually spent on cases, these findings would indicate that, with the one exception of the Middlesbrough PDO in respect of investigation stage claims, none of the PDOs appear to have devoted more time to cases than would be the norm in private practice in their areas. Therefore, the explanation for the much higher 'cost per case' in the PDOs reported above is likely to lie with the other factors that have already been identified, namely with their higher operational costs and under-utilisation of staff resources due to the slow build-up of a client base.

(ii) Crown Court Cases

As noted earlier, in order to compare costs between the PDOs and private practice in Crown Court cases, a somewhat different methodology had to be employed. Crown Court cases are not covered by the General Criminal Contract, but instead private practice solicitors (and barristers) are remunerated separately for their work on such cases.³¹ We obtained data on the costs paid to private practice solicitors in just over 45,000 cases concluded in the main Crown Court centres served by the research during three years 2001-2 to 2003-4. These data included costs paid to solicitors (less disbursements) but not counsel fees.

For their part, the PDOs did not prepare 'mock' Crown Court claims in the same way as they did through SPOCC for investigation stage and magistrates' court proceedings cases. Instead, we identified their Crown Court cases from the PDS Case Management System, including the number of chargeable hours recorded as having been spent on these cases in the Crown Court.³³ We then multiplied the amount of time by the same 'cost of time' figures used earlier in the analysis of PDS investigation stage and magistrates' court costs.³⁴ As noted earlier, our calculation of 'cost of time' included expenditure by the PDOs on disbursements (but not counsel fees in the Crown Court), whereas disbursements were not included in the data we obtained on private practice Crown Court cases. As a result, our data somewhat underestimate private practice Crown Court costs in comparison with the PDOs. We obtained data on a total of 424 Crown Court cases

³¹ Until April 2003, such payments were administered by the Court Service. Although from that date the Legal Services Commission became responsible for Crown Court legal aid, the separate system of payment, administered outside the General Criminal Contract, has been maintained.

³² These were Birmingham Crown Court for the Birmingham PDO; Liverpool Crown Court for the Liverpool PDO; Teeside Crown Court for the Middlesbrough PDO; Gloucester Crown Court for the Cheltenham PDO; and Swansea, Cardiff and Merthyr Crown Court for the Swansea and Pontypridd PDOs.

³³ Time spent in the magistrates' court was excluded in 'either way' cases, as these costs would have been included in our magistrates' court proceedings sample. However, in 'indictable only' cases the time spent in magistrates' courts was included in the Crown Court cost calculation.

³⁴ It is important to recognise that under our methodology the costs of the PDOs in police stations, magistrates' courts and the Crown Court have been calculated on the basis of the same hourly cost rate. This may differ from private practice, where the average hourly costs paid to solicitors under legal aid at these various stages might be higher in the Crown Court than at police stations or in magistrates' courts.

concluded by the research PDOs, although only 372 of these were in the main Crown Court centres for which we had comparable private practice data.

Table 5.9 shows the distribution of both PDS and private practice Crown Court cases across different cost categories, based on our calculation of PDS costs using the ‘high cost’ estimate of their ‘cost of time’. A significant feature of this distribution is that while private practice had 214 Crown Court cases (0.5%) with costs exceeding £100,000, the PDS had no cases with similar costs. Similarly, while private practice had a further 176 cases (0.4% of the total) with costs above £50,000 but not more than £100,000, there was only one PDO case (0.2% of all PDO Crown Court cases) with similar costs. Moreover, these categories of high cost Crown Court cases accounted for no less than 44% of the total costs of all private practice Crown Court cases included in our sample, whereas the one high cost PDS Crown Court case accounted for just 7.4% of all their estimated costs in the Crown Court. This indicates that at least during their initial years of operation the PDOs did not become involved to any notable extent in longer and more costly Crown Court cases of the type which, although only constituting a small minority of private practice cases at this level, nevertheless account for a high proportion of the overall costs paid to solicitors for their work in the Crown Court.

Table 5.9 Distribution of PDO and Private Practice Crown Court Cases in Selected Crown Court Centres by Costs, 2001-2 to 2003-4

	Public Defender Service				Private Practice			
	No. of cases	%	Value £000s	%	No. of cases	%	Value £000s	%
Less than £1k	148	34.9	76	5.9	21338	46.9	10007	5.8
£1001 - £2k	89	21.0	127	9.8	10838	23.8	15663	9.1
£2001 - £5k	135	31.8	435	33.5	9196	20.2	27934	16.3
£5001 - £10k	37	8.7	248	19.1	2358	5.2	16134	9.4
£10001 - £20k	9	2.1	131	10.1	835	1.8	11286	6.6
£20001 - £50k	5	1.2	185	14.2	494	1.1	15316	8.9
£50001 - £100k	1	0.2	96	7.4	176	0.4	11859	6.9
£100001 - £200k					120	0.3	16617	9.7
£200001+					94	0.2	46540	27.2

This finding raises a methodological issue in respect of a comparison of average Crown Court case costs between the PDS and private practice. Obviously, to include the high cost cases identified above in such a comparison would have the effect of greatly increasing average case costs for private practice, far more than would be the case for the PDS. We therefore decided to compare Crown Court costs between the PDS and private practice for each of the relevant Crown Court centres on two bases, one of which includes all cases and the other which excludes cases exceeding £100,000 in value. Table 5.10a shows this comparison based on both our ‘high’ and ‘low’ estimates of PDS costs for the

total sample, while Table 5.10b shows the same calculations for cases up to £100,000 in value.

When higher cost cases are included, the PDS is shown to have lower average case costs in five of the Crown Court centres. In Liverpool PDS average Crown Court costs were between 54% and 58% lower than private practice (depending on whether the 'high' or 'low' estimate of PDS costs is used); in Birmingham PDS Crown Court average case costs were between 40% and 48% lower; and in Cardiff PDS average Crown Court case costs were between 25% and 32% lower. There were two other Crown Court centres where the difference between PDS and private practice average case costs were more marginal. In Swansea Crown Court PDS average case costs were 17% below private practice on a 'low' estimate of their costs but only 8% lower on a 'high' estimate. In Teeside PDS Crown Court average case costs were 12% less than private practice on a 'low' estimate but only 1% less on a 'high' estimate. Finally, there were two Crown Court centres where average PDS Crown Court costs were considerably higher than those of private practice, even with the most high cost cases included in the sample. In Gloucester PDS Crown Court costs were on average between 59% and 79% higher and in Merthyr they were between 23% and 42% higher.

When higher cost cases above £100,000 are excluded from the analysis, the average Crown Court costs of private practice in the various courts are reduced considerably, but the average cost of PDO Crown Court cases remains the same since they had no cases with such high costs. Under this analysis, it is still the case that in Liverpool average PDO Crown Court costs are between 18% and 25% lower than private practice depending on whether a 'high' or 'low' estimate of PDO costs is used. In Birmingham PDO average Crown Court case costs are 13% lower than private practice under the 'low' cost estimate but virtually the same under the 'high' cost estimate, while in Cardiff average PDO Crown Court case costs were between 4% and 12% lower. In all the other courts, PDO average Crown Court costs were consistently higher than those for private practice, once cases in excess of £100,000 are excluded from the analysis. In Teeside PDO average Crown Court case costs were between 22% and 38% higher; in Swansea between 61% and 79% higher; in Merthyr between 63% and 79% higher; and in Gloucester between 59% and 79% higher.

Table 5.10a PDO and Private Practice Crown Court Costs analysed by Court, 2001-1 to 2003-4: All Cases

Court		'Low' cost			'High' cost		
		Mean	Std. Dev.	N	Mean	Std. Dev.	N
Birmingham	PDS	£2,088	£1,569	41	£2,401	£1,804	41
	PP	£4,010	£32,337	11356	£4,010	£32,337	11356
Liverpool	PDS	£1,963	£4,611	93	£2,145	£5,023	93
	PP	£4,663	£40,752	11789	£4,663	£40,752	11789
Teeside	PDS	£2,471	£2,466	88	£2,803	£2,798	88
	PP	£2,821	£22,348	6496	£2,821	£22,348	6496
Cardiff	PDS	£2,287	£1,931	10	£2,517	£2,142	10
	PP	£3,369	£17,341	8526	£3,369	£17,341	8526
Swansea	PDS	£3,955	£11,770	54	£4,399	£12,965	54
	PP	£4,765	£35,091	3444	£4,765	£35,091	3444
Merthyr	PDS	£2,824	£5,212	26	£3,093	£5,697	26
	PP	£2,178	£10,909	1851	£2,178	£10,909	1851
Gloucester	PDS	£2,683	£4,804	60	£3,020	£5,401	60
	PP	£1,689	£3,078	2013	£1,689	£3,078	2013

Table 5.10b PDO and Private Practice Crown Court Costs analysed by Court, 2001-2 to 2003-4: Cases up to £100,000

Court		'Low' cost			'High' cost		
		Mean	Std. Dev.	N	Mean	Std. Dev.	N
Birmingham	PDS	£2,088	£1,569	41	£2,401	£1,804	41
	PP	£2,408	£6,157	11300	£2,408	£6,157	11300
Liverpool	PDS	£1,963	£4,611	93	£2,145	£5,023	93
	PP	£2,625	£6,270	11714	£2,625	£6,270	11714
Teeside	PDS	£2,471	£2,466	88	£2,803	£2,798	88
	PP	£2,027	£4,818	6477	£2,027	£4,818	6477
Cardiff	PDS	£2,287	£1,931	10	£2,517	£2,142	10
	PP	£2,611	£5,811	8497	£2,611	£5,811	8497
Swansea	PDS	£3,955	£11,770	54	£4,399	£12,965	54
	PP	£2,451	£5,675	3413	£2,451	£5,675	3413
Merthyr	PDS	£2,824	£5,212	26	£3,093	£5,697	26
	PP	£1,733	£3,103	1847	£1,733	£3,103	1847
Gloucester	PDS	£2,683	£4,804	60	£3,020	£5,401	60
	PP	£1,689	£3,078	2013	£1,689	£3,078	2013

We carried out multivariate analysis on the Crown Court data relating to cases with costs in excess of £100,000. We were limited in the data available to us on Crown Court cases, but were able to control for location and for offence type (as indicated by broad groupings of offences) through multivariate analysis. This provides greater confidence that any differences in cost that are identified are attributable to differences between public defenders and private practice. However, because the analysis only controls for two sets of variation (offence type, which is necessarily general in nature, and court) there may be other factors which are not addressed by this analysis. For that reason, this analysis should be interpreted with caution.

Nevertheless, where cases of a value greater than £100,000 are excluded, the PDS was not found to have significantly different Crown Court costs when compared with private practice after offence type and court location were controlled for. This was true whether we used the lower cost assumptions for calculating the PDOs costs or the higher cost assumptions (Table 1 and 2, Appendix 5.3). This suggests that much of the difference in average costs between the PDOs and private practice found in particular courts, as discussed above, may have been attributable to different case types dealt with by the two services. More generally, the evidence does not reliably suggest that the PDS overall was either cheaper or more expensive than private practice in the way that it dealt with Crown Court cases.

This finding is interesting, given the very much higher ‘cost of time’ figures that have been applied in this analysis to the time recorded by the PDOs on Crown Court cases, compared to the various legal aid hourly rates under which payments to solicitors in private practice would have been calculated (see Table 5.6). The fact that there were no significant differences in the resulting overall costs of Crown Court cases between the two sectors when these greatly different hourly rates were applied might be thought to indicate that, in general, the PDOs recorded less time on such cases than private practice. Some evidence of this is available from an exercise, commissioned by the PDS separate from this research, under which an experienced costs draughtsman was asked to examine the files relating to 40 PDS cases involving Crown Court and to compare the costs claimed by the PDS under various legal aid rates with those that have been claimed by private practice solicitors in similar cases. This analysis concluded that, especially in the more complex Crown Court cases, the PDOs *recorded* less time and other work on the files than might have been expected if the same cases had been conducted by private practice solicitors. This was partly due to the PDOs failing to enter onto the files time and work which, from other information available, it was clear had been completed on these cases, but also may have reflected less actual time spent by the PDOs on these cases than would have been anticipated had they been handled by private practice solicitors.

However, we have considerable reservations about the methodology employed in the above exercise. The analysis in some respects reflected the notional claims filed under SPOCC during the research by the PDOs for their work in police stations and magistrates’ courts, in the sense that the draughtsman was calculating what the PDOs would have been paid for the work recorded under legal aid rates, rather than their actual

³⁵ Three of the cases involved committals to the Crown Court only for sentence.

costs. Also, unlike our analysis of SPOCC claims, where a comparison was made with *actual* claims filed by private practice solicitors, the draughtsman was comparing PDS notional costs on Crown Court cases with his own estimate of the time and work that private practice solicitors *might* have devoted to similar cases and the payments they would have received for this. In other words, the exercise involved notional evidence as regards both PDO and private practice Crown Court costs.

In this respect, it will be recalled that the evidence from our own (albeit limited) sample of Crown Court files drawn directly from both the PDOs and private practice indicates that it was only in Birmingham and Liverpool that less time on average was recorded by the PDOs than by private practice in Crown Court cases (see Table 3.11b in Chapter 3). From this we would conclude that the evidence on the time spent by PDOs and private practice on Crown Court cases is at best inconclusive.

Another factor that may have influenced the above results showing a lack of cost differentials in Crown Court cases handled by the two types of service is methodological. The methods used to calculate PDS costs operated so as to apply the same hourly rate to all types of case, whether in the police station, magistrates' court or Crown Court, whereas one would expect private practice to claim at lower hourly rates for police station and magistrates' court work and, especially once uplifts are taken into account, higher rates for Crown Court work (see Table 5.6 above). If it were possible to calculate similar variable rates for the PDS, the effect would be to reduce its cost differentials with private practice for police station and magistrates' court cases but to increase them for Crown Court cases.

Conclusions

This chapter has examined various factors which have contributed to the costs of the Public Defender Service, especially during the first three years of its operation. During this period the service involved high costs, primarily due to the staffing levels with which the PDOs were initially established but also because of the relatively expensive office accommodation in which some of the PDOs were housed. Of course, the PDOs were being set up from scratch and therefore entailed start up and capital costs, but once these costs were capitalised and written off over the period of the pilot, they did not make a substantial contribution to the overall cost of the service.

A more important factor leading to the relative expense of the PDS has been the slow build up of clients and cases over the initial period of their operation, resulting in a significant under-utilisation of capacity during the whole of the period covered by this research. During the first year of operation in 2001-2, the initial four PDOs averaged just over 400 'chargeable' hours per 'fee-earning' member of staff. In 2002-3 the Cheltenham PDO had opened, and the research PDOs increased their overall annual average of chargeable hours per fee earner to just over 700, while in the third year of the service in 2003-4 this increased to just under 900 chargeable hours per fee earner. This appears to be in the lower quartile of the chargeable hour targets that private practice criminal defence firms would have been expected to achieve. Preliminary figures for the

research PDOs in 2004-5 show little overall improvement in their average chargeable hours, although more dramatic increases were recorded in 2005-6. However, these improvements appear only partially to reflect an actual increase in clients and cases and otherwise to be attributable to improved recording of time spent on cases, which would not in itself lead to a reduction in overall case costs.

The combination of high staff and other running costs and under-utilisation of capacity in the PDOs has meant that they have entailed very high 'costs of chargeable time' over the period of the research. Based on a 'high' estimate of their cost, including capital and start-up costs (but not wasted computer costs), the research PDOs had an average cost of £210 per chargeable hour in 2001-2. This was reduced to just under £114 in 2002-3 and to just under £106 in 2003-4. Even on a 'low' estimate, based on their running costs only, the research PDOs had an average cost of £176 per chargeable hour in 2001-2, reduced to £100 in 2002-3 and to £95 in 2003-4. Although these figures include disbursements, they still are substantially higher than the hourly rates on which criminal legal aid payments are normally paid to solicitors in private practice.

These high hourly costs of the PDOs during their first three year's of operation translated in substantially higher cost per case when compared with private practice, especially at the investigation and magistrates' court proceedings stage. The most reliable data in this respect comes from multivariate analysis, which allows for the influence of such factors such as location, offence type and case complexity on costs to be controlled for. In terms of police station attendance cases, PDO average case costs tended to be between 71% and 93% higher than those for comparable private practice firms, while in magistrates' court proceedings cases PDO costs were between 41% and 58% higher. These differences in case costs in the police station and at magistrates' courts are due primarily to the higher costs of the PDOs and do not reflect any tendency by the PDOs to spend longer on such cases.

The evidence relating to comparative Crown Court costs is less clear-cut, partly due to limitations of the data available to us on private practice solicitors' costs but also because the PDOs largely did not handle the type of lengthy, complex and relatively high cost cases in the Crown Court which, although constituting only a minority of all Crown Court cases, account for a sizeable proportion of overall legal aid expenditure in this area. Once the effect of such high cost cases and of other independent variables that may impact on costs have been controlled for, there appears to be no significant difference overall in the estimated costs of PDO and private practice Crown Court cases. Given that PDO costs have been estimated on higher hourly charging rates than would normally be available to private practice solicitors under the various forms of criminal legal aid, this might be thought to suggest that the PDOs spent less time on Crown Court cases, but our evidence from a sample of Crown Court files drawn directly from both sectors again indicates that there was no significant overall difference in the time recorded by the PDOs and private practice on their Crown Court cases during the research period.

Chapter 6

Perceptions of the PDS outside the Service

This chapter reports on results from various surveys of criminal justice professionals and also of criminal defence clients. Whilst peer review has been used as the primary means of evaluating quality of the PDS (see Chapter 4), we wanted to explore the views of a variety of criminal justice professionals, particularly in relation to perceptions of quality, independence and the impact of the PDS on local criminal justice ‘markets’.

It is important to emphasise that the views presented here are based on the *perceptions* of the particular respondents, which may not reflect the reality of PDS (or indeed private practice) criminal defence work. As will be seen below, respondents sometimes had limited direct experience of the PDOs and their lawyers. It is also possible that respondents from some professional groups may have been expressing a prejudice against state employed lawyers generally, rather than reflecting their actual experiences of the PDOs. This prejudice may be thought to have especially influenced the responses of private practice solicitors, many of whom expressed considerable hostility to the setting up of the PDOs in their areas, at least initially, and who considered that for various reasons they constituted unfair competition with their own firms. It is possible that the responses of some barristers and even District Judges may also have been influenced to a degree by similar preconceptions possibly based, in part, on adverse views derived from perceptions of the standard of public defender schemes in the USA.

With regard to clients’ perceptions, whilst acknowledging that they may not be the best indicator of the technical quality of criminal defence work, it was felt that it was important to test clients’ perceptions of the quality of the PDS compared to private criminal defence practitioners, particularly in view of the importance of client choice.

Survey of Criminal Justice Professionals

(i) Sample

The first part of the chapter reports on perceptions of the PDS among CPS lawyers, police custody sergeants, District Judges (Magistrates’ Court) and criminal defence solicitors and barristers in private practice who work in the areas covered by the six PDOs included in the research. We decided to undertake postal surveys of these professional groups. Questionnaires were circulated directly to all barristers included on the relevant PDOs’ lists of experts and to a sample of solicitors in private practice taken from the duty solicitor lists for each of the research

areas.¹³⁷ We also sent questionnaires directly to District Judges sitting in the main magistrates' courts served by these PDOs.²

Questionnaires were sent to a total of 219 barristers, 138 solicitors in private practice and 18 District Judges. Our method of circulating questionnaires to the police and CPS lawyers was indirect, in that we sent a batch of questionnaires to the relevant police forces and CPS areas and requested that they be circulated to relevant custody officers and prosecuting lawyers and returned directly to us.

The number of completed questionnaires returned from each of these groups is shown in Table 6.1. Because of the indirect method of distributing the questionnaires, we are unable to determine the response rate from the police and CPS. The overall response rate from barristers was 18%, from solicitors in private practice 31%, and from District Judges 89%. Because of the low response rate from the first two of these groups, we cannot maintain that the views expressed are necessarily representative of these types of professional groups. It should also be borne in mind that responses from some groups were concentrated in particular areas so that, for example, over half those from the police came from Middlesbrough and Cheltenham, and nearly 70% of responses from barristers and 55% from private practice solicitors came from Liverpool and Birmingham. The survey results from these groups may therefore reflect their experiences of the particular PDOs rather than of the PDS as a whole.

¹³⁷ We decided to circulate the questionnaire to individual solicitors, rather than to firms. In particular, we were concerned to canvass the views of solicitors holding different positions in private practice, whether as partners or as employees of the firms.

² We did not include Crown Court judges, lay magistrates, Justices' Clerks or other magistrates' court clerks in our survey for various reasons. We took the view that Crown Court judges would have limited direct experience of differences between the PDOs and private practice, given that most of their dealings would be with members of the Bar who serve both sectors. Similarly, it was thought that individual lay magistrates would only have limited experience of the PDOs. Although we made various attempts to contact the relevant magistrates' courts in order to obtain the views of Justices' Clerks and other magistrates' court clerks, we were largely unsuccessful in obtaining their cooperation.

Table 6.1: Responses to Surveys of Criminal Justice Professionals

	CPS		Police		District Judges		Barristers		Private Practice Solicitors	
	N	%	N	%	N	%	N	%	N	%
Birmingham	5	12.5	4	13.8	4	25.0	12	29.3	15	34.9
Cheltenham	6	15.0	7	24.1	2	12.5	1	2.4	6	14.0
Liverpool	6	15.0	3	10.3	0	0	16	39.0	11	25.6
Middlesbrough	14	35.0	9	31.0	4	25.0	3	7.3	5	11.6
Pontypridd	8	20.0	1	3.4	2	12.5	2	4.9	0	0
Swansea	0	0	4	13.8	2	12.5	6	14.6	6	14.0
Swansea/ Pontypridd	0	0	0	0	2	12.5	0	0	0	0
Not ascertained	1	2.5	1	3.4	0	0	1	2.4	0	0
Totals	40	100.0	29	100.0	16	100.0	41	100.0	43	100.0

(ii) Contact with criminal justice professionals

We asked survey respondents to indicate the level of contact they had had both with private practice and the PDS to help us gauge the extent to which the PDS had made an impact and also the amount of experience on which respondents were forming judgments. We would, of course, expect there to be significantly less experience of the PDS than of private practice because there are far more private practitioners in any area and also because of the relatively recent establishment of the PDS.

Table 6. 2: In the past three months, how many times have you had professional experience of private practice lawyers?

	CPS		Police		District Judges		Barristers	
	N	%	N	%	N	%	N	%
Not at all	0	0	0	0	0	0	0	0
1 to 5 times	0	0	2	6.9	0	0	1	2.4
6 to 10 times	1	2.5	3	10.3	0	0	1	2.4
More than 10 times	39	97.5	24	82.8	16	100.0	38	92.7
Not ascertained							1	2.4
Totals	40	100.0	29	100.0	16	100.0	41	100.0

Table 6.3: In the past three months, how many times have you had professional experience of Public Defender Service lawyers?

	CPS		Police		District Judges		Barristers		Private Practice Solicitors	
	N	%	N	%	N	%	N	%	N	%
Not at all	1	2.5	7	24.1	0	0	12	29.3	2	4.7
1 to 5 times	15	37.5	10	34.5	6	47.5	17	41.5	13	30.2
6 to 10 times	8	20.0	4	13.8	1	6.25	5	12.2	10	23.3
More than 10 times	15	37.5	8	27.6	9	56.25	5	12.2	18	41.9
Not ascertained	1	2.5					2	4.9		
Total N	40	100.0	29	100.0	16	100.0	41	100.0	43	100.0

Tables 6.2 and 6.3 show that, as predicted, all the professional groups surveyed had high levels of contact with private practitioners in the three months prior to the survey, and lower levels of contact with the PDS. Notably, only a quarter of the barristers who responded had been in professional contact with the PDS on six or more occasions during that period.

(iii) Perceived quality

Whilst quality and independence are interrelated concepts, the survey first asked for respondents' views on aspects of the quality of work carried out by the PDS, and then asked for views specifically on perceptions of independence. Respondents were asked their opinion on how PDS lawyers compare with private practice lawyers in their area in terms of the quality of their representations/advocacy.

Table 6.4: In your opinion how do Public Defender Service lawyers compare with private practice lawyers in your area on the quality of their representations/advocacy?

	CPS		Police		District Judges		Barristers		Private Practice	
	N	%	N	%	N	%	N	%	N	%
Better	5	12.5	0	0.0	0	0	2	4.9	0	0.0
About the same	27	67.5	17	58.6	13	81.25	23	56.1	12	27.9
Worse	3	7.5	2	6.9	1	6.25	4	9.8	19	44.2
Too many variables to say	4	10.0	4	13.8	2	12.5	4	9.8	9	20.9
Don't Know/Not applicable	1	2.5	5	17.2	0	0	6	14.6	2	4.7
Not ascertained			1	3.4			2	4.9	1	2.3
N	40	100.0	29	100.0	16	100	41	100.0	43	100.0

The results in Table 6.4 suggest that the PDS were broadly perceived as being of similar quality to private practice in this regard, although private practitioners were more likely to say that they were worse. Where a difference between the PDS and private practice was reported, barristers and judges were marginally more likely to say that the PDS was worse than better, whereas CPS lawyers were marginally more likely to say that PDS lawyers were better. However, in all cases, the numbers involved are very small.

As noted earlier, respondents were encouraged to explain their responses and where this was done, it unsurprisingly tended to confirm the picture set out above. Some CPS respondents suggested that within private practice and the PDS there was variability in quality depending on the individual lawyers concerned:

Performance is very varied dependent upon advocate and class of case. Some perform very well whilst others seem to flounder if faced with more than two cases in any list.

Some are extremely competent and very eager, however others require more experience.

Positive CPS comments on the PDS focused on the lack of financial incentive colouring their lawyers' judgment and affecting their working practices:

I think that they are better than their Private Practice colleagues because they are not 'money driven'. Cases are not seen 'on and on' in an attempt to maximise legal aid payments.

[PDS lawyers are] More prepared. Attend Court early. In a position to proceed immediately.

Several CPS respondents praised PDS lawyers for being more polite and pleasant to them, and this CPS lawyer saw them as being more understanding of the CPS:

The PDS lawyers have an excellent understanding of the role of the CPS and therefore do [not] set unrealistic timetables re. demands for case progression. Advocating is good and liaison excellent.

On the other hand, whilst the majority of police respondents said that PDS lawyers performed about the same as private practice lawyers, some of them commented on their perception of a variable standard of PDS lawyers and on their lack of preparedness in spite of having small caseloads before the court.

The majority of barristers said that they thought PDS lawyers were about the same as private practice lawyers in terms of quality of representations and advocacy. Some of their narrative responses provide a more nuanced explanation of this perception:

The quality is better than poor firms, but similar to average good firms.

Generally the PDS seems to provide a service of the same standard to any other High Street Practice. They seem to be viewed in a similar vein by both lay clients and others within the criminal justice system .

However, some barristers argued that there was not a level playing field between private practice and the PDS, for example:

They have taken high quality staff from private practice paid them more/holidays/pension and given them a lower case load. The quality is generally very high in consequence.

As we have seen, private practice solicitors were more critical of the PDS. Some of those who said that PDS lawyers were of a similar standard to private practice observed that most of the PDS lawyers came direct from private practice and were therefore likely to be of a similar standard. Others, however, pointed to a perception that incentives and structures had an adverse impact on PDS quality:

No incentives to work hard to achieve good results. Salary [in] excess of local solicitors and benefits (pension etc.) make lawyers complacent.

They lack the volume of work and do not appear regularly before the court. It has a high turnover of staff which affects consistency and credibility. They do not get the same co-operation and assistance from other defence lawyers.

In contrast to the perceptions of some other professional groups, a recurrent theme in the responses of private practice solicitors was that those recruited to the PDS were either inexperienced or, more commonly, lawyers who had not succeeded in private practice and who were poorly motivated to do their best for clients. There were also some more specific criticisms of the quality of work perceived by private practitioners:

Quality of advocacy poor appears to suggest poor case preparation.

Public defender could not distinguish "Plea Before Venue" on a guilty plea and Mode of Trial.... Obviously did not understand basic practice.³

Several comments referred to the lack of 'day-in, day-out' advocacy resulting from low case volumes, and some suggested that cultural differences between PDS and private practice lawyers accounted for differences in quality:

³ In either-way cases the defendant is asked to indicate what they would plead, and mode of trial is only relevant if they indicate a not guilty plea or fail to indicate a plea.

By comparison the private firm advocates seem more willing to take extreme or risky positions on behalf of the client and frequently this works to the advantage of the client's interests.

A couple of them are quite experienced but lacking flair. There are one or two others who are clearly inexperienced and make up for lack of ability/knowledge by being aggressive.

(iv) Perceived ability to deal with the prosecution

Respondents were asked about their perceptions of the effectiveness of the PDS in dealing with the prosecution.

Table 6.5: In your opinion how do Public Defender Service lawyers compare with private practice lawyers in your area on their effectiveness in dealing with the prosecution?

	CPS		Police		District Judges		Barristers		Private Practice	
	N	%	N	%	N	%	N	%	N	%
Better	7	17.5	0	0	0	0	2	4.9	0	0
About the same	25	62.5	15	51.7	12	75.0	21	51.2	21	27.9
Worse	6	15.0	1	3.4	2	12.5	5	12.2	9	20.9
Too many variables to say	1	2.5	4	13.8	1	6.25	2	4.9	3	7.0
Don't Know/Not applicable	1	2.5	9	31.0	1	6.25	11	26.8	18	41.9
Not ascertained									1	2.3
Totals	40	100.0	29	100.0	16	100.0	41	100.0	43	100.0

The results are similar to those for quality of representations/advocacy with the majority of respondents, other than private practice solicitors, indicating that the effectiveness of the two sectors was about the same. Again, a relatively small minority of CPS and barrister respondents indicated that they thought that the PDS was better, and a small (but slightly larger) minority of all professional groups indicated that the PDS was worse than private practice. Private practice provided an exception to this picture, with only just over a quarter indicating that the PDS was about the same, and a fifth indicating that the PDS was worse than private practice. Perhaps surprisingly, nearly half of private practitioners did not feel able to indicate a view.

Some CPS respondents suggested that the PDS might be more likely to deal with cases expeditiously, and that they were more effective negotiators who were more likely to be proactive in contacting the prosecution, rather than simply leaving cases to be dealt with at the court. Conversely, some PDS lawyers were described as, "abrasive and unrealistic" by one CPS respondent and "more inflexible in their approach" by another, who described in more detail what they meant:

...[T]here tends to be more common sense in the approach of private practice lawyers and more taking legal points (not always with a great deal of merit) from PDS.

These perceptions of the PDS were also reflected in the comments of some private practitioners:

[The PDS] Appear to have a strange attitude towards the Crown. Very confrontational approach on the whole.

[G]eneral tendency to be confrontational not always in the interest of the client and certainly not the public purse.

Whilst barristers generally felt that the PDS lawyers were about the same as private practice lawyers on this criterion, one who thought they were worse explained it in the following terms:

In my opinion they fulfil their duty and requirements. There is no ambition, enthusiasm or real drive, whilst always very nice, easy to deal with, they appear to lack the drive necessary to succeed without the limitless supply of Government funds.

(v) Dealing with other defence lawyers

A similar question was asked in respect of PDS lawyers dealings with other defence lawyers, the results of which are shown in Table 6.6.

Table 6.6: In your opinion how do Public Defender Service lawyers compare with private practice lawyers in your area on dealing with other defence lawyers?

	CPS		Police		District Judges		Barristers		Private Practice	
	N	%	N	%	N	%	N	%	N	%
Better	0	0	0	0	0	0	1	2.4	0	0
About the same	21	52.5	10	34.5	8	50.0	18	43.9	14	32.6
Worse	4	10.0	0	0	1	6.25	7	17.1	13	30.2
Too many variables to say	0	0	3	10.3	0	0	2	4.9	8	18.6
Don't Know/Not applicable	15	37.5	16	55.2	7	43.75	13	31.7	7	16.3
Not ascertained									1	2.3
Totals	40	100.0	29	100.0	16	100	41	100.0	43	97.7

Understandably, there was generally a greater tendency for respondents, other than private practice lawyers, to be unable or unwilling to express a view. Of those that did, the majority felt that the PDS were about the same as private practice, although nearly a third of private practice lawyers thought that the PDS was worse.

CPS respondents who commented other than to say the PDS were about the same as private practice suggested that some PDS lawyers were “hostile” in their dealings with other firms. Others, however, appeared to view it, in effect, the other way round, pointing to resistance amongst private practitioners to working with the PDS:

There are still issues about 'competition' between private practice and PDS lawyers which seem to result in efforts to hinder the work of the PDS lawyer rather than work for the benefit of clients and the CJS.

Similar views were expressed by some barristers:

Private practice lawyers are suspicious of them [and] are less likely to co-operate. They [the PDS] become isolated in the legal community.

I do not think they are respected by private practice lawyers because they are not viewed as independent.

A mistrust of PDS lawyers was also reflected in the comments of some private solicitors:

There remains a mistrust of PDS lawyers by those in private practice. The generous funding of the PDS and the perception that they are not profit driven means many defence lawyers are more wary of the PDS. It is also true that PDS lawyers have a certain arrogance which it is believed is due to the safety net effects of not having to make a profit.

However, other private solicitors indicated that early concerns about the PDS had subsided, for example:

Early misgivings about the political motive for setting up such a service have now subsided, they have not taken a large share of the market and on a personal level were known to most practitioners prior to PDS being set up.

(vi) Effectiveness in dealing with the police

Finally, in this part of the survey, respondents were asked about their view of the effectiveness of the PDS in dealing with police compared to private practice.

Table 6.7: In your opinion how do Public Defender Service lawyers compare with private practice lawyers in your area on their effectiveness in dealing with the police?

	CPS		Police		District Judges		Barristers		Private Practice	
	N	%	N	%	N	%	N	%	N	%
Better	1	2.5	0	0	0	0	1	2.4	0	0
About the same	7	17.5	18	62.1	6	37.5	13	31.7	8	18.6
Worse	3	7.5	4	13.8	1	6.25	3	7.3	4	9.3
Too many variables to say		0	3	10.3	0	0	2	4.9	1	2.3
Don't Know/Not applicable	29	72.5	3	10.3	9	56.25	19	46.3	30	69.8
Not Ascertained			1	3.4			3	7.3		
Totals	40	100.0	29	100.0	16	100.0	41	100.0	43	100.0

Again, and for understandable reasons, a high proportion of respondents, other than custody officers, felt unable or unwilling to assess the PDS on this criterion. The majority of police respondents felt that the PDS performed about the same as private practice in this respect.

The perception, identified earlier, that some PDS lawyers acted in an abrasive or confrontational manner was reflected in the comments of some CPS respondents, for example:

The general impression given is that PDS make demands of police rather than requests, generally in inappropriate cases.

However, this did not appear to be reflected in the view of custody officers (the majority of whom thought the PDS to be about the same as private practice in terms of their effectiveness in dealing with the police), but a number of them did, contrary to the views of some private practitioners, consider that the PDS could be too defence minded, as the following comments show:

An apparent standard is to encourage ‘No Reply’.⁴

Long delays in attending to 'thwart' the custody clock.

(vii) *Overall service provided to clients*

Having considered the individual aspects of the quality of work of the PDS, respondents were then asked to provide an overall rating of the quality of service that PDS lawyers provide to clients compare to that provided by private practice.

Table 6.8: In your opinion how do Public Defender Service lawyers compare with private practice lawyers in your area on the overall quality of the service they appear to give to their clients?

	CPS		Police		District Judges		Barristers		Private Practice	
	N	%	N	%	N	%	N	%	N	%
Better	8	20.0	0	0	0	0	7	17.1	1	2.3
About the same	21	52.5	19	65.5	12	75.0	19	46.3	12	27.9
Worse	4	10.0	3	10.3	1	6.25	5	12.2	18	41.9
Too many variables to say	0	0	3	10.3	0	0	1	2.4	2	4.7
Don't Know/Not applicable	7	17.5	3	10.3	3	18.75	5	12.2	9	20.9
Missing			1	3.4			4	9.8	1	2.3
Totals	40	100.0	29	100.0	16	100.0	41	100.0	43	100.0

Although the overall profile of responses is broadly similar to those given in respect of the individual aspects of quality, the responses of CPS and barrister respondents to the question on overall quality of service to clients is slightly more favourable to the PDS, with over 70% of CPS respondents and over 60% of barrister respondents rating the PDS as the same or better than private practice. The predominant view, however, is that the PDS provides the same quality of service to clients as private practice. The only exception is private practice itself, which rated the PDS as providing a worse quality of service to clients, possibly reflecting a continued hostility to the concept of a public defender service.

A number of CPS respondents indicated that the PDS were more willing than private practice solicitors to advise and act decisively and expeditiously in the interests of their clients, for example:

They do not waste court time and get maximum [sentence discount] for guilty pleas if appropriate. They also defend clients with enthusiasm and are solid lawyers.

The PDS lawyers appear to have their clients' interests at heart not their firms.

⁴ There is evidence that PDS lawyers were more likely than private practice lawyers to advise clients to remain silent in police interviews. See Chapter 3.

Whilst many of the private practice firms in this area provide good quality advice and service to their clients, some are still more willing to advise not guilty pleas or [apply for] spontaneous adjournments to attract business rather than considering an individual's needs.

On the other hand, a minority of CPS respondents reported poor quality work by PDS lawyers:

A number of cases have been noted where [poor] or inaccurate advice has been given by a PDS advocate resulting in the defence solicitors having to step in to defuse situations and take over representation.

I have seen instances of very bad advice given...

Again, the minority of custody officers who rated the PDS as worse than private practice indicated what they felt was an inappropriate adversarial stance taken by PDS lawyers. One, for example, suggested that an adversarial stance was resulting in more charging of PDS clients.⁵

[The PDS] Often advise no comment which results in charge when a caution would have applied in cases where the evidence appears incontrovertible.

Barristers tended to repeat the same kind of comments made in respect of the individual aspects of quality, but some respondents commented on the good quality of PDS case work, such as:

Preparation of briefs and background research is on [a] par with the best solicitors.

On the other hand, some barristers believed that the fact that PDS lawyers are directly employed by the state affects their approach:

The PDS tend to work with a Civil Service mind set. They do not work the long hours that private solicitors do, and with client access to the same person 24/7. It is a tick box availability regime without the continuity required. Staff who were in the private sector have changed their approach when working for the PDS.

Similar comments were made by some private practice solicitors, and others made the more directly political point that in their view, despite the absence of a 'level playing field' in financial terms, this did not benefit clients:

I am not convinced that I have seen any advantage to clients from the provision of service by the PDS. The tax payer has not had value for money given the set up costs. The establishment of the PDS has created a far from level playing field. No other private firm would obtain capital to perform so poorly and represent so few clients.

However, this comment appears to be directed more to 'value for money' aspects of the PDS (on which there may be justifiable criticisms) rather than to quality of service to the client.

(viii) Quality of Briefs to Counsel and Preparation from Barrister's Perspective

In addition to the general question on quality, barristers were asked whether they perceived any difference in the quality of briefs to counsel prepared by the PDS.

⁵ Our analysis of investigation stage outcomes showed that overall fewer PDS clients were charged than private practice clients although, of course, outcomes are determined by a number of variables. See Chapter 3.

Table 6.9: In your opinion how do Public Defender Service lawyers compare with private practice lawyers with regard to the quality of briefs to counsel?

	N	%
Better	11	26.8
About the same	18	43.9
Don't know	5	12.2
Not ascertained	1	2.4
Total	41	100.0

Although the predominant response is that the PDS performed ‘about the same’ as private practice, more barristers were positive about the quality of briefs than about quality generally. Those barristers who said that the PDS was better ranged between describing their briefs to counsel in terms such as ‘superb’ and ‘better than the extremely poor standard to which most firms have now sunk.’

Barristers were also asked directly about the standard of case preparation by the PDS compared to private practice.

Table 6.10: In your opinion how do Public Defender Service lawyers compare with private practice lawyers with regard to the standard of case preparation?

	N	%
Better	7	17.1
About the same	21	51.2
Worse	3	7.3
Too variable to say	3	7.3
Don't know	5	12.2
Not ascertained	2	4.9
Total	41	100.0

Here, the responses are similar to the assessment of overall quality of service to clients, with the majority believing that the PDS was the same as or better than private practice in terms of case preparation.

(ix) Independence issues

Since, from the outset, concern was expressed in a number of quarters about the independence of PDS lawyers, we asked respondents a series of questions directed at a number of aspects of

independence.⁶ They were first asked about their views as to the willingness of PDS, as compared with private practice, lawyers to challenge the police or prosecution.

Table 6.11: In your opinion how do Public Defender Service lawyers compare with private practice lawyers with regard to their willingness to challenge the police or prosecution?

	CPS		Police		District Judges		Barristers		Private Practice	
	N	%	N	%	N	%	N	%	N	%
More willing	1	2.5	3	10.3	1	6.3	1	2.4	1	2.3
About the same	32	80	15	51.7	10	62.5	25	61.0	19	44.2
Less willing	1	2.5	1	3.4	1	6.3	4	9.8	11	25.6
Too variable to say	2	5	5	17.2	2	12.5	0	0.0	2	4.7
Don't know/not applicable	3	7.5	3	10.3	2	12.5	10	24.4	9	20.9
Not ascertained	1	2.5	2	6.9			1	2.4	1	2.3
Totals	40	100.0	29	100.0	16	100.0	41	100.0	43	100.0

As with the previous questions, the predominant response was that the PDS are about the same in this respect. A quarter of private practitioners, and ten per cent of barristers indicated that in their view there was a tendency for PDS lawyers to be less willing to stand up to the police or prosecution. However, this was not reflected by the other professional groups. One in ten custody officers thought that PDS lawyers were more willing to challenge the police or prosecution, possibly reflecting the view of some custody officers that PDS lawyers were ‘too adversarial’. However, the response of the majority of custody officers to questions relating to the ‘adversariality’ of the PDS was that they are about the same as private practice.

A similar question was asked, about the willingness of PDS lawyers to ‘stand up’ for their clients.

⁶ See Chapter 1 for a discussion of this issue and the PDS Code of Conduct.

Table 6.12: In your opinion how do Public Defender Service lawyers compare with private practice lawyers in their willingness to 'stand up' for their clients?

	CPS		Police		District Judges		Barristers		Private Practice	
	N	%	N	%	N	%	N	%	N	%
More willing	0.0	0	1	3.4	0	0	1	2.4	2	4.7
About the same	36.0	90	17	58.6	13	81.25	24	58.5	13	30.2
Less willing	0.0	0	1	3.4	0	0	4	9.8	18	41.9
Too variable to say	1.0	2.5	5	17.2	1	6.25	1	2.4	3	7.0
Don't know/not applicable	2.0	5.0	3	10.3	2	12.5	10	24.4	6	14.0
Not ascertained	1.0	2.5	2	6.9			1	2.4	1	2.3
Total	39.0	97.5	29	100.0	16	100.0	41	100.0	43	100.0

Not surprisingly, the results were broadly the same as for the previous question, although fewer custody officers appeared to think that PDS lawyers were more adversarial than private practice lawyers, whereas private practitioner respondents appeared to be more critical of PDS lawyers in relation to their willingness to stand up for their clients compared to their willingness to challenge the police or prosecution.

Finally in this section, we asked a question which was designed to elicit views about the willingness of PDS lawyers, where they advised their clients to plead guilty, to do so at an early stage. The research of the Scottish Public Defender Service Office found a tendency for PDSO lawyers to advise guilty pleas earlier than private practice,⁷ and we wanted to find out whether there was a perception that this might be happening with the PDS in England and Wales.

⁷ T. Goriely *et al*, *The Public Defence Solicitors' Office in Edinburgh: An Independent Evaluation*, Edinburgh: Scottish Executive Central Research Unit, 2001.

Table 6.13: In your opinion how do Public Defender Service lawyers compare with private practice lawyers where a client is advised to plead guilty, in their willingness to advise a client to plead guilty at an early stage of the proceedings?

	CPS		Police		District Judges		Barristers		Private Practice	
	N	%	N	%	N	%	N	%	N	%
More willing	7.0	17.5	0	0	1	6.25	3	7.3	10	23.3
About the same	22.0	55	9	31.0	8	50.0	23	56.1	9	20.9
Less willing	1.0	2.5	4	13.8	0	0	0	0.0	2	4.7
Too variable to say	2.0	5	6	20.7	0	0	0	0.0	21	48.8
Don't know/not applicable	7.0	17.5	8	27.6	7	43.75	14	34.1	0	0
Not ascertained	1.0	2.5	2	6.9			1	2.4	1	2.3
Total	40	100.0	29	100.0	16	100.0	41	100.0	43	100.0

Although the predominant view of those respondents who felt able to express an opinion was that the PDS was about the same as private practice in this respect, there was a slightly less neutral response than for previous questions. Interestingly the CPS respondents who did not feel the PDS acted similarly to private practice in this regard, felt the PDS were more inclined to advise a guilty plea earlier than private practice. On the other hand, those custody officers who thought there was a difference between the PDS and private practice, were more likely to think that PDS lawyers were less willing than private practice to advise an early guilty plea. Again, this may reflect the view of a minority of custody officers that PDS lawyers are more adversarial than private practice lawyers. Certainly, the CPS respondents would be more likely to have direct experience of this than custody officers. Interestingly, private practice respondents were, if anything, more equivocal on this than on other issues in that, compared to the other questions on independence, a greater proportion thought that practice was too variable to say.

(x) Impact on the local market

The original rationale for the PDS, as expressed in the government White Paper *Modernising Justice*, was that a mixed system would provide better value for money for the taxpayer.⁸ If this is correct, it is inevitable that a PDS would have an impact on the criminal defence ‘market’. We wanted to obtain the views of criminal justice professionals as to whether PDOs had made an impact locally, and the nature and form of such impact. Respondents were thus asked what impact they thought the PDS had on their area in terms of quality, choice and the local private profession, and they could indicate as many responses as they thought applicable as well as any other impact that was not specified in the question.

⁸ See Chapter 1

Table 6.14: What impact, if any, do you think the setting up of a Public Defender Office has had in your area?

	CPS		Police		District Judges		Barristers		Private Practice	
	N	%	N	%	N	%	N	%	N	%
No significant impact	24	60	18	62	11	68.8	27	65.9	25	58.1
Taken work away from private solicitors	5	12.5	2	7	4	25.5	12	29.3	16	37.2
Improved the quality of criminal defence services	7	17.5	0	0	1	6.3	3	7.3	0	0.0
Reduced the quality of criminal defence services	2	5	2	7	0	0	2	4.9	6	14.0
Improved choice for suspects and defendants	15	37.5	6	21	4	25.0	8	19.5	3	7.0
Reduced choice for suspects and defendants	0	0	0	0	0	0	0	0.0	0	0.0
Other (Please specify)	0	0	2	7	0	0	2	4.9	9	20.9

The dominant response, including that of private practice respondents, was that the PDOs have had no significant impact in the areas where they were set up. Given that even in those areas with relatively few private practice suppliers, the proportionate number of clients represented by most of the PDOs is relatively small, this is not surprising. A substantial minority of barristers, judges and private practice respondents felt that PDOs had taken clients away from private practice. Again, this is not surprising given a potential client base that was not increasing to any great extent, and that this option could be validly indicated even though the impact on private practitioners was minor. Again, other than for private practice respondents, a substantial minority of respondents thought that the PDO had improved client choice. Given that the establishment of a PDO is likely to have increased the number of suppliers available in any particular area, such a response is not surprising. Views about the impact on quality of criminal defence services are fairly neutral, with only CPS respondents indicating in any numbers that the PDO had improved quality and, conversely, few private practice lawyers indicating that they had reduced quality.

Survey of Client Views

Attempts to obtain views of criminal clients on the quality of the services they have received from their lawyers have often proved unsuccessful, as a result of unrepresentative samples and poor response rates. Obtaining clients' views relating to police station legal advice can be especially problematic. If the client is not charged with a criminal offence, his or her contact with the particular solicitors' firm or PDO may be relatively short. On the other hand, if they are charged and the firm continues to represent them in subsequent court proceedings, there is a risk both that any approach by researchers to obtain views on the investigation stage will interfere with the on-going solicitor-client relationship and that the client's views of what happened at the police station will be flavoured by the subsequent handling and outcome of the case. There is

also the problem that (as criminal defence lawyers can themselves testify) it may be difficult to keep track of the whereabouts of, or to make contact with, criminal defence clients.

We decided to seek the views of the clients in the same sample of cases on which we based our file analysis,⁹ rather than drawing separate samples for these purposes. This meant that there was an inevitable delay between the actual provision of legal advice in these cases and our approach to clients, as we were required to wait until the PDO or private practice firm had completed their relevant cases before we could sample them. It was not uncommon for a period of some months to elapse before this process was completed.

We also conducted a pilot early on to attempt to contact clients in one of the areas by telephone soon after we had obtained their details from the files. Because of the low incidence of client telephone numbers on lawyers' files and the logistical problems we experienced in trying to encourage clients to speak to us on the telephone, we discontinued this method of seeking client views.

As a result, during the period of file data collection for each of our three samples (police station, magistrates' court and Crown Court) a survey was conducted, seeking the opinions of the clients of private practice law firms and PDOs in all six pilot regions. Clients were drawn from the files we looked at in each of the six regions. We contacted all clients for whom a residential address was given. This meant, in particular, excluding those who were imprisoned at the end of their case. Whilst this means our sample is biased towards a group of non-imprisoned clients, it is not a bias likely to favour one service over another. Our response rate across the three samples was 11%. This is poor but not unusual for this sort of client survey.

⁹ See Chapter 1 for a general description of this sample.

(i) The investigation stage

There were 47 respondents in this sample, 25 who were PDS clients, and 22 who were private practice clients.

Table 6.15: Responses from Clients in Investigation Stage Sample

	Public Defender Service		Private Practice		Total	
	N	%	N	%	N	%
Birmingham	5	20	3	13.6	8	17.0
Cheltenham	6	24	3	13.6	9	19.1
Liverpool	2	8	3	13.6	5	10.6
Middlesbrough	3	12	5	22.7	8	17.0
Pontypridd	2	8	2	9.1	4	8.5
Swansea	3	12	5	22.7	8	17.0
Missing	4	16	1	4.5	5	10.6
N	25		22		47	

The sample shows that we have a spread of respondents from all areas and from both sectors, although in all instances numbers are very small.

To assist in the contextualisation of client perceptions of the service they had received, we asked clients whether they had used the same lawyers prior to the case that we were asking them about. It is possible that those with prior service have already formed a view that their lawyer is ‘good’ and therefore would be more likely to rate their services highly.

Table 6.16: Police station clients: Have you ever used these lawyers before?

	Public Defender Service		Private Practice		Total	
	N	%	N	%	N	%
No	14	56.0	8	36.4	22	46.8
Yes	11	44.0	14	63.6	25	53.2
N	25		22		47	

Although more private practice clients had used the same lawyers previously, there was no significant difference between the two sectors regarding whether the client had used the lawyer before, but a significant proportion of the PDS respondents did have prior experience of PDS lawyers.

We first sought to obtain factual information about the interview process in the police station from clients. In particular, some of the survey questions were designed to pick up the extent to which lawyers in the two sectors took an interventionist approach to police station work, by being willing to intervene with the police or stop the interview to advise their clients.

Table 6.17: Police station clients: When interviewed, did your legal adviser say anything to the police?

	Public Defender Service		Private Practice		Total	
	N	%	N	%	N	%
No	6	24.0	5	22.7	11	23.4
Yes	13	52.0	14	63.6	27	57.4
Don't Know	6	24.0	2	9.1	8	17.0
Not ascertained	0		1	4.5	1	1.8
N	25		22		47	

Although slightly more private practitioner clients said their lawyer intervened, the difference is not statistically significant, and is mainly accounted for by the higher proportion of PDS clients who did not know the answer to this question.

Table 6.18: Police station clients: Did your legal adviser stop the interview to talk to you in private?

	Public Defender Service		Private Practice		Total	
	N	%	N	%	N	%
No	12	48.0	12	54.5	24	51.1
Yes	8	32.0	9	40.9	17	36.2
Don't Know	2	8.0	0	0	2	4.5
Not ascertained	3	12	1	4.5	4	8.5
N	25		22		47	

A slightly higher proportion of private practice clients thought the lawyer had stopped the interview to talk to them, but the difference was not statistically significant and was accounted for by clients not answering the question or answering 'don't know'.

Table 6.19: Police station clients: If yes to either, do you think this helped your case?

	Public Defender Service		Private Practice		Total	
	N	%	N	%	N	%
No	0		1	4.5	1	2.1
Yes	16	64.0	14	63.6	30	63.8
Don't Know	4	16.0	1	4.5	5	10.6
Not ascertained	5	20.0	6	27.3	11	23.4
N	25		22		47	

Where the client reported that there had been such an intervention by their lawyer, they were asked if they thought that this had helped their case. Clients in both groups were similarly confident that any intervention had helped.

The next set of questions concerned clients' views of the quality of service they received. It is, of course, always important to emphasise that client surveys measure *perceived* quality of service and that this can be quite different from technical quality.¹⁰

Table 6.20: Client Perceptions of Service: Police Station

		Excellent	Good	OK	Poor	Very Poor	Don't know	N
		%	%	%	%	%	%	
Overall, how good was your representation?	PDS	64	28	8	0	0	0	25
	PP	59	18	9	9	5	0	22
How good was your lawyer at getting information about your case from the police?	PDS	52	24	16	4	0	4	25
	PP	46	23	14	9	5	5	22
How good was your lawyer at explaining what was happening at the police station?	PDS	60	16	20	4	0	0	25
	PP	55	23	9	5	5	5	22
How good was your lawyer at preparing you for interview?	PDS	44	24	24	0	4	4	25
	PP	55	23	5	18	0	0	22
How good was your lawyer at understanding your point of view?	PDS	44	28	24	0	0	4	25
	PP	41	36	5	18	0	0	22
How good was your lawyer at assisting you during your interview?	PDS	48	24	16	4	0	8	25
	PP	59	14	18	5	5	0	22

These findings are broadly positive: clients generally rated their lawyers highly on the criteria we used to measure satisfaction. This is consistent with client surveys of the legal profession generally.¹¹ There are no significant differences between the PDS and private practice, and there

¹⁰ R. Moorhead, A. Sherr and A. Paterson, (2003) 'What Clients Know: Client perspectives and legal competence', 10/1 *International Journal of the Legal Profession* 5-37.

¹¹ *Ibid.*

is no consistent pattern in terms of the proportion of clients who rate their lawyers excellent or good on any particular criterion. Private practice clients indicated more frequently than PDS clients that they thought their lawyers were poor or very poor, but the number of such clients was low.

Table 6.21: Future Use of Lawyers (Police Station Survey)

		Yes	No	Don't Know	N
		%	%	%	
If arrested again, would you use the same legal adviser?	PDS	84	12	4	25
	PP	73	27	0	22
Would you use the Duty Solicitor?	PDS*	28	16	56	25
	PP	14	64	23	22
Would you use another solicitor?	PDS	20	20	60	25
	PP	27	41	32	22
Would you not use a solicitor?	PDS	8	28	64	25
	PP	5	55	41	22
Would you use a solicitor from the PDO which has recently opened in your area?	PDS	0	0	100	25
	PP	27	50	23	22

Very few clients said they would not use a solicitor if arrested again, and relatively few said they would not use the same legal adviser. Many were sceptical of using a duty solicitor. There was one significant difference between PDS and private practice, which is that the PDS clients were more inclined to say they would use the duty solicitor scheme. This may have been because they were more likely to have come to the PDS lawyer via the duty scheme and were therefore happy with instructing via that route.

(ii) The proceedings stage

There were 90 respondents in this sample, 45 from each supplier-type. About three fifths of the respondents' cases were heard in magistrates' courts, with around two-fifths in the Crown Court. The responses from magistrates' court and Crown Court clients are recorded in separate tables. Generally, we have not identified regions separately as the number of responses is too low to make such analysis meaningful.

Table 6.22: Data on Clients from Magistrates' Court sample

	Public Defender Service		Private Practice		Total	
	N	%	N	%	N	%
Birmingham	6	21.4%	5	19.2%	11	20.4%
Cheltenham	6	21.4%	5	19.2%	11	20.4%
Liverpool	1	3.6%	5	19.2%	6	11.1%
Middlesbrough	3	10.7%	7	26.9%	10	18.5%
Pontypridd	7	25.0%	0	0.0%	7	13.0%
Swansea	5	17.9%	4	15.4%	9	16.7%
N	28		26		54	

The magistrates' court sample was fairly balanced save in terms of the absence of clients from private practice in Pontypridd and the relative absence of PDS clients in Liverpool.

Table 6.23: Data on Clients from Crown Court sample

	Public Defender Service		Private Practice		Total	
	N	%	N	%	N	%
Birmingham	6	35.3	3	15.8	9	25
Cheltenham	1	5.9	2	10.5	3	8.3
Liverpool	3	17.6	4	21.1	7	19.4
Middlesbrough	3	17.6	6	31.6	9	25
Pontypridd	2	11.8	0	0.0	2	5.6
Swansea	2	11.8	4	21.1	6	16.7
N	17		19		36	

Responses from private practice and PDO clients show greater regional variation in the Crown Court sample than they did in the magistrates' court sample, and once again there were no responses from private practice clients in Pontypridd.

An issue to bear in mind when considering client evaluations of service is the extent to which they have had experience of that lawyer type in more than one case.

Table 6.24: Magistrates' Court: Have you ever used these lawyers before?

	Public Defender Service		Private Practice		Total	
	N	%	N	%	N	%
No	13	46.5	12	44.4	24	45.5
Yes	14	53.5	14	55.6	29	54.5
N	27		26		53	

There is little apparent difference between the two sectors in the magistrates' court sample, with slightly more than half the respondents having used their lawyer before. The position is similar in the Crown Court sample, where slightly more of the PDS respondents had previous experience of the same lawyer, though the difference is not significant.

Table 6.25: Crown Court: Have you ever used these lawyers before?

	Public Defender Service		Private Practice		Total	
	N	%	N	%	N	%
No	8	50	11	59.7	19	54.7
Yes	8	50	8	42.3	16	45.3
N	16		19		35	

Most of the questions asked of clients gave them the opportunity to grade their lawyer on a scale ranging from Excellent to Very Poor. The results for magistrates' court sample are set out in Table 6.26. None of the differences between lawyer type are statistically significant, and clients generally rated both PDS and private practice lawyers as excellent or good on each of the criteria. In very general terms, private practice had more excellent ratings than the PDS, but the PDS tended to have a larger proportion of clients rating their services as good or better.

Table 6.27 shows the same data for clients in the Crown Court sample, and in this sample there is a more obvious trend and some significant differences. In particular, the PDS Crown Court clients reported satisfaction levels at around 70% or 80%, indicating their lawyer was good or excellent on particular criteria, whereas private practice tended to report satisfaction levels at around 30-50%. The two statistically significant differences relate to two questions. The first was 'Overall, how good was your representation? In response, 59% of PDS clients rated their lawyer as excellent compared to only 26% of private practice clients, and similar proportions of clients rated their lawyers as good (24% and 26% respectively). Slightly more private practice clients rated their lawyer as poor or very poor. The second question was 'How good was your lawyer at explaining what was happening in your case? Again, 59% of PDS clients rated their lawyer as excellent compared to only 26% of private practice clients, and similar proportions of

clients rated their lawyers as good (24% and 21% respectively). More private practice clients rated their lawyer as poor or very poor.

Table 6.26: Client perceptions of service (magistrates' court)

		Excellent	Good	OK	Poor	Very Poor	Don't know	N
Overall, how good was your representation?	PDS	43%	36%	14%	0%	7%	0%	28
	PP	68%	4%	24%	0%	4%	0%	26
How good was your lawyer at explaining what was happening in your case?	PDS	57%	25%	14%	0%	4%	0%	28
	PP	58%	15%	19%	0%	4%	4%	26
How well did your lawyer know the details of your case?	PDS	52%	28%	12%	4%	4%	0%	25
	PP	58%	13%	17%	8%	4%	0%	24
How good was your lawyer at advising you whether to plead guilty?	PDS	60%	16%	4%	8%	8%	4%	28
	PP	48%	24%	20%	4%	4%	0%	26
How good was your lawyer at getting information from the prosecution to help with your case?	PDS	44%	20%	20%	0%	8%	8%	25
	PP	52%	16%	12%	12%	4%	4%	25
How good was your lawyer at negotiating with the prosecution to get you a better deal?	PDS	39%	22%	17%	4%	9%	9%	23
	PP	60%	8%	12%	8%	8%	4%	25
How good was your lawyer at representing you in court?	PDS	64%	24%	4%	0%	8%	0%	25
	PP	65%	17%	4%	9%	4%	0%	23
How good was your lawyer at advising you on what sentence you might get?	PDS	54%	17%	13%	4%	4%	8%	24
	PP	57%	13%	13%	13%	4%	0%	23
How good do you think your lawyer was at preparing the case for your trial?	PDS	36%	43%	0%	7%	14%	0%	14
	PP	57%	14%	14%	0%	14%	0%	14

Table 6.27: Client perceptions of service (Crown Court)

		Excellent	Good	OK	Poor	Very Poor	Don't know	N
Overall, how good was your representation?	PDS	59%	24%	6%	12%	0%	0%	17
	PP	26%	26%	26%	16%	5%	0%	19
How good was your lawyer at explaining what was happening in your case?	PDS	59%	24%	12%	6%	0%	0%	17
	PP	26%	21%	32%	11%	11%	0%	19
How well did your lawyer know the details of your case?	PDS	41%	41%	12%	6%	0%	0%	17
	PP	31%	13%	44%	6%	6%	0%	16
How good was your lawyer at advising you whether to plead guilty?	PDS	35%	29%	12%	18%	0%	6%	17
	PP	19%	19%	38%	19%	6%	0%	16
How good was your lawyer at getting information from the prosecution to help with your case?	PDS	44%	19%	6%	13%	13%	6%	17
	PP	12%	18%	29%	18%	12%	12%	16
How good was your lawyer at negotiating with the prosecution to get you a better deal?	PDS	29%	29%	6%	6%	6%	24%	17
	PP	6%	18%	29%	12%	12%	24%	17
How good was your lawyer at representing you in court?	PDS	59%	24%	0%	6%	12%	0%	17
	PP	35%	18%	29%	12%	6%	0%	17
How good was your lawyer at advising you on what sentence you might get?	PDS	35%	41%	6%	6%	0%	12%	17
	PP	24%	18%	35%	12%	6%	6%	17
How good do you think your lawyer was at preparing the case for your trial?	PDS	46%	27%	18%	0%	9%	0%	11
	PP	21%	36%	29%	7%	7%	0%	14

Discontinuity of representation has been a significant issue in the literature on criminal defence lawyers.¹² In our survey, clients were asked, “How many different lawyers from this firm did you see during your case?”

Table 6.28: Magistrates’ Court: How many different lawyers from this firm did you see during your case?

	Public Defender Service		Private Practice	
	N	%	N	%
One	11	37.0	7	26.9
Two	7	25.9	9	34.6
Three	5	18.5	4	15.4
Four	5	18.5	1	3.8
Five or more	0	0.0	3	11.5
Don’t Know	0	0.0	2	7.7
N	28		26	

Table 6.29: Crown Court: How many different lawyers from this firm did you see during your case?

	Public Defender Service		Private Practice	
	N	%	N	%
One	5	29.4	1	5.3
Two	1	5.9	4	21.1
Three	3	17.6	4	21.1
Four	7	41.2	4	21.1
Five or more	1	5.9	6	31.6
N	17		19	

In both the Crown Court and magistrates’ court samples there was a tendency for clients to see more than one lawyer, and this was the case for both PDS and private practice clients. Although more of the PDS clients answering the survey dealt with only one lawyer, the differences between private practice and the PDS were not significant and they were, in any event, in a minority.

It is noted elsewhere in the that the timeliness of advice on plea is an important issue, which relates both to efficiency of the ‘system’ and to whether lawyers, in the way in which they provide advice, act in their clients best interests. We were interested to discover clients view on this matter, and thus they were asked, ‘Did your lawyer offer timely advice on when to plead?’.

¹² See, in particular, M. McConville, et. al., *Standing Accused*, Oxford, Clarendon Press, 1994, p. 41.

¹³ See in particular Chapter 4.

Table 6.30: Magistrates' Court: Did your lawyer offer timely advice on when to plead?

	Public Defender Service		Private Practice	
	N	%	N	%
No Advice	0	0.0	2	10.5
Too Soon	1	5.3	0	0.0
About Right	17	89.5	13	68.4
Too Late	0	0.0	1	5.3
Don't Know	1	5.3	3	15.8
N	19		19	

The great majority of PDS clients in the magistrates' court sample thought that their lawyer provided timely advice on when to plead (89.5%). A smaller, but still large, proportion of private practice clients thought their lawyers' advice was timely (68.4%), with most of the remainder not knowing . Two private practice clients said that they had not received advice on plea, whereas no PDS clients said this.

Table 6.31: Crown Court: Did your lawyer offer timely advice on when to plead?

	Public Defender Service		Private Practice	
	N	%	N	%
Too Soon	0	0.0	3	37.5
About Right	7	70.0	2	25.0
Too Late	1	10.0	2	25.0
Don't Know	2	20.0	1	12.5
N	10		8	

In the Crown Court sample PDS clients had fewer concerns about the timeliness of plea than did the private practice clients, although the number of clients providing valid data on this question was small, and the differences were not statistically significant.

Another way of examining client perceptions of quality is to ask whether the client would instruct the same lawyer on a future occasion.

Table 6.32: Magistrates' Court: Would you use the same lawyer again?

	Public Defender Service		Private Practice	
	N	%	N	%
No	4	14.3	3	12.0
Yes	22	78.6	19	76.0
Don't Know	2	7.1	3	12.0
N	28		25	

In the magistrates' court sample the results for the PDS and private practice are similar, with the majority of both PDS and private practice clients saying that they would use the same lawyer again.

Table 6.33: Crown Court: Would you use the same lawyer again?

	Public Defender Service		Private Practice	
	N	%	N	%
No	3	17.6	4	21.1
Yes	12	70.6	10	52.6
Don't Know	2	11.8	5	26.3
N	17		19	

In Crown Court sample there was evidence of a greater willingness of PDS clients to use the same lawyer again, but the numerical differences are very small.

Conclusions

This chapter is concerned with *perceptions* of legal professionals and clients, and it is interesting to contrast them with, in particular, the peer review quality assessment reported in Chapter 4. Perceptions may be affected by a range of factors, including specific experiences in individual cases and of individual personnel. This may explain some of the contrasting views within professional groups in relation to aspects of performance such as advocacy or effectiveness in dealing with the police and prosecution.

The overwhelming perception of criminal justice professionals concerning the PDS is that it performs at a similar level of quality and in a similar way to private practice. This was the case for respondents (who felt able to express a view) from all professional groups, other than private practice solicitors, in respect of all questions concerning quality and independence. Where there was a perceived difference between the PDS and private practice which, except in the case of private practice respondents, was normally the view of a small minority of respondents in any particular professional group, there was a tendency for more respondents to rate the PDS somewhat more poorly than private practice.

In relation to many of the issues, this may be explained by the particular professional interests of that group. For example, slightly more custody officers rated the PDS as worse than private practice in terms of their effectiveness in dealing with the police than those who rated it as better. On the other hand, more thought the PDS more willing to challenge the police than those who thought the PDS were less willing to do so. In other words, these custody officers thought that PDS lawyers were more willing to challenge the police which may have resulted, given their position in the criminal justice system, in them taking the view that the PDS was less effective in its dealings with the police. This suggestion of greater adversariness on the part of PDS lawyers, is consistent with our findings at the investigative stage that PDS lawyers were more likely than their private practice counterparts to advise silence in police interviews.¹⁴

¹⁴ See Chapter 3.

However, there is no evidence from respondents from other professional groups that greater adversariness at the investigative stage carried through to the proceedings stage.

It is to be expected that private practice solicitors would, on the whole, have a negative attitude to the PDS because of the perceived threat that the PDS represented to their interests. However, in interpreting the results reported in this chapter it must be remembered that the strongest overall perception is that the PDS is broadly the same as private practice in terms of quality and independence, and that it has had no significant impact on criminal defence services in their locality other than increasing the choice available to clients and taking some work away from private practice.

The most obvious factor when reviewing the results of the client survey is that clients of both the PDS and private practice characteristically believe that they are provided with a high quality service. It is fair to question the ability of clients to judge the service received, given the opacity of the legal system and the asymmetries of knowledge between lawyers and their clients. The survey addresses these concerns to some extent, by asking respondents to evaluate their lawyers' ability to explain their cases to them, and their knowledge of their case details, such as securing information from, and negotiating with, the prosecution (matters which clients might legitimately be expected to understand and evaluate). In the magistrates' court sample the results for both provider-groups were broadly similar. In the Crown Court sample, however, clients were generally happier with the service provided by the PDS. That said, the differences are mostly not statistically significant and the surveys are themselves based on low response rates from the total client base we sampled. As a result, such differences as there are should be treated with caution.

Chapter 7

PDS Staff Perceptions of the Service

This chapter examines the views and attitudes of Public Defender Service staff both in relation to their experience of working for the service and in respect of a range of wider issues. Many of the staff working for the PDS, particularly lawyers and accredited representatives, previously worked in private practice and are thus able to make comparisons between the two types of provider across a range of issues. Such issues include management and administration, career progression and professional development, and other factors internal to the service. In addition, many of the questions concerning independence and quality that were asked of criminal justice professionals working outside of the PDS (see Chapter 6) were also asked of PDS staff in order to provide a useful comparison. We were also interested in obtaining the views of staff as to how they saw the PDS developing in the future.

Of course, the data presented consists of the *perceptions* of staff. On occasions, their perceptions may not accord with those of others in the PDS, or the LSC. Further, those perceptions may not reflect the *reality* of the situation and, where appropriate, we indicate this in the text or in footnotes. We did not conduct a similar survey of private practice staff, and many of both the positive and critical assessments of the PDS may have direct analogues in the experience of staff and partners working in private practice.

Sample and Method

Semi-structured, face-to-face, interviews were conducted with the office heads of the Birmingham, Cheltenham, Liverpool, Middlesbrough, Pontypridd and Swansea offices during December 2004 and the early months of 2005. The sample consisted of all of the office heads then in post but did not include those originally appointed as heads of the Swansea and Middlesbrough offices but who had left the service before the interviews were conducted. All of the office heads had previous experience of working as criminal defence lawyers in private practice.

Telephone interviews were conducted with members of staff from the same six PDOs during December 2004. The staff sample comprised all 'fee-earning' staff in the six offices, consisting of 18 solicitors/barristers (including one trainee solicitor), hereinafter termed lawyers, and 13 accredited representatives. Those in the staff sample had worked in their current offices between one and 43 months, and five of them had experience of working in more than one PDO. Of the 31 interviewees in the staff sample, 27 had experience of working in private practice (that experience ranging between two and 29 years). The interview data for the staff sample were

content analysed to identify themes, commonly expressed views and pertinent comments made by individuals or small numbers of interviewees.

All of the interviews were conducted according to a structured schedule, but interviewees were given the opportunity to explain in narrative form their responses to those questions.

Working for the PDS

Respondents in the office head and staff samples were asked a number of open questions designed to discover their views on working for the PDS. The office heads were asked an open question designed to elicit their views on the advantages and disadvantages of working in a large public organisation, that is, the Legal Services Commission, but were encouraged to consider specifically matters relating to management and policy. In the case of the staff sample, the question was framed in terms of their likes and dislikes about working for the PDS. Both groups were also asked about the differences between working for the PDS and for private practice. In the case of the staff sample, they were specifically asked to identify differences relating to (a) professional development and training, (b) career development and opportunities, and (c) other working conditions.

In this chapter we deal first with the likes and dislikes (staff), and the perceived advantages and disadvantages (office heads), of working for the PDS, and then go on to consider responses concerning perceptions of differences in working for the PDS compared to private practice. In relation to the staff sample, all 31 interviewees listed one or more 'likes'. Most also identified 'dislikes', but two interviewees who had only recently joined the PDS could not list 'dislikes'. Our analysis indicated that the 'likes' could be meaningfully grouped under the themes employment conditions, resources, professional/ethical approach and working environment, and the 'dislikes' under the themes management structure, administrative burden and working conditions. The themes are not wholly discrete, but they do provide a useful means of presenting the data. The order in which the themes are reported in this section gives some indication of the frequency (from most to least) with which likes/dislikes were listed by interviewees in the staff sample.¹⁴¹

(i) Advantages of working for the PDS

(a) Conditions of employment

Conditions of employment, including holiday entitlement, pensions, employment rights, a flexible approach to working and 'fringe benefits, were high on the list of factors that staff said they liked about working for the PDS

¹⁴¹ The themes identified here were data-driven; that is, they were not suggested to the staff interviewees, nor were they decided prior to the analysis being conducted.

(b) Resources

Resources, such as training, structured career development and staffing levels were also frequently listed as ‘likes’. Those who elaborated suggested that staffing levels were sufficiently high to allow back-up, flexibility and time to deliver a quality service, impacting favourably on their ability to deliver a professional service. One lawyer’s comments are typical.

There is a commitment to training which goes beyond the minimum. There is a real opportunity to better yourself. (Lawyer)

The resources issues extended beyond training to the level of cover within the office, for example, for duty rota, and simply having more time to deal with clients.

Safety net in the team – cover is always provided. (Accredited representative)

Because of the size of the office we can cover being on call effectively. (Lawyer)

Having time to deal with clients, time to deal with them as real people with real problems. (Lawyer)

Some of the office heads also identified such factors as advantages in working for the PDS.

The advantages are that you’ve got the resources – if you need, you know, to send somebody on a training course or need to send somebody to another office to help out or that sort of thing. That’s always there. (Office head)

(c) Professional/ethical approach

The suggestion that the PDS facilitates a more professional and ethical approach was reflected in the belief of many staff that they were able to be more client-focused, providing a quality service that is not fee-driven. Most interviewees acknowledged that this approach was largely possible because of the resources available to them within the PDS. Typical comments included:

PDS provides more quality service than private practice because we have the resources and time to give a real service to clients. (Accredited representative)

Doing law without doing law for money or profit. (Lawyer)

(d) Working environment

There was a further, albeit less frequently listed, group of ‘likes’ under the theme of working environment. This included references to office atmosphere, supportive colleagues and work-life balance, reflecting personal, rather than physical, working conditions. Again, overlap between themes is apparent since adequate resources and an ethical approach each contributed to what interviewees liked about their working environment.

The office atmosphere is very good. Support and guidance from experienced lawyers, lack of pressure to earn fees because we're not-for-profit. (Lawyer)

Personally valued. A better quality of life and work-life balance than in private practice. (Accredited representative)

(ii) Disadvantages of working for the PDS

(a) Management and structure

The majority of staff interviewed reported dislikes relating to management and structure, including a perceived remoteness of central/senior management, inter-professional tensions (e.g. lawyers with administrators), lengthy decision-making processes and recruitment difficulties. Typical comments referred to:

Huge organisation, everything is so slow, for example, implementation of changes in forms, recruitment process. (Lawyer)

Central structure [that] is remote from the practical demands of the job – this can be very frustrating. (Lawyer)

The two factions - legal staff versus administrators - there is no real teamwork. With administrators being civil servants and having no role in supporting legal staff and no understanding of what legal staff do. (Accredited representative)

The latter respondent expressed a view suggesting that the 'client-focus' gained from being freed from fee pressures might be compromised by a bureaucratic approach to the service.

The service has become about ticking boxes ..., not about what we do on the ground for clients. Interference from the centre. (Accredited representative)

Recruitment processes were a particular concern.

Inordinate time taken in recruiting means PDS loses possible recruits. (Accredited representative)

Such concerns were also voiced by office heads, but in their case they were articulated by reference to their role as managers within a large organisation.

Disadvantages – firstly, size of the organisation in terms of practicalities... less flexibility, the common things that one gets with a big organisation. Less flexibility to deal with perhaps staffing issues. (Office head)

But such concerns were often tempered by recognition that this was, perhaps, a price to pay for the advantages of working for a large organisation. The same office head continued:

But the knock on effect with that is that there are major advantages in terms of internal training, a lot of skills within the organisation to tap into, a designated personnel department. (Office head)

Nevertheless most of the office heads voiced considerable concern about the disadvantages of working for the PDS in terms of lack of flexibility, long lines of decision-making, etc, and contrasted it with their experience in private practice.

These processes are slow and most of us in private practice were used to making a decision and doing it the next day, be it staff recruitment, purchasing equipment. That plainly cannot happen in this kind of organisation and yet it is plainly a disadvantage. It goes with the territory. (Office head)

As noted in Chapter 1, at the outset of the PDS the office heads reported to the professional head of service, an experienced private criminal defence lawyer who was also a part-time member of the Legal Services Commission, in respect of professional matters. While this role has been maintained, a new full-time post of Head of the PDS was created in 2004, to act as line manager for the individual office heads, and this post was filled by one of the office heads.

Most, if not all, office heads felt positively about having a professional head of services who was respected both within the PDS and outside, although some expressed the view that such a position may not be necessary in the longer term. Others, on the other hand, felt that having a professional head was more important than having an executive head of the PDS, although opinion was divided about the latter.

I like the professional head, and of course that is required by statute anyway. If there is an element of duplication, I don't think we necessarily need a head of us [ie. a head of employed services]. (Office head)

It makes logical sense to have a Head of the PDS and I think in terms of having a professional head, I am not sure how necessary that is longer term. I can understand the need for it during the pilot period, to make sure that things are done as they should be. But whether that position will last... (Office head)

(b) Administrative burden

Many of the staff also specifically identified bureaucratic processes in negative terms, including auditing, form-filling and an inappropriate focus on collecting statistics. A number of interviewees commented that such processes hampered them in providing a quality legal service to their clients.¹⁴²

Forms and red tape can be burdensome... Auditing is pedantic in the extreme, especially checks on the non-legal side. (Lawyer)

¹⁴² The central PDS view is that the service remains client focused and that there is not an overly-burdensome auditing process.

There was a perception amongst some staff that this problem had intensified recently, possibly to the detriment of the quality of service to clients.

Confusion about the function of the PDS. It started being about... Focus is now less on helping clients and more on statistics. (Lawyer)

There was a consensus amongst the staff interviewed that they carry a considerable administrative burden, and that legal staff had to deal with administrative tasks that would be more appropriately dealt with by clerical staff. This was viewed as a waste of resources as well as reducing the senior support available, particularly to junior staff.

Waste of resources expecting lawyers to do their own typing and admin... This will become a real problem as we get busier.¹⁴³ (Lawyer)

Lack of availability of senior staff / office head to support the lawyers because of their other management and administrative commitments.
(Accredited representative)

(c) Working conditions

Dislikes relating to working conditions referred to the physical working environment, including open-plan office space, and building work that affected only some of the offices. It is clear that some staff are more averse to an open-plan office layout than others.

Perhaps surprisingly, some office heads voiced concerns about lack of opportunities for career advancement within the PDS. This was linked to the ways in which different skills were valued.

What may make you a successful lawyer doesn't necessarily guarantee that you will go far in the PDS... So you can be fiery, difficult, obstructive and outspoken, which are all qualities that will make you a very good defence lawyer, but in fact this organisation might not [value them]. You might well be held back. Because, I mean, in terms of career advancement, really the only way to advance in this organisation is through the management route. (Office head)

Whilst there was support for the notion that there ought to be common policies and working practices applying to all PDOs, there was evidence of tensions concerning the way in which those policies were formulated. It was also clear that some of the tensions stemmed from the fact that in private practice, lawyers of the standing and experience of office heads would have been in charge of, or part of a small group of partners who would have formulated policy.

If we meet as partners, we'll discuss things and reach decisions. Things are now driven centrally. Decisions are made well outside of my office that impact immediately upon my office. (Office head)

¹⁴³ We are informed by the PDS that whilst lawyers are expected to do some of their word-processing, they are not required to type briefs to counsel, long proofs of evidence or lengthy client-care letters.

Other office heads, however, did not feel so excluded from the policy-making process and, in any event, felt able to work with (or around) policies formulated for the whole service.

Some of them [common policies] are difficult, but I will always put my views forward to try and influence any points I think that need to be changed... Sometimes it works and sometimes it doesn't. If it doesn't, you've got to live with it. That's what you have to do in a big organisation...It can be a little bit frustrating at times, but I wouldn't say it was problematic. You can always work round it or through it, should we say. (Office head)

Differences between Working for the PDS and Private Practice

Interviewees in the staff sample were asked to compare the PDS and private practice in terms of professional development and training, career development and opportunities, and other working conditions. To a considerable extent the data gathered below elaborate comments made, unprompted, in response to the above likes/dislikes question. Office heads were asked a similar question, but were specifically asked to consider the differences in terms of staff management, how case-work is conducted, professional development and training, career development and opportunities, and other working conditions.

(i) Professional development and training

As noted earlier, many staff identified the training opportunities available in the PDS as a positive benefit. The majority of staff interviewees reported that, compared to private practice, the PDS was more proactive in its attitude to training, provided easier access to, and greater choice in, training, and also that training was better resourced.

PDS is more focused than in private practice, training is not done grudgingly or seen as an indulgence but thought about proactively. Private practice firms are under more financial and time pressures so training is not seen as important but as an indulgence. (Lawyer)

Interviewees who commented directly on professional development generally did so in terms of training being targeted at the needs of the individual rather than simply the needs of the PDS.

In private practice training is limited to the firm's benefit rather than personal development. In the PDS the focus on personal development is greater including the option to take a degree. (Accredited representative)

Not all interviewees, however, were unconditional in their praise of the training and professional development offered by the PDS. Such adverse comments were not confined to staff in only one office. For example, a number of interviewees

commented that training, particularly training for the higher rights qualification, fell below promises and expectations.¹⁴⁴

PDS training is not as good as I expected on joining. I expected to be able to qualify for higher rights but that has not been the case. (Lawyer)

Other negative comments suggested the training policy and structure favoured junior staff and not surprisingly, therefore, there was a tendency for such negative comments to be voiced by lawyers rather than accredited representatives.

There is more development of junior staff than you would find in private practice, but then professional development seems to stop. (Lawyer)

Most office heads regarded the training opportunities and policies in the PDS in positive terms, both for legal staff and administrative staff, and also for themselves as managers.

(ii) Career development and opportunities

Most staff interviewees indicated that, in general, there was greater scope for career development and more career opportunities in the PDS than in private practice. A number of respondents however pointed out that, as the PDS and private practice have very different structures, one is:

Not comparing like with like. In private practice the only option is a partnership, this is not available in the PDS. (Lawyer)

In acknowledging these differences in structure, a number of staff interviewees reported that they welcomed the opportunity the PDS offered for them to become involved in management and to gain further qualifications.

PDS offers more opportunities for example in management, although no partnerships. It has better structured career development than private practice. It's also fairer, it's about your skills - not 'if your face fits'. (Lawyer)

As in the above quotation, several more interviewees voiced their approval that 'merit' rather than 'nepotism' influenced career advancement within the PDS.

Another limiting factor cited by several interviewees related to the current, pilot-nature of the PDS. Whilst acknowledging the potential for career advancement within the PDS, these interviewees suggested that career development and opportunities would only become a practical reality if, and when, the PDS expanded.

These differing attitudes towards career development and opportunities in the PDS were also reflected in the views of the office heads. On the one hand, it was commonly believed that the PDS provided excellent career development opportunities for those who were not qualified as lawyers. Examples were given of staff being

¹⁴⁴ According to the PDS Annual Report 2005/05, at the end of 2004/5 seven PDS lawyers had the higher rights qualification, a number which had increased to 11 by the time the annual report went to print.

given the opportunity, and funding, to undertake law degrees and courses leading to qualification as lawyers. Similarly, opportunities were provided for some who had experienced difficulties in securing training contracts or pupillage. One office head was particularly enthusiastic in this regard, and contrasted the PDS positively with private practice. Another stated that career opportunities in the PDS were ‘immeasurably superior’ to those available in private practice, and another said:

Virtually without fail every member of staff is doing something to advance them as [an] individual. That has been probably the biggest single difference between what happens in private practice and the PDS. (Office head)

Indeed, the view was expressed by one office head that part of the role of the PDS should be to provide training opportunities for lawyers and prospective lawyers who may then move into private practice. In other words, it was suggested that the PDS should be a training and career development resource for the whole criminal defence profession.

However, there were some negative views amongst the office heads about career development opportunities in the PDS. The specific concern about training for the higher rights qualification raised in the staff interviews was also repeated by some of the office heads, although it may be that this resulted from a (possibly temporary) change in PDS policy towards this type of training.¹⁴⁵ Another concern raised by a number of the heads related to the fact that in private practice career progression – becoming a partner – was quite clear cut, whereas in the PDS it was less certain. For some, this resulted from the pilot nature of the PDS. For others, however, the tension between being a good lawyer and a good administrator, and the perceived emphasis on administration within the LSC, meant that they felt that advancement within the LSC depended on the latter rather than the former.

(iii) Other working conditions

The factors relating to working conditions most frequently cited by the staff interviewees were flexitime, flexible working patterns and physical working environment. All respondents who cited ‘flexibility’ did so positively, generally without elaborating further. Views on the physical working environment divided opinion. Of the 17 staff interviewees who mentioned it in response to this question, 11 made positive comparisons with private practice. The remaining six, however, were dissatisfied with their office environment. Of these, five were from the same office (Liverpool), although it should be noted that staff from other offices had complained in similar terms when listing their likes/dislikes (see above). A typical comment is:

Open-plan means it’s difficult to concentrate, although it’s good in terms of flexibility in working hours. (Lawyer)

¹⁴⁵ The evidence is that many private practice solicitors who have gained this qualification have not made extensive use of their right to act as advocates in the Crown Court, and this may have been a factor in the PDS policy toward providing such training. However, it has now been decided as a matter of policy in at least one of the PDOs that the service should provide as much of its Crown Court advocacy ‘in-house’ as possible.

Only one interviewee mentioned open-plan office space in wholly positive terms, as follows:

Open-plan structure works well, it helps ensure teamwork. (Lawyer)

The office heads were generally positive about working conditions, especially as compared to those in private practice. Working conditions in private practice were described as ‘Dickensian’ by one office head, and another commented:

This office is much nicer than any private firm. My previous firm used to smell of urine when you came through the main entrance hall, and it was all pretty basic really. It’s much nicer here. (Office head)

One interesting question is whether PDS staff believe that better training and career opportunities, and better working conditions, have a positive impact on the conduct of cases and client care. Office heads were not asked specifically about such a connection, but one commented that it was too early to say: ‘the jury’s out on that’.

(iv) Other differences between the PDS and private practice

Office heads were also asked to identify significant differences between the PDS and private practice in terms of staff management and casework. With regard to the former, there was a consensus that management, at the office level, was better in the PDS than in private practice. However, it was felt that this comes at a cost. A number of them referred to the (large) amount of their time spent on management, and to the difficulty of ‘getting the balance right’. One felt this tension acutely. Although he found his management functions ‘interesting’, he also felt it important that he devote, and be seen by his staff to devote, sufficient time to casework.

50% of my time goes to management, 50% of my time is supposed to be fee-earning work. It’s taken me personally a while to get that balance right. I want to be in court as much as possible... I’m a lawyer, that’s what I should be doing. I also feel strongly that this is what I show to the rest of the staff, that it’s busy. And I’m hardworking as I am in order that they give me respect. (Office head)

Of the three office heads who commented on casework generally, one thought that the standard in the PDS was the same as ‘any good firm’, although the paperwork was better. The other two thought that PDS casework was better, although one of them thought that this may be attributable to the (lower) volume of work rather than quality *per se*. However, these views should be seen in the context of the issues dealt with in the next section.

Quality and Effectiveness

Interviewees in both samples were asked a series of closed questions designed to elicit views about quality of service and effectiveness, comparing the PDS with private practice. Some of these questions were similar to those asked of professionals outside of the PDS. These are dealt with in Chapter 6 where it was noted that, except for private practitioners, the majority view was that there was little, if any, perceptible

difference between the PDS and private practice. With this set of questions, interviewees were asked to say whether the PDS was better or worse, or more effective or less effective, than, or the same as, private practice. If these ratings were judged inappropriate, interviewees could opt instead for 'don't know' or 'too many variables to say'. They were also asked to identify reasons for any differences identified.

(i) The quality of representation and advocacy

Over half of the staff interviewees (17 interviewees, 55%) and five out of the six office heads thought that PDS and private practice lawyers were about the same in terms of quality of representation and advocacy, although about a third of the staff sample (10, 32%) felt PDS lawyers were better. Those who thought that PDS lawyers were better in this regard tended to attribute it to good teamwork, quality and staffing resources, having time to prepare, being client-focused and not being fee-driven. For example:

More time to get the right result for the client, driven by quality issues and not financial concerns. (Lawyer)

Because we deal with things as quickly as possible without compromising the client's best interests. We also give better advice generally. (Lawyer)

Generally we have the support and good internal structures (better file management, review etc.) and also have sufficient time to prepare effectively. (Lawyer)

Only one (staff) interviewee thought PDS lawyers were worse than those in private practice

because they don't put the work in.

(ii) Effectiveness in dealing with the prosecution

Just under half of the staff interviewees (14, 45%), and half of the office heads, thought that PDS lawyers were more effective than those in private practice in dealing with the prosecution. Over a third of the staff interviewees (11, 35%) thought both groups were about the same. None of the interviewees thought PDS lawyers were less effective than their private practice counterparts.

Those that thought that PDS lawyers were better than those in private practice in dealing with the prosecution attributed it to some of the same factors as those relevant to quality of advocacy and representation (e.g. more time, not fee-driven and client-focused). Some attributed it to having a better working relationship with the CPS, for example:

We liaise with the CPS more in each case, and have a more proactive relationship with them. (Lawyer)

We are more inclined to get involved with the CPS at an early stage. (Lawyer)

This view, that there was better inter-agency co-operation, was explained by some in terms of shared organisational structures, common goals and a joint concern to expedite matters quickly and in the client's best interests, or by the PDS being perceived as different from private practice defence lawyers.

We have shared common goals, both salaried government employees, both doing a job. No animosity and also no issues around financial incentives.
(Lawyer)

A lot of lawyers have good local experience/contacts and get on well with them. We are also known for doing a good job. We are not seen as cowboys and have good working relationships with the CPS. (Lawyer)

Of course, it is just such perceptions that led some private practitioners to question the independence and quality of service provided by the PDS, as discussed in Chapter 6.

(iii) Effectiveness in dealing with other defence lawyers

Most staff interviewees (21, 68%) thought PDS lawyers and those in private practice were about the same in terms of their effectiveness in dealing with other defence lawyers. A few, however, reported that PDS staff were either more effective (3, 10%) or less effective (2, 7%). A similar divide was found with the office heads, with half believing that PDS and private practice lawyers were about the same in this regard, one believing them to be more effective, and two to be less effective. A number of the staff and office heads reported that they had faced hostility from private practice defence lawyers,¹⁴⁶ although a number reported that this had improved as the PDS became more established.

(iv) Effectiveness in dealing with the police

About half of staff interviewees (16, 52%) and half of the office heads thought that PDS staff were more effective than private practice lawyers in dealing with the police. About a third of the staff interviewees (10, 32%), and a half of office heads, thought both groups were about the same, a view that accords with the majority of custody officers surveyed.¹⁴⁷ None thought that PDS lawyers were less effective than those in private practice in dealing with the police.

Those that thought that PDS lawyers were more effective in dealing with the police explained it in terms of a mutual professional respect and understanding, partly attributed to both being government agencies, as well as to PDS staff being efficient, rigorous, client-focused and not driven by financial imperatives. As with relationships with the CPS, this raises questions about independence of the PDS although, as will

¹⁴⁶ A view supported by some of the CPS and barrister respondents. See Chapter 6.

¹⁴⁷ Although there was a minority of custody officers who considered that PDS lawyers took a more aggressive and adversarial approach to representing clients in police stations than lawyers from private practice. See Chapter 6.

be seen later, independence is not regarded as problematic by the majority of staff or office heads. The following comments are typical of those that thought that PDS lawyers were more effective.

The attitude of the police is better to the PDS. I think they think we are on their side. (Lawyer)

The police take the PDS seriously because we are there simply to do a good job for our clients. (Accredited representative)

As with the CPS, they know we are there to do a job not just to make money. We are looking after our clients' best interests with no other motivation such as financial concerns. For example, we deal with cautions early and over the phone and let the police get on with their job.¹⁴⁸ (Lawyer)

(v) Overall quality of service to clients

All of the office heads, and nearly three-quarters of staff interviewees (23, 74%) thought PDS lawyers provided a better service to clients than those in private practice. It was seen in Chapter 6 that most professional respondents from outside the PDS, other than solicitors in private practice, thought that the overall service to clients provided by the PDS was about the same as that provided by private practice, although about a fifth of CPS, and just less than a fifth of barrister, respondents agreed with the views of PDS staff on this issue. Few of the staff (4, 13%) thought they provided a service to clients that was 'about the same' as private practice in terms of quality and, as we have already noted, only one staff interviewee thought they provided a worse service than private practice lawyers.

Better quality of service was attributed to the PDS having the resources and organisational structures (e.g. not being fee-driven, sufficient time and staff, support of colleagues, manageable caseloads) to deliver a service that had clients' best interests as the underpinning principle.

We don't have as many case files as in private practice and therefore time to deal with clients as individuals and focus on client care. (Accredited representative)

We get second opinions on cases from colleagues, including careful review of all evidence. (Lawyer)

Two more themes are suggested by the narrative responses to this question. Firstly, clients are seen as active agents within the process.

We have better client care, we take client feedback on board. (Lawyer)

¹⁴⁸ According to the Head of the PDS dealing with police cautions over the telephone is not in accordance with PDS policy.

It is about getting things sorted at an early stage, giving advice that is relevant to the client, listening to and hearing clients, better advice to achieve the right result for the client. (Accredited representative)

Secondly, the PDS is seen as providing a more holistic service which better serves clients' interests (and, implicitly, those of the wider society, e.g. by reducing recidivism).

We offer a wider service, for example, we can refer to other agencies. We will work with clients to help prevent them from re-offending. We will also get help for clients where it may not be 100% required in the case but is significant in helping them, for example, a mental health report. (Accredited representative)

We offer a holistic approach in dealing with clients - part of what we do is to break offending cycles. (Solicitor)

(vi) Funding as a source of conflict of interests

Interviewees in both samples were asked if they thought that the way that the PDS is funded makes conflicts of interest between lawyer and client more or less likely than in private practice. Just under half of the staff interviewees (14, 45%), and a third of the office heads, thought PDS staff were less likely than those in private practice to experience conflict of interest as a result of the funding structure. Over a third of the staff sample (12, 39%) and half of the office heads suggested that the level of conflict would be about the same for both groups. None suggested that PDS lawyers would be more likely to experience conflict than those in private practice.

Explanations for lack of conflict centred on the fact that with a public service, fee-earning and profit motive were irrelevant.

We have no concern with the financial impact of the case. We want a result as early as possible and have no incentive to prolong cases. (Lawyer)

Private practice lawyers are always conscious of the need to make money and this is more likely to cause conflicts. (Lawyer)

No private paying clients – we don't deal with money just clients. (Lawyer)

Independence and Professional Ethics

Interviewees were asked a series of questions designed to obtain their views on independence and a number of related professional and ethical issues. As in the previous section, these were closed questions and, again, interviewees were asked to say whether the PDS was better or worse, or more effective or less effective, than, or the same as, private practice. If these ratings were judged inappropriate, interviewees could opt instead for 'don't know' or 'too many variables to say'. They were also asked to identify reasons for any differences identified. In addition, office heads were asked a more open question about independence, and specifically asked whether they

had ever had a case in respect of which they had had to refer to the PDS Code of Conduct and/or refer a professional conduct matter to the professional head of service.

(i) Independence

When the creation of the PDS pilot was being considered by Parliament, concern was expressed about whether lawyers employed by a public organisation would be sufficiently independent, specifically in the sense of acting in the best interests of clients without regard to any organisational or political pressures that may be placed on public defenders. It was for this reason that the Access to Justice Act 1999 s16 required the LSC to prepare a Code of Conduct for its employees that was subject to approval by the Lord Chancellor and by both Houses of Parliament. The Code of Conduct was approved and published in 2001.¹⁴⁹

Interviewees in both samples were asked whether, in their view, there was any difference between PDS lawyers and private practice lawyers with regard to their independence. The majority of staff interviewees said that PDS and private practice lawyers were about the same in terms of their independence (20, 64%). Six (19%) stated that PDS lawyers were more independent than their private practice counterparts, and two (7%) felt them to be less independent. This contrasted with the views of office heads, five of whom stated that PDS lawyers were more independent.

Those staff interviewees who thought that PDS lawyers were more independent largely explained this by reference to the fact that they were not influenced by the profit motive. The following comments are typical.

Because there is no profit incentive, there is no other pressure than to do the best job for the client. (Accredited representative)

Our commitment is to the client, because of the way we are funded we are not there for any other reason. (Accredited representative)

Some suggested that they had to be more vigilant in terms of independence because of preconceptions about the PDS. For example:

Because of initial suggestions that the PDS was part of the police, we have more to prove. (Accredited representative)

The office heads, when asked specifically whether they thought there were any particular issues of independence regarding the PDS, either vigorously asserted their independence or described it as a non-issue, as in the following comments.

The day anyone starts putting any pressure on me to do what isn't right by the client, I will walk out the door. And I think generally my experience is that people in the PDS feel the same. I think it comes down to your personal integrity in the end. (Office head)

¹⁴⁹ *Code of Conduct for Employees of the Legal Services Commission who provide services as part of the Criminal Defence Service*, London, Legal Services Commission, 2001. For a discussion of the development of the Code, see Chapter 1.

No, I think this is completely not an issue. I think there is absolutely no issue about our lack of independence. The way in which we deal with cases is on [a] case by case basis, the only thing that guides us is the interest of the client. There is no pressure whatsoever on us to deal with matters in a certain way.
(Office head)

However, a number of the office heads prefaced their answers by specifically defining independence in terms of the work they did for clients, going on to say that in that sense there was no pressure on them in terms of acting independently. But in the case of at least one office head there was some evidence of an awareness that independence was a complex issue and of ambiguity over whether it might be compromised in other ways as a result of recent management changes with the service.

In terms of what I do for the client, no [independence is not an issue]. But I can see us becoming more centrally driven. The policy will be imposed as to how you operate in your area, and I am not sure, is that independence? In terms of how I understand independence to be, what I do for my client, no, I am independent. I can do what I think is best for my client. (Office head)

In fact a minority of the office heads referred to central ‘control’ on a number of occasions in their interviews, giving the impression that they thought it was an issue that had become of greater significance since the early days of the PDS.

(ii) Willingness to challenge, and to ‘stand up’ for clients

In order to probe the issue of independence more closely, interviewees in both samples were asked two closely related questions: were PDS lawyers more or less willing than private practice defence lawyers to challenge the police or prosecution; and were PDS lawyers more or less willing to ‘stand up’ for their clients. Not surprisingly, responses to these two questions were similar, with 19 (61%) of staff interviewees saying that there was no difference between PDS and private practice lawyers in respect of both issues. Four of the office heads were of the same view in respect of willingness to stand up to police or prosecution, and half thought the same in respect of standing up for clients. Just under a third of staff interviewees thought that PDS lawyers were more willing to challenge the police/prosecution, and about a third thought that PDS lawyers were more willing to stand up for their clients than private practice defence lawyers. None thought PDS lawyers were less willing in respect of either question. This contrasts with the perceptions of professionals outside of the PDS, very few of whom thought that PDS lawyers were more willing than private practice lawyers to ‘stand up’ for their clients.¹⁵⁰

Interviewees linked their willingness to challenge the police/prosecution with their independence; because they were independent they felt free to challenge. Willingness to stand up for clients was linked to the client focus of the PDS, but many also

¹⁵⁰ Although one in ten custody officers did think PDS lawyers were more willing to ‘stand up’ for their clients. See Chapter 6.

referred to resources and funding as key factors which enabled them to act in the best interests of clients. The following comments were typical.

We give the client priority – they are our only priority. (Accredited representative)

We have more options in dealing with clients, for example, being able to refer them to other agencies. We are prepared to make sure they get the best service and help. (Lawyer)

(iii) Willingness to advise an early guilty plea

One aspect of independence, and one that was identified by the evaluation of the Scottish PDSO, concerns the actions of public defenders in advising clients to plead guilty. It has been argued that an indicator of lack of independence is a greater tendency or willingness of PDS lawyers to advise clients to plead guilty at an early stage of the proceedings; although there is some methodological difficulty in determining whether, if such a tendency is identified, it operates to the detriment of clients. Interviewees in both samples were asked whether, in their view, there was any difference between PDS and private practice lawyers, where a client is advised to plead guilty, in their willingness to advise a client to plead guilty at an early stage of the proceedings. This was the only question in this section where the majority of respondents suggested differences between PDS and private practice lawyers. Thirteen (42%) staff interviewees, and all of the office heads, said that PDS lawyers were more willing,¹⁵¹ and five (16%) staff interviewees said that they were less willing. Just under a third rated them as about the same, which was the view of the majority of criminal justice professionals surveyed.

Those who said that PDS lawyers were more willing to advise an early guilty plea tended to explain it in terms of the PDS not being concerned with making a profit, and in terms of it being in the client's interests, but reference was also made to experience.¹⁵²

Not fee driven. If someone is going to plead guilty with me in a first hearing, I would be far more likely to do it now than I would have been in private practice. If they are going to plead guilty they should do so as soon as they can if the evidence is there. (Office head)

We have no financial incentive to adjourn or prolong cases. Also, it is in the client's interest to plead early. (Lawyer)

¹⁵¹ A view supported by nearly a quarter of private practice lawyers, and nearly a fifth of CPS lawyers, surveyed. See Chapter 6.

¹⁵² The data on 'cracked' trials showed no significant differences between the PDS and private practice at a national level (see Chapter 3). The peer review data found no significant differences between the PDS and private practice in terms of the timeliness of guilty pleas (see Chapter 4).

(iv) Guidance and training regarding independence

Finally in this section, staff interviewees were asked what guidance and/or training they had received in respect of independence whilst working for the PDS. We were specifically interested to discover whether they had ever had a case in respect of which they had had to refer to the PDS Code of Conduct, and/or whether they had ever referred a matter to the professional head of the PDS. The latter questions were also asked of the office heads.

Thirteen staff interviewees (42%) reported that they had received no guidance or training in respect of independence since joining the PDS. The remainder reported that they had received guidance or training on induction, at team meetings or at file reviews. Although not specifically asked to comment, four of the interviewees who said they had received no training commented to the effect that training was unnecessary.

Only one staff member reported that they had specifically referred to the Code of Conduct in respect of a case, and this person had also referred a professional conduct matter (relating to legal professional privilege) to the professional head of the PDS. A further four staff interviewees reported having referred a professional conduct matter to the professional head of the PDS. One interviewee would not give details, but the others commented as follows.

A case transferred to the PDS with a complaint, from firm originally acting, that they had been unfairly criticised in court. It was not upheld. (Lawyer)

A matter referred on a conflict of interest question – the case was handed over to a private practice firm. (Accredited representative)

A breach of client confidentiality issue where concerns were raised about the client's danger to custody officers - intentions to harm expressed to solicitor. (Lawyer)

Half of the office heads had had cause to refer to the PDS Code of Conduct and/or had referred at least one matter to the professional head of the PDS. However, they were generally reluctant to disclose details on the basis that they were confidential.

The Creation and Development of the PDS

(i) Location and staffing structures

We were interested to discover from office heads their views on the creation and subsequent development of the PDS.¹⁵³ We did this by a series of open questions, starting with a question on the initial creation of the PDS, particularly in relation to the geographical location of PDOs and in relation to staffing structure and numbers. It should be noted that that only two of the six office heads we interviewed had been employed by the PDS from the beginning, and a number of those who had joined the

¹⁵³ See Chapter 1 for an account of the setting up of the PDS and the location of offices.

service later said that they were not aware of the original rationale for the location of offices.

There was a measure of agreement that not all of the locations, especially some of those in large cities with a large number of suppliers, were necessarily appropriate. It was understood by some that there was a number of reasons why specific towns and cities were chosen, and that to an extent decisions were based on a compromise between a number of sometimes conflicting factors. Certainly, when asked if, were the PDS to start again, anything different should be done, a number of the heads said that they would not choose the same locations, and Liverpool, Birmingham and Pontypridd were specifically mentioned in this regard. Smaller towns with a rural hinterland, and a small supplier base, were identified by some as being the kinds of location that should be chosen for PDS offices.

A second aspect of this question concerned the precise location of the PDOs within the town or city, and the nature of the offices, that is, whether they are ‘shop front’ offices often in ‘prime’ positions. A number of office heads said that they understood why such locations and ‘formats’ were chosen (in particular, the need to demonstrate ‘presence’ in a town), but there was a fair degree of consensus that ‘shop front’ premises were both expensive and unnecessary, especially given that the nature of criminal defence work is such that there is little ‘passing trade’.

With regard to staffing structures, it was understood that there was a need to operate a service that was able to operate ‘24/7’ from within its own resources and that this dictated, to a large extent, the number of ‘fee-earners’ required for each office. Equally, it was recognised that this is not how private practice would have approached the opening of a new office, and that inevitably it would result in an expensive service, at least in the early years before a client-base was fully developed.

(ii) Developing a client base

It was noted in Chapter 1 that no special powers or facilities were granted to the PDS in terms of client recruitment, and that PDOs had to recruit a client base ‘from scratch’ without any form of preferential treatment compared to private practice.¹⁵⁴ The various offices have had different experiences in developing a client base, with some being more successful than others. Given the decisions made about location and staffing structure, the development of a client-base inevitably has a critical impact on cost-effectiveness, which is dealt with further below. We were interested to ascertain the views of office heads about this issue, and to discover whether they thought that it was easier or harder for the PDS to develop a client base than for private practice, and whether employing local staff made a difference.

Most office heads were agreed that employing local staff did have a positive impact because they may already have a ‘following’ and would have local contacts. Thus for those offices that did not recruit local staff, it was felt that client recruitment was inevitably adversely affected.

¹⁵⁴ See Chapter 1.

A number of other factors were identified as making client recruitment difficult, including the fact that, in some locations, there was a well-established private supplier base, that private practice was able to offer ‘inducements’ to clients such as cigarettes,¹⁵⁵ and that many potential clients did not know what the PDS was. This, in the view of some office heads, was exacerbated by the attitudes and actions of some private practice solicitors. It was believed that rumours were deliberately spread, for example, that the PDS were part of the police. Much of this was put down to fear on the part of the private profession. One office head explained that the PDS was established at about the same time as contracting was introduced, and that there was acute concern that this might be the beginning of the end for private practice.

And there was this fear at the time that the PDS was going to be a huge success and rolled out almost overnight...it was almost like we were a big stick with which to threaten private practice...I don’t say the LSC did that overtly, but certainly the feedback and the interaction I saw from defence practitioners... was very much that. (Office head)

(iii) A common ethos and innovation

It is well established that local cultures and practices are an important feature of the criminal justice system in England and Wales.¹⁵⁶ In this context, we were keen to ascertain the extent to which the PDS has been successful in establishing a common ethos across the different offices. Having a common ethos does not necessarily mean that all offices have to provide the same service in the same way, and so we also wanted to understand whether office heads felt that they had been able to innovate in the way that they provide services.

Specific factors identified as being part of a common approach were trying to resolve cases more quickly (although one office head was ‘vexed’ by his belief that the ‘PDS has tended to plead slightly later’); trying to provide a holistic service (by, for example, referring clients with difficult underlying problems to appropriate agencies), and not having ‘the distraction of profit’. However, perhaps surprisingly, a number of the office heads gave the impression that they had not given the issue much thought, and there was little attempt by the office heads to develop the issue of a common ethos much further.

A number of the office heads mentioned mechanisms used by the PDS to try and develop a common ethos, such as joint training and peer review of each other’s files. Further, it was suggested by some that the appointment of a Head of the PDS would contribute to the development of a common ethos.

There was also recognition by a number of the heads that there were limits to common working practices, particularly as a result of local cultures and practices. Few of them specified these in any detail, but one gave the example of different

¹⁵⁵ The *Code of Conduct* (note 9) para 8.1 provides that a PDS employee must not offer any inducement, gift, etc., other than refreshments or cigarettes for a client’s immediate consumption in the employee’s presence.

¹⁵⁶ See generally L. Bridges *et al*, *Quality in Criminal Defence Services*, London, Legal Services Commission, 2000, and L. Bridges and A. Abubaker, *Work Patterns and Costs under Criminal Contracting*, London, Legal Services Commission, 2000.

sentencing practices in different courts requiring a different approach to advice to the client and to mitigation. Another expressed it in these terms.

As regards to differences between offices, there are always regional differences in the way the practicalities are carried out on a day-to-day basis, and also you've got different characters in different offices so the feel of the offices is very different. (Office head)

With regard to the capacity for innovation, a number of the office heads interviewed were fairly newly appointed and thus were still working their way into the job. One of these felt that the most urgent need, on his appointment, had been to cope with a 'haemorrhaging of clients', and dealing with this took priority over innovation. He would liked to have delivered services differently, but did not feel that he had yet had the opportunity to innovate. A number of the heads referred to having spent time developing links with 'outreach groups' such as advice centres and CABx, the probation service, and judges, although much of this appeared to be concerned with publicising the service and client recruitment rather than delivering services in innovative ways.

There were two common themes on innovation, although to an extent these were aspirations rather than current activities. The first, mentioned by a number of heads, was the idea of delivering services by means of lawyers working some distance from the office, equipped with laptops and modern means of communication. This was regarded as being of particular importance in providing criminal defence services in rural areas. The second was using referrals – to alcohol and drugs agencies, for example – in order to provide a more holistic service to clients. A further innovation, raised by one head, concerned a specific plan to bring new recruits into the profession by working closely with a local university, although another head had similar plans for his office.

One office head felt that the capacity for innovation at the office level was becoming more difficult. Asked whether he had been able to innovate, he replied:

Initially yes, because the LSC had no idea how an office was run. So you got pretty much a blank canvas. But more and more, that is being constrained because you have a corporate plan in the LSC which is then fed out to the department, which is fed out to [the] central business team, which is fed out to your office. (Office head)

(iv) Workload and cost-effectiveness

Most, if not all, of the office heads appeared, not surprisingly, to be acutely aware of the issues and pressures surrounding caseloads, workloads for staff, and cost-effectiveness. With regard to staff workloads, experiences varied. One, for example, felt that he personally was working much harder than he had done in private practice, and that this was also true for his staff. Asked what the incentives were, he mentioned overtime pay, but thought that mostly it was because of a 'sense of public service' amongst his staff.

Most of us come from private practice and are used to working hard, and maybe team spirit. I think we look after each other and if the next person's working hard, we do the same. And I think also it's just a public service ethos, which I think is generally underestimated in this country. (Office head)

Interestingly, the same head recognised that some of the work being done was work that would not be paid for in the context of private practice.

I mean, sometimes a lot of my management role is spent naturally telling people that some of the work you do is not necessary and sometimes people get really stuck into a case and do a lot... and at the billing stage you have to write [it] off as actually being irrelevant. (Office head)

Nevertheless, he believed that the ability of staff to do this was one of the benefits of the PDS.

I mean, one of the advantages about us not having to worry about fees is that that puts them on the side. All you have to concentrate on is [the] client before you. What can I do best, how may I best to a good job for them. I hope I'm not being too romantic about the PDS, but I do think that is right. (Office head)

Other heads felt that their staff worked about the same number of hours as equivalent staff in private practice, but said that they worked differently, partly because of the greater resources available to them. However, there was a recognition that there was an apparent mismatch between the claim that they worked as hard, or harder, than those in private practice, but that their chargeable time was less.¹⁵⁷

So they work differently. In terms of working harder, I can't answer that. I think it's a bit of a loaded question because [if] we said to my staff 'Do you think you work harder?' many will say to me they feel they work harder now than in private practice. [But] you look at the chargeable time they claim. It's not as much. (Office head)

None of the heads explicitly accepted that their staff worked less hard than in private practice, although one did say:

There must also be those who perceive an easier life. I'm sure there must be those in the organisation for the nine to five job, with the advantages of a large organisation. (Office head)

On cost-effectiveness, there was a general recognition that the PDS is more expensive than private practice. Some of the reasons for this have already been alluded to: starting from scratch with the resources to provide a 24/7 service, and expensive accommodation. References were also made to 'reasonable or better salaries', paperwork and recording (both on case files and 'statistics'), and 'central costs'.

In terms of making the PDS cheaper, it was felt that money could be saved on accommodation, but that some of the other costs such as those relating to staffing and

¹⁵⁷ See Chapter 5.

management were necessary. Further, it was felt that providing a good quality service was bound to be more expensive.

Well, I suppose it could be as [cheap] as private practice, but at the end of the day we tend to spend more time with clients than perhaps private practice would. So from a legal aid point of view, you know, you can cut corners in private practice far easier than you can with the PDS. (Office head)

You will always be more expensive, in my view, if you provide the level of support for training and development, working conditions, and some restructuring which the PDS do. With... private practice you are always going to have an extra quid in mind. (Office head)

Whilst some heads believed that as caseloads increased, costs would come down, none of them mentioned reducing 'non-chargeable' time spent on cases and other work as a means of reducing costs.

Perceptions of the Impact of the PDS

The creation of a public defender service was, in some quarters at least, a controversial initiative and it appears that many private practitioners were concerned both about the long term plans of the government in respect of criminal defence services and, in the shorter term, about the impact of PDOs on their businesses. We wanted to obtain the views of those working for the PDS on their perceptions of the impact of the PDS. We did this in two ways. First, we asked both staff and office heads a closed question about the impact of the setting up of a PDS in their area. They were given the following list of options, and could select as many as they thought relevant and provide narrative comment: no significant impact, taken work away from private practice, improved the quality of criminal defence services, reduced the quality of criminal defence services, improved choice for suspects and defendants, reduced choice for suspects and defendants, and 'other'. This was the same question as asked of criminal justice professionals outside of the PDS.¹⁵⁸ Second, we asked a more open question of office heads only, seeking their views on the impact of the PDS on the LSC (and its management of the CDS), on the government and its criminal justice policies, and on the rest of the criminal justice system.

The two effects most frequently selected by the staff interviewees were 'improved the quality of criminal defence services', and 'improved choice for suspects and defendants'. These factors were always selected together and were selected by staff in all six participating office. Overall, 27 (77%) of the staff sample selected them. The opposites (reduced quality/ reduced choice) were not selected at all, either by interviewees in the staff sample or the office head sample. In Chapter 6 we showed that whilst relatively few criminal justice professionals thought that the PDS had improved quality, substantial minorities of all groups other than private practice solicitors did think that the PDS had increased client choice.

¹⁵⁸ See Chapter 6.

The explanations given by PDS respondents for selecting these items echoed much of what has been reported in this chapter. Interviewees said that the PDS had provided a client-focused, not-for-profit, quality service. The service was resourced to enable staff to work towards ‘getting the right result for each client’ effectively and efficiently. Interviewees said that this combination of factors made for ‘healthy competition’, although one or two put it more bluntly.

The PDS has forced private practice to raise its game a bit as a result of the competition. (Lawyer)

Almost half of the interviewees (15, 48%) suggested that the PDS had taken work from private solicitors in their area, a view with which a substantial minority of barristers, private practice solicitors and judges surveyed concurred. The three (10%) interviewees who selected ‘no significant impact’ explained that the ‘market’ was sufficiently large to provide both public and private lawyers with clients.

We have too few cases – opening 2 or 3 files in a day at best – because of the fact that there are a number of very good quality firms locally who get the work. (Accredited representative)

The market for clients is so large and this is a small office. It’s hard to have any significant impact. (Lawyer)

Interestingly, this was the response of the majority of criminal justice professionals surveyed.¹⁵⁹

The ‘other’ category only generated one response, from an office head, that added to the effects specifically mentioned.

From an employee’s point of view... it’s given younger solicitors an opportunity to try a different way of working. I think the older ones are probably not that interested, but certainly the younger ones get an opportunity to try something different. (Office head)

As noted above, the open question to office heads was designed to elicit responses about the effects of the PDS at a national, rather than a local, level. With regard to the impact on the LSC, and its management of the CDS, half of the office heads believed that the PDS has had a significant impact on the LSC in terms of improving its understanding of criminal defence lawyers and criminal defence practices.

Yeah, I think they have learnt a lot about what it actually is to have a criminal practice, and what is needed, so that they can plan for that. (Office head)

Yes, we’ve had people in our office from the LSC auditors...some of them have their eyes opened to the fact that when you’re in the police station you’re not necessarily dealing with one case; you could be dealing with half a dozen... It gives them an understanding on why some things are not put on files, and

¹⁵⁹ See Chapter 6.

putting that into perspective... they were amazed about the amount of waiting time that was not our fault. (Office head)

Perhaps understandably, office heads were generally less clear about the impact of the PDS on government policy and the rest of the criminal justice system. However, two of the office heads did articulate interesting views in this respect. One expressed astonishment at the lack of the defence perspective in the formulation of government policy: 'the defence has no voice'. Another made the following comment:

You meet people at the DCA [Department for Constitutional Affairs] and you realise that they don't really know who we are. I mean its slightly disconcerting, disheartening at times. These people, who are very nice, interesting, people who come along and they are totally interested in this, but really haven't got a clue. (Office head)

How should the PDS Develop in the Future?

Finally, both sets of interviewees were asked an open question on how the PDS should develop in the future. Whilst a few of the staff interviewees expressed concern at the lack of forethought and planning that had gone into setting up the PDS, most were also able to provide concrete suggestions for the future development, and there was a large degree of consensus.

Need for clear idea of the expansion beyond the pilot stage – there is no clear message on our continued role and no vision. This needs to be communicated to all offices. (Lawyer)

The PDS needs to decide what direction to go in – similar to private practice or different. We should be different given that we are non-profit making. (Accredited representative)

Two broad themes were indicated, firstly focusing on the expansion of the PDS, and secondly focusing on reforms to the management and structure of the service. To deal with expansion first, the majority view was that the PDS should expand to meet local needs 'to fill gaps in provision by providing a quality service', and avoid setting up offices in areas already adequately served with good quality legal services.

The PDS should develop to meet local need and not act in competition with large numbers of existing suppliers. (Lawyer)

Offices should be set up where private practice is not providing adequate quality or choice. (Lawyer)

However, this was not a unanimous view, and one office head believed that the PDS 'should be in every town in England and Wales'.¹⁶⁰

¹⁶⁰ A minority view within the PDS that might, nevertheless, be seen as according with the initial Government view of the need for 'a mixed system, combining both private and staff lawyers' in which 'the two systems will, in effect, both complement and compete with one another'. See Cm 4155, *Modernising Justice*, London, HMSO, 1998, para 6.19.

A number of interviewees highlighted the need to concentrate on rural areas and areas 'of real need' and to think 'creatively' and 'innovatively' about how services could best be provided to such communities.

PDS offices should only develop into rural areas where private practice is not effective in providing a service, and specifically not in London, Manchester, and similar locations. We should be about meeting needs and not competing with private practice. (Lawyer)

For example, using the [...] office as an area office, there could be a satellite system of lawyers and offices to allow cover in other areas as duty solicitors. This could involve laptops or remote working rather than the expense of setting up new offices. This would allow us to meet area needs more effectively. (Lawyer)

A number of interviewees suggested that the PDS should expand to deliver a different kind of service than that provided by private practice, providing a more holistic service, including outreach work, and which works with community groups and other agencies.

We should expand to give advice in other areas of law, for example, welfare benefits, family, housing, debt - so we provide quality legal services across the board to meet needs. (Lawyer)

Need to make better and more connections with community groups dealing with, for example, drug and alcohol dependency, homelessness, to help with re-offending. We need to work to help clients improve their lives. Reducing re-offending will also reduce the need for public funding for criminal advice and representation (Lawyer)

A few suggested that the PDS should be more proactive in promoting its legal service to clients, and one office head believed that there should be a system of directing clients to the PDS, although he accepted that it could have a 'downside' in terms of the lawyer/client relationship.

We should be able to advertise our services. (Lawyer)

The PDS should focus on getting clients in from the streets now that quality is in place. There should be a focus on market and business development. (Accredited representative)

Finally in this section, one office head believed that the PDS should provide an example of best practice, which would also assist in improving the standards of private practice.

I think it has a function to be a provider of a scheme for excellence, that's pretty important. And I think we should be a yardstick for how private practice can do it, and I think we should work in conjunction with private practice, and be an example of best practice, and I mean by that not in cash [terms], or the way you

run a file, or secure [a] guilty or not guilty, but your approach [to] the client and how you care for the client. (Office head)

The second area of proposed development related to management and structure. Here, interviewees were quite clear that the underpinning principle of the PDS should be a client-focused service. However in various ways, directly and indirectly, most seemed certain that management and structural changes were necessary to ensure this was realisable goal for the PDS in the future. Interviewees again raised the issues of administration being a time-consuming burden and the collection of statistics a stumbling block, which interfered with them providing a quality service to clients.

We need to focus on the service we deliver and not admin for the sake of admin. We need to streamline things, the case management system for example, and focus on what is important – delivering an excellent service to clients.
(Lawyer)

PDS needs to get away from the administrator mindset and run offices like solicitors' firms, that is with administrators working with and supporting legal staff. (Accredited representative)

Once the pilot ends we need to move away from the focus on statistics and move towards service. For example, we need to develop business by bringing in experienced staff and be more proactive in developing offices and business (as private practice would do in terms of expanding their business).
(Accredited representative)

Another issue returned to under this theme was the need to review recruitment procedures and career development.

There is a need to make sure we get the right people in the recruitment process – it's not just about filling seats but about attracting those who see criminal law as a vocation. (Lawyer)

There should be clear information about what the PDS does and development of work placements to ensure on-going recruitment into the PDS.
(Accredited representative)

Career development structure needs to be more flexible. (Lawyer)

A number of comments suggested that some PDS staff, specifically lawyers, felt they are undervalued, or not wholly understood, by others within the LSC and the wider criminal justice system. Such comments (mostly from one office) included:

We should continue to provide information on the work of the PDS to enable the LSC to understand what is happening in practice on the ground. (Lawyer)

There is scope for the PDS to assist in the review of changes in the criminal justice process. (Lawyer)

The PDS is needed politically for benchmarking, best practice, and the evaluation of changes in the criminal law. The PDS needs to raise awareness and levels of understanding in government about the role of the PDS and impact it has. (Lawyer)

Conclusions

Broadly, the lawyers and accredited representatives we interviewed had a positive attitude to working for the PDS. This was an informed perception since the vast majority of them also have experience of working in private practice. Whilst they were, of course, expressing opinions about a service which they knew was being evaluated, the fact that they were prepared to express criticisms demonstrates that their positive views were not simply self-serving. The staff valued what they saw as the client-focused, not-for-profit, quality service, principles of the PDS. They acknowledged that the PDS approach was possible because of the way in which the service was resourced, but were also clear that the quality, experience and commitment of PDS staff themselves played a considerable role in delivering these principles. A number of staff saw scope for economies to be made, particularly by trimming administration and bureaucracy, and by moving away from expensive city centre, shop-front, office locations

Overall, interviewees did not see themselves as better than private practice lawyers *per se*, a view that accords with the majority of criminal justice professionals working outside the PDS that we surveyed. However, the interviews suggest that in general PDS staff do have a more positive view of the quality of their work and their relationships with other professionals such as the CPS and the police. Generally they felt that they work under a system (not-for-profit compared to fee-driven) that enables them to provide a better, generally more holistic, client-centred service and to adopt a more rigorous approach when representing their clients, although there was a concern that this could be adversely affected by bureaucratic factors. One of the major concerns in setting up the service, that of independence, was not felt to be problematic although surprisingly four in ten of them said that they had received no guidance or training on the issue.

Most of the staff said that they liked the employment conditions, such as job security, holiday entitlement, training, and career development opportunities, associated with being part of a large, public organisation, although specific concerns were expressed by some, particularly in relation to working in an open-plan office environment. However, many regarded other aspects such as management structures, administration and bureaucracy, as both unnecessary and as impediments to them delivering a quality service, and some of the office heads expressed concern about a lack of autonomy as compared to those working at a similar level in private practice.

Interestingly, a number of interviewees suggested that sharing the same 'government employee' status as other professional groups they worked with, particularly the police and CPS, helped them foster good working relationships with them. Some PDS staff felt that the status of the PDS aided them in delivering a high standard of client-care, and allowed them to adopt a rigorous approach to client representation, and none expressed concern that this might compromise, or be seen to compromise, their

independence and ability to work in the best interests of their clients. This suggests that PDS staff see a better relationships with police and the CPS, who do not simply perceive them as being 'in it for the money', as conducive to them standing up for clients in the police station and at court although, as we showed in Chapter 6, this view was not reciprocated by a minority of those we surveyed in the those organisations.

We saw in Chapter 6 that most criminal justice professionals that we surveyed took the view that the PDS had not had a significant impact on the local criminal justice market. The majority of the PDS staff, on the other hand, believed that setting up the PDOs had led to improvements in the quality of criminal defence services and in increased choice for suspects and defendants. About half of the PDS staff also believed that the PDS had taken work away from private practice, but generally it was felt that given the size of the 'market', this did not have a significant impact on private practice.

With regard to the future of the PDS, some concern was expressed about a perceived lack of certainty and of a clear sense of direction for the service. The majority felt that the PDS should expand to meet gaps in provision, for example, in rural areas, but that it should avoid opening offices in areas that are already well provided for by private practice. These may be contrasted with the initial Government intention in setting up the PDS, that it should lead to a more general 'mixed' pattern of delivery of criminal defence services throughout the country. A common theme was the desirability of developing a more 'holistic' service, meaning more outreach work, expanding the service into areas of law related to crime (such as housing, welfare benefits and debt), and working more closely with community and other groups dealing with, for example, drug and alcohol dependency and homelessness. In doing so, the PDS could both be a 'scheme for excellence' and could assist in 'reducing re-offending [which] will also reduce the need for public funding for criminal advice and representation'.

Chapter 8

Conclusions

The Government initially defined the objectives of the Public Defender Service primarily in terms of its potential to deliver a more cost effective criminal defence service of better or at least equal quality to that provided by private practice under contracts. In this way, it was hoped that the PDS would serve as a 'benchmark' in terms of both cost and quality for contracted criminal defence services. As discussed in Chapter 1, the Legal Services Commission re-framed and widened the objectives of the PDS during its initial period of operation.

For our own part, we aimed in the research to evaluate the PDS in terms of its cost effectiveness; quality of service; patterns of case conduct; client recruitment, retention and satisfaction; independence; effectiveness, efficiency and accountability of management structures; and impact on local patterns of supply. As regards many of these criteria, the evaluation has been based on a comparison between the services provided by the six Public Defender Offices included in the research and those offered by private criminal defence solicitors operating under contracts within the same localities. A final aim of the research has been to provide recommendations on future models of a PDS of appropriate quality, cost and independence and an assessment of the future role of the PDS and the balance between it and private practice in various areas. In setting out our conclusions, we follow the order of this report, dealing first with patterns of case conduct and outcomes, then with issues of quality and independence, cost effectiveness, management, and finally with our recommendations for future development.

Patterns of Case Conduct and Outcomes

There was evidence that the PDOs, over the period of the research, have dealt on the whole with somewhat less serious or complex cases than their private practice comparators. This applies not only in terms of the PDOs not being involved in the highest cost Crown Court cases but also more generally in terms of their caseloads in police stations, magistrates' courts and the Crown Court. This would be expected of a service that has had to start and to recruit clients 'from scratch' and which as a result was particularly dependent in some areas on duty solicitor referrals. We would expect this difference between the PDS and private practice to diminish over time, although it is likely to require a specific initiative for the service to become heavily engaged in the longer, more complex and expensive Crown Court cases on any significant scale.¹⁶¹

The main differences between the two sectors in terms of case processing and outcomes appear to have occurred in respect of custodial legal advice. There was evidence that PDO advisers were more likely to attend in person on clients held in police stations than their private practice counterparts. There was no consistent pattern across the PDOs as regards the amount of time spent on police station advice

¹⁶¹ Since the finish of the research, a specialist Crown Court unit has been established based in the Cheltenham PDO.

cases or in attending on the client, in comparison with private practitioners in their areas. However, there was a clear pattern in several of the areas of clients being advised to exercise their right to silence more often by PDO advisers than by those from private practice. This pattern of advice appears to have led to more positive outcomes for PDO clients in police stations, with their being more likely than clients of private practice not to be charged or summoned for a criminal offence.

The evidence as regard the processing of court cases, whether in magistrates' courts or the Crown Court, does not show such significant differences as between the PDOs and private practice. In general, PDO cases involved fewer hearings per case but more time between court hearings. For cases being committed to the Crown Court, the PDS tended to have fewer hearing in magistrates' courts but more in the Crown Court.

There was evidence that one of the PDOs recorded significantly less time on magistrates' court cases than private practitioners in its areas (although this may have been related to the PDO having a higher incidence of guilty pleas), while another PDO spent significantly more time on magistrates' court cases. Data on time spent on Crown Court cases was less reliable but also showed mixed results, with two PDOs spending on average less time, and four PDOs more time than private practice firms in their areas. These results were likely to be affected in some areas by the inclusion in the sample of some very long Crown Court cases which, as noted above, the PDOs were generally less likely to handle.

Cases handled by three of the PDOs tended to end in guilty pleas more often than those of private practitioners in their areas, but for five of the PDOs there was also a greater likelihood that the case would result in the charges against the defendant being dropped. There were few significant differences between the two sectors in terms of sentences received.

These findings tend to indicate that, insofar as they are intended to provide a generalist service to criminal suspects in police stations, there may be limited advantages of a salaried service in terms of case processing and outcomes. Clearly, if suspects represented in police stations are more likely not to be charged or summoned for a criminal offence, this has advantages both for the clients and for the public purse in terms of cost savings. The evidence as regards the handling of proceedings cases in magistrates' courts is more ambiguous. A tendency for PDS clients to plead guilty more often, while obviously involving cost savings, would only be considered to be advantageous to clients if there was evidence that this resulted in convictions for lesser offences and/or more lenient sentences, which was not evidenced by this research. Again, it is difficult to draw conclusions as to the relative advantages of the PDS in respect of the handling of Crown Court cases, especially given the differences between the make up of the Crown Court caseload of the two sectors during the period of the research (with the PDS tending not to handle very high costs cases).

Our interviews with key personnel in both the LSC and the Public Defender Service itself suggest that, partly because of the research evaluation and its focus on the comparison with private practice, there was a tendency during this period for the PDOs to mirror private practice and not to experiment greatly in terms of new forms of service delivery. Latterly, there have been limited attempts at such

experimentation, including the opening of further 'branch' offices in Chester and Darlington, provision of 'outreach' service from the Cheltenham PDO based in the offices of other services in smaller rural towns, involvement in new criminal justice initiatives such as the Community Justice Centre in Liverpool and early referrals of defendants for drug treatment, and most recently the establishment of a PDO Crown Court unit based at Cheltenham. Our research has not involved an evaluation of these initiatives or of their effectiveness, both in assisting clients or achieving cost savings in the wider criminal justice system.

Quality and Independence

The evidence of our research is that the PDS has achieved the objective of being able to provide a generalist criminal defence service which is of good quality, equal and in many respects better than the general standard of service provided by private practitioners in comparable areas. The quality of the service provided by the PDS certainly was not uniform in the early stages of the service when a number of the PDOs appeared to be performing in certain respects less well than local private practice. However, our second and more comprehensive peer review study showed that, with the exception of Swansea where the PDO performed below the level of private practice according to a number of criteria¹⁶², all the other PDOs included in the research were performing consistently well, with some of the PDOs achieving standards significantly better than private practice and at levels of excellence or 'competence plus' on the various measures of case handling.

In this respect, perhaps the greatest strength of the PDS, in comparison with private practice, lies in its ability to present good information, well communicated to clients in well structured files. It is possible that these results are partly attributable to the extra time available to legal staff in the PDS given their smaller caseloads during the period of the research. However, the quality standards achieved are also likely to be the result of the development and refinement of systems across the PDOs in terms of standard forms and letters and the case management system (CMS), and of training and staffing associated with implementation of these systems, including each PDO having a quality manager. The PDS police station pro forma has also benefited from advice from the research team and was subsequently revised in the light of the findings of our earlier investigation stage peer review. Many of these systems, including the various forms, file cover, standard letters and manual, have been made more widely available to private criminal defence firms through publication on the internet.

Our view is that peer review, involving assessment of case work by independent and experienced criminal defence professionals, provides the best basis for evaluating quality. However, the above findings are supported by other sources of evidence. The overwhelming view of the criminal justice professionals we surveyed was that there was little perceptible difference between the quality of service provided by PDOs and private practitioners in their areas. The one exception to this was solicitors in private practice, whose views are very likely to have been influenced by a

¹⁶² We have been asked to note that there were significant changes in the management of the Swansea PDO in 2003, and while our second peer review took place after this, many of the cases included in the second peer review of the Swansea office would have had work done on them prior to these management changes.

perception of competition with the PDOs, which they have seen as being over-resourced and working under capacity and therefore facing less pressure and able to devote more time to cases. Although it is probably right to discount a number of the specific criticisms of PDOs emanating from private practitioners regarding the quality of their work, it is fair to say that the challenge facing the PDS in the future will be to maintain the levels of quality they have achieved at the same time as increasing their client numbers and caseloads and/or restraining their costs (see below).

Again, although our client surveys achieved very low response rates and therefore produced no statistically significant results, the general view expressed was one of satisfaction with the quality of service received, whether from a PDO or a private practice provider. This echoes the findings of client surveys conducted by the PDOs and by private practitioners.

It is also likely that staff morale within the PDS has contributed to the standards of service achieved. The staff, almost all of whom had previous experience of private practice, valued what they saw as the client-focused, not-for-profit, quality service principles of the PDS. They acknowledged that the PDS approach was possible because of the way in which the service was resourced, but were also clear that the quality, experience and commitment of PDS staff themselves played a considerable role in delivering these principles. Generally they felt that they worked under a system that enabled them to provide a better, generally more holistic service and to adopt a more rigorous approach when representing their clients. Again, the challenge now facing the PDS, given some of the views staff expressed on the demands of administration and 'bureaucracy', will be to maintain morale and commitment in light of the need to increase workloads and control costs and the implementation of the management tools to achieve these objectives.

The issue of the perceived independence of a salaried criminal defence service featured very prominently in both the professional and political debates that surrounded the setting up of the PDS. However, within this research we have found no evidence that, as regards interference in the conduct of individual cases, this has in practice been an issue of concern among PDS staff, their clients, or indeed other criminal justice professionals, including solicitors in private practice. To the contrary, there was evidence, such as that relating to the tendency of some PDOs to advise clients in police stations to exercise their right to silence more often, which positively points to the PDS having an independent approach to defending its clients.

We also have no evidence that clients *perceive* the PDS as less independent than private practice criminal defence firms operating under contracts. Such perceptions continue to exist amongst some private practitioners and a minority of other criminal justice professionals, who tend to see a salaried service as *per se* being potentially more vulnerable to political interference. On the other hand, many of the staff working within the PDS regard themselves as having more independence in the conduct of cases precisely because they are working within a 'not-for-profit' setting and with fewer constraints on the time they can devote to particular clients and cases.

There was support for the role of the professional head of service as a referral point for complaints and particular issues of professional conduct, although in practice relatively few such referrals have been made. It was also considered that this role had

made a significant contribution to establishing the professional credibility of the PDS from the outset. The current professional head of service has also seen it as part of his role to provide general guidance on issues of professional conduct extending beyond the PDS to the criminal defence service as a whole. In this respect, the notes of guidance he has issued on advising on guilty pleas and adjournments, on police station advice, and in particular on the CDS objectives may be seen as performing an important role in defending the independence of the CDS as a whole.

The more recently created Head of the PDS has now assumed some of the functions of the professional head of service in investigating specific complaints, but it must be questionable whether the holder of this post, with direct responsibility for the Central Business Team, would be perceived as having the same degree of independence from the day-to-day operation of the PDS or credibility with the wider criminal defence profession. Indeed, early concern was expressed in some quarters that the professional head of service should not be a member of the Legal Services Commission, although in practice this has probably placed the current holder of this post in a better position to advocate the position of the PDS within overall LSC policy.

Cost Effectiveness

On the basis of the evidence of its operations over the period of the research, the case that the PDS can provide general criminal defence services at a comparable cost to contract providers remains unproven. Even using our 'low' estimate of PDS costs, based on their running costs only and excluding capital and start up costs, there was a very significant cost differential between the average case costs of the PDS during its first three years of operation and comparable private practice, ranging from between 40% to just over 90% higher for the PDS depending on the area and type of case. The one exception to this could be in relation to Crown Court cases, where the PDS and private practice appear to have comparable costs in terms of the types of smaller and medium-cost cases in which both sectors are engaged. However, the PDS has not become significantly involved in the types of high costs cases in the Crown Court which account for significant proportions of legal aid expenditure in this area, and therefore meaningful comparison at this level have not been possible to make.

Of course, many of the factors relating to the way the PDS was established, discussed in Chapter 1, have had an adverse impact on the service's costs. These include the decisions relating to the location, staffing and accommodation of the PDOs and the 'level playing field' basis on which they were required to compete with private practice for clients. It is also worth noting that cost comparisons were made with the generality of private practice in each of the areas served by PDOs, and it may be that where private practice firms themselves open new offices they will experience similar high initial case costs as the PDOs. More generally, unlike other jurisdictions in which salaried defenders have been introduced, there already existed in England and Wales both a highly comprehensive system of public criminal defence services and an extensive network of private practice firms to provide them. As a result, in most of the areas in which PDOs have been established (the one exception among the PDOs included in the research being Cheltenham) there were few evident 'gaps' in the local market for criminal defence services that could be exploited in order to build a client base.

These factors have combined to ensure that all the PDOs have been operating below capacity, as measured in terms of 'chargeable hours' per fee earner, throughout the period of the research. Data on 'chargeable hours' and utilisation of staff time for the most recent complete year, 2005-6, indicate a significant improvement by most of the PDOs in the number of chargeable hours recorded per member of staff. How far this latest trend in fact reflects an actual increase in clients and cases (as distinct from an improved recording of time spent on cases) and therefore a real decrease in average case costs is more difficult to determine. In any event, our research points to the need (also recognised by the senior management of the service) for the PDS to exercise greater control over their operating costs if they are in fact to provide a comparable service to private practice criminal defence firms in terms of costs.

Of course, the issue of whether the PDS provides a cost effective service cannot be determined solely on the basis of a comparison between its average case costs and those of contracted providers alone. There may be additional benefits of the PDS to the LSC and to the Government which outweigh its higher average case costs.

Management

One of the decisions taken when the PDS was first established, partly as a reaction to the concerns expressed about independence, was that it should have a relatively devolved management structure, with each PDO head given considerable autonomy over the running of their local office. There was also a collegiate form of central management, operated through the PDS Management Committee with the professional head of service as chair and each PDO head as a member, along with the Head of the CDS and other representatives of the LSC. Important areas of service development, such as the creation of standard forms and file organisation, were largely delegated to the PDO heads, and it was not until 2001 that a full-time administrator was appointed to the PDS team centrally. Also, an initial decision was taken, again on grounds of independence, that each PDO should have a 'stand alone' computer system. This policy was subsequently changed in favour of linking the PDOs into the LSC computer network for management (but not case management) purposes. Although initially contracted out, much of the development work on the PDS Case Management System was also undertaken within one of the PDOs and then rolled out to other offices, not becoming fully operational until the second year of the service.

This devolved structure contributed to a lack of consistency in management and in the quality of services of the PDOs during their initial period of operation. Arguably, it also contributed to a lack of clarity as to the objectives of the service, with the individual PDOs and their heads pursuing somewhat different strategies toward service development. Of course, these strategies were also influenced by differences in the local contexts and markets in which they were operating. Nevertheless, during the second year of the service problems with inconsistency in standards began to come to light, partly through the research but also when the professional head of service extended his role to undertaking limited quality assessments of files in each PDO. It was at this stage that the PDS began to develop centrally various service and management targets against which the work of each PDO might be assessed.

Eventually, the devolved management structure was replaced in 2004, following the appointment of one of the PDO heads to the post of Head of PDS and the establishment of a PDS Central Business Team which came to be based not in the LSC London headquarters but in the Birmingham PDO.¹⁶³ This change meant that the PDO office heads, who had previously reported for management purposes to the Head of the CDS, a non-lawyer, would now become responsible for both professional and management matters to the Head of PDS, an experienced criminal defence solicitor.

As noted in Chapter 7 when reporting on the views of staff of the service, these changes in management structure have created their own tensions within the PDS, especially among some of the PDO heads, who have seen the development of further targets relating to client recruitment, chargeable time and the mix of cases dealt with by their office as potentially undermining their autonomy and independence to develop their local services in line with their perceptions of local needs and circumstances. Similar anxieties have also been expressed, if less forcefully, by other staff, in terms of their complaints about excessive 'administration' and 'bureaucracy'. On the other hand, the internal data we have seen from the PDS does suggest that the new management structure has begun to have an effect in, for example, driving up chargeable hours recorded by a number of the PDOs. Our own second stage peer review also clearly showed that a more consistent standard and quality of service has been achieved across all but one of the PDOs over time.

One alternative model for administering the PDS that was raised by a number of respondents to the initial consultation on setting it up was that the LSC might grant aid another body to run the service. Such an 'arms' length' arrangement was seen as one possible means to further ensuring the independence of the service. It was not pursued at the time, in part because the tight deadline set by Government for the PDS to become operational did not allow sufficient time to identify or set up a body to run the PDS separately from the LSC. Whether such a structure should now be reconsidered depends on the objectives that might be set for the development of the PDS beyond its pilot phase. However, it is important to recognise that operation through an 'arms' length' structure would not resolve but only transfer to the new body the potential conflict between central and more devolved operational management of the service. As it would also require some form of medium-term contract between the LSC and the new body, it might introduce an unnecessary element of inflexibility into the future development of the service.

¹⁶³ Consideration was given at this time to establishing a salaried service for immigration in Birmingham, to operate alongside the PDO there, but this plan was not implemented.

Perhaps one of the clearest lessons to be drawn from the pilot and our research evaluation is the need for a clear understanding within Government, the LSC and the staff of the PDS of the policy objectives behind the PDS. Certainly, when the service was originally launched there was ambiguity as to its purposes, which may well have contributed to the atmosphere of distrust among private practice criminal defence solicitors (themselves having to adapt at the same time to the new contracting regime) as to the Government and LSC's motives in setting up the new service. The political and professional controversy surrounding the launch of the PDS itself served to reinforce a risk averse approach within the LSC to the way in which it was set up. Eventually, the lack of clear policy objectives filtered through, by way of the devolved management structure, to those responsible for running the individual PDOs.

Of course, this report is being published at a time when Government is raising fundamental questions about the objectives of the criminal justice system as a whole and the role of criminal defence and criminal legal aid within that system. Lord Carter's Review of Criminal Legal Aid Procurement was established in 2005 to examine the whole way in which publicly-funded defence services are being purchased and delivered. As our own report was being finalised, the interim findings of the Carter Review were published,¹⁶⁴ recommending the replacement of the current system of contracting for criminal defence services, based to a considerable extent on hourly-determined prices, and involving very large numbers of private practice firms across the country. In particular, the Carter interim report argued that the "sheer number of suppliers in many urban areas makes it difficult for them to obtain sufficient volumes of work to structure themselves in the most efficient way."¹⁶⁵ This clearly echoes and helps to contextualise the experience of the PDOs in terms of the competition they faced from private practice in attempting to establish a client base and a cost effective service during the course of this research.

The Carter review is proposing a phased transition to a new system of procurement, in which there would be a much smaller number of 'preferred suppliers' with whom the LSC would contract, initially based on a more comprehensive system of fixed prices per case for most criminal defence services. Eventually, once the number of suppliers has been reduced, a system of "managed competition" will be introduced in which these suppliers will tender against each other, based on set quality standards, the capacity of the firm, and competitive pricing, for volumes of criminal defence services in groups of local police stations and associated magistrates' court and Crown Court work. As well as establishing "an appropriate quality standard" through

¹⁶⁴ Lord Carter's Review of Legal Aid Procurement, *Procurement of Criminal Defence Services: Market-based reform*, London, Department of Constitutional Affairs, 2006. The final report of the review, setting out detailed proposals for implementation of its recommendations, has subsequently been published. See Lord Carter's Review of Legal Aid Procurement, *Legal Aid: A market-based approach to reform*, London, Department of Constitutional Affairs, 2006. The Government has subsequently announced its intentions to proceed with the reform of criminal defence procurement broadly on the lines proposed by Lord Carter. See CM 6993, *LegalAid Reform: The Way Ahead*, London, Department of Constitutional Affairs and Legal Services Commission, November 2006.

¹⁶⁵ *Procurement of Criminal Defence Services, ibid.*, p. 4. In fact, as noted in Chapter 1, the current number of suppliers, estimated at 2,500 solicitors' offices nationally, represents a reduction of well over half from the number operating prior to the introduction of the current contracting system in 2001.

the “preferred supplier approach and measured by peer review” as a prerequisite for competitive tendering,¹⁶⁶ the Carter Review interim report recognised that there may be a need to set a lower pricing limit below which tenders will not be accepted, so as “to prevent unrealistic bids destabilising the market”.¹⁶⁷

It is against the background of the Carter Review recommendations that the future development of the PDS needs to be considered. For its part, the Government has tended from the outset to see the PDS as part of a mixed system for the delivery of criminal defence services, operating alongside contracted private practice providers, the two types of service both complementing and competing with one another. In particular, the PDS would provide a means of ‘benchmarking’ contracted private practice providers in terms of both value for money and quality. A secondary objective was to provide the LSC with an alternative form of delivery which could be used where there were gaps in service provision, due to the implementation of contracting or for other reasons. In this latter respect, the PDS has proved its value particularly in Cheltenham among the locations included in this research, where the PDO has now been established as the largest single provider of criminal defence services and the base for experimentation in service delivery in more rural areas.

Apart from this and when viewed in terms of these original objectives, it cannot be said that the PDOs included in our research, as they have developed during the period of pilot, have provided either effective competition or a means of ‘benchmarking’ private practice criminal defence firms specifically in terms of the cost of their services under contracts. These would include police station legal advice, particularly those cases requiring an attendance in person on the suspect,¹⁶⁸ and the vast majority of routine cases in the magistrates’ courts. The PDS has so far provided only limited comparisons with private practice in respect of Crown Court cases and in particular has not become involved, due to an early policy decision (now reversed) to exclude them from such work, in the types of longer, more complex and high costs cases that absorb a high proportion of legal aid costs in the Crown Court. The limited comparisons we have been able to draw between the PDS and private practice in lesser cost Crown Court cases suggest that, once factors such as the nature of the charges and location are taken into account, there is in fact no significant cost differential between the PDS and private practice, and this may suggest that the PDS does have a benchmarking role in terms of the costs and efficiency in the conduct of Crown Court cases. Further investigation of the specialist Crown Court unit that has now been established in the Cheltenham PDO would be required before any firm conclusions can be drawn in this regard.

The PDS has also been seen as one mechanism for benchmarking the quality of criminal defence services. In this respect, the PDS does appear to have evolved over the period of the pilot as an example of good quality criminal defence service, comparable to the best private practice firms. Taken together, these firms, perhaps as

¹⁶⁶ *Ibid.*, p. 21. While initially the Carter Review accepts that the LSC will have a role in determining these quality standards, it recommends that eventually the task of monitoring these standards will be one primarily for the professional bodies, namely the Law Society and the Bar Council.

¹⁶⁷ *Ibid.*, p. 25.

¹⁶⁸ Proposals have been advanced for reform of the provision of police station legal advice over the telephone, through the development of CDS Direct. See Legal Services Commission Press Release, ‘Telephone Advice Pilot to go Ahead’, 13 November 2004.

identified through the LSC's 'preferred supplier' programme, and the PDS could provide the basis for further developing the Commission's quality assurance mechanisms in respect of criminal defence services, including further refinements of qualitative peer review as employed in this research. One of the recommendations of an earlier study on the piloting of criminal contracting was that the LSC should establish a Criminal Quality Review group in partnership with the best criminal defence firms. It is arguable that the dynamics of contracting as a mechanism for purchasing legal aid services, at least in its present form, does not encourage such partnership arrangements and the open sharing of information and expertise that they require. Nor is it obvious that a system of competitive tendering, as proposed by the Carter Review, would form the basis for the development of a stable and long-term partnership between the LSC and private practice suppliers. In this context the PDS as a directly funded mechanism of service delivery may have an important role to play in bridging the 'information gap' between the LSC and its main providers of criminal defence services.

Indeed, all those who we have interviewed within the PDS and the LSC have testified to the role that the service has already played in increasing the understanding of those responsible for the administration and development of the CDS as a whole into the dynamics of local service delivery in this field. It is more questionable how far such lessons have been extended to and been absorbed within those sections of Government responsible for criminal legal aid policy and expenditure decisions, let alone for wider criminal justice policy. The PDS has also been able to demonstrate during the pilot its value as a 'test bed' for developing particular management tools and forms of service delivery which could have a wider applicability across the CDS as a whole. Management developments have included the package of PDS forms for recording and reporting information on cases, the CMS computer case management system, and peer review. Developments in service delivery have included outreach services organised through other organisations, involvement of some PDOs in local criminal justice initiatives around diverting offenders outside the normal criminal justice system and into treatment programmes, and the establishment of a specialist Crown Court unit.

Of course, it is conceivable that these types of initiatives could equally well be developed through private practice providers, although again the contract relationship (with or without competitive tendering) may not provide an ideal basis for this type of developmental partnership between the LSC and local providers. At the same time, if the PDS is to be developed, not so much as a direct competitor with and benchmark for private practice but as a tool of service development and improvement for the CDS as a whole, then it will be necessary that the PDS continues to operate in a range of different types of area as a general criminal defence service provider, and to do so with greater efficiency and cost effectiveness than the service was able to demonstrate at least in its first three years of operation. In this respect, while it is obvious, at least in retrospect, that some of the locations chosen for pilot PDOs were not appropriate, in other areas (such as Cheltenham) the PDS has proved its value as a mechanism for filling gaps in local service delivery. Indeed, it is arguable that much more could have been done during the pilot in developing this objective of the PDS, for example in extending the service more into rural locations and other areas of poor supply, including experimenting with new forms of service delivery.

The preliminary findings of our research were made available to the Carter Review team, and on this basis they have concluded that “initial indications are that although the model adopted delivers quality defence services it does not achieve the efficiencies expected from independent suppliers.”¹⁶⁹ The interim report of the review goes on to state:

In most circumstances a publicly owned and controlled defence service should be able to compete on the same terms as others. It is also questionable as to whether the provision of a criminal defence service fits well within the general remit of the Legal Services Commission. However, there is a potential for a public defence service in areas where the independent market cannot provide sufficient coverage for an efficient cost.¹⁷⁰

Our own view is that this is to define possibly too narrow a role for the PDS within the context of a more “managed market” for criminal defence services, as recommended by the Carter Review. As argued above, the PDS would seem to have an important role in the continuing development of quality standards and service innovation in criminal defence, which it may well prove difficult to replicate under either the existing system of contracting with private practice or one based on competitive tendering. In this respect we would note that the Carter Review recommendations appear to us to be based on a somewhat static view of acceptable quality standards, scope of service and modes of service delivery in this field. Nor, given the historic record in this respect, would we share the confidence that the Carter Review appears to place in the legal professional bodies as the primary guarantors of the quality in the delivery of criminal defence services.¹⁷¹

As we have indicated, we have evaluated the PDS in the context of what in most urban areas is a highly competitive and crowded (if not efficient) market for the provision of criminal defence services. If the Carter Review proposals for a more “managed market” are implemented, the market context in which the PDS might operate would be very different, with far fewer private practice suppliers for clients to choose from and the LSC being more active, eventually through the competitive tendering system, in allocating work between these suppliers. Indeed, one of the risks

¹⁶⁹ *Ibid.*, p. 16.

¹⁷⁰ *Ibid.* The final report of Lord Carter’s Review does not develop this suggestion further and, indeed, contains only one mention of any form of public defender service. This is in the context of alternative options to the proposed ‘market-based approach’ to reform based on competitive tendering through a number of private practice suppliers in each area. One such option considered was the “creation of an independent public defender” that “would allow for a few very large, independent regional suppliers to win work” and to be assigned monopoly control of all duty solicitor work in police stations and magistrates’ courts, but with the power to issue vouchers to clients to allow them to utilise other suppliers. Such an approach is rejected on the grounds that it would represent “a substantial, unmanaged change for suppliers and a fundamental departure from the way the justice system in England and Wales has evolved” as well as posing “significant risks to both quality and access.” (see *Legal Aid: A market-based approach to reform, op. cit.*, p. 53). Nor is the future of the Public Defender Service raised as a topic in the Government consultation paper issued to accompany Lord Carter’s final report (see Legal Services Commission and Department of Constitutional Affairs, *Legal Aid: a sustainable future*, Consultation Paper CP 13/06, July 2006).

¹⁷¹ See, in particular, M. McConville, et. al., *Standing Accused: The Organisation and Practices of Criminal Defence Lawyers in Britain*, Oxford, Clarendon Press, 1994 for a critical review of the standards of criminal defence in Britain in a period when the Law Society and Bar Council were primarily responsible for overseeing quality standards and prior to the establishment of the Legal Services Commission or its predecessor body, the Legal Aid Board.

of the system proposed by the Carter Review is that criminal defence work in any particular area could be concentrated amongst so few private practice suppliers as to make the LSC overly dependent on them for the continuing supply of services and to render client choice virtually meaningless.¹⁷² As we have seen, the Carter Review interim report itself recognised this danger, insofar as it has recommended that a minimum price be fixed below which tenders for services will not be accepted, but without explaining how in practice such a minimum price would be determined.

An alternative would be to maintain the PDS on a more general basis and, through the “managed market”, allocate to it a proportion of criminal defence work, with the size of the allocation in any particular area varying depending on strength of the remaining local private practice provision.¹⁷³ However, the PDS allocation should be of sufficient size to enable the service to operate efficiently in terms of its staffing and other resources, and it would be for the LSC through its management of the PDS to ensure that its costs remained at least comparable to those otherwise determined in the locality under the competitive tendering process. This does not necessarily imply that PDS cost should always be equal to or below those resulting from competitive tendering, since one of the purposes of maintaining the PDS would be to provide a basis for the LSC to determine a minimum price below which high quality criminal defence services cannot be maintained. Another important function of the PDS in this scenario would be to provide a guarantee of client choice between service providers in any given area.

In summary, it is difficult on the basis of the research evaluation of the PDS pilot to recommend that the service be developed, in the context of the current system of contracting, as a large-scale provider of generalist criminal defence services or as a means of providing competition with or cost benchmarking for private practice providers in this field on a nation-wide basis. On the other hand, even in this context the PDS does have a role to play both in benchmarking and further developing quality standards in criminal defence and as an integral part of the service development programme of the CDS, and to fulfil this role it must be maintained as a generalist criminal defence service provider, if not in all the present sites then at least in a considerable number and range of localities across the country. In this role the PDS may well be able to develop and demonstrate more efficient ways of delivering criminal defence services in particular sectors, such as the Crown Court, which will have a wider applicability across the CDS as a whole. Beyond this, and looking forward from the Carter Review to the possible development of competitive tendering for criminal defence services, we can envisage a wider role for the PDS as an essential guarantor of quality standards, minimum costs and client choice of representative in a more “managed market” for such services.

¹⁷² As explained in Chapter 1, this was one of the local market conditions that was taken into account in selecting the sites for the original PDOs.

¹⁷³ As discussed in Chapter 1, the prohibition under the Access to Justice Act 1999 on requiring clients to use the services of LSC employed lawyers, as well as other considerations, prevented such an allocation of a share of the market to the PDS when it was established. Although it is theoretically possible that a “managed market” and system of competitive tendering would not necessarily lead to particular individuals being required to use the service of only one provider, in practical terms this is very likely to be one of the consequences of the Carter Review recommendations. This issue is not addressed in the Carter Review interim report.

Appendix 2.1 Offence Categories used in Case File Analysis

OFFENCE	CODE	CATEGORY ¹⁷⁴	MAXIMUM PENALTY
Offences against the person	01		
Common Assault/Battery	0101	SO	6 months
ABH (s.47 OAPA)	0102	EW	5 years
GBH and/or wounding (s.20)	0103	EW	5 years
GBH/Wounding with intent (s.18)	0104	IO	Life
Threat to kill	0105	EW	10 years
Obstructing a police officer	0106	SO	1 month
Assault on a police officer	0107	SO	6 months
Child neglect/assault/abandon/ill treat	0108	EW	10 years
Abduction	0109	EW	7 years
Kidnap	0110	IO	Life
False imprisonment	0111	IO	Life
Homicide and similar	02		
Death by dangerous driving (s.1 RTA)	0201	IO	10 years
Death by careless (etc.) driving (s.3A RTA)	0202	IO	10 years
Manslaughter	0203	IO	Life
Murder	0204	IO	Life
Sexual offences/children	03		
Attempt/Unlawful sexual intercourse with girl under 16, s.6	0301	EW	2 years
Attempt/Unlawful sexual intercourse with girl under 13, s.5	0302	IO	Life
Indecent Assault, s14 or 15	0303	EW	10 years
Assault with intent to commit buggery, s.16	0304	IO	Life
Indeceny/indecent conduct with or towards children	0305	EW	2 years
Attempt/Rape, s.1, s.37 Sexual Offences Act 1956	0306	IO	Life
Indecent exposure	0307	SO	3 months
Possession of indecent photos of children	0308	EW	3 years
Robbery	04		
Robbery/Assault with intent to rob (s.8)	0401	IO	Life
Burglary	05		
Dwelling house, s.9	0501	EW	14 years
Otherwise, s.9	0502	EW	10 years
Aggravated Burglary, s.10	0503	IO	Life
Criminal damage	06		
Criminal damage, under £5000	0600	SO	6 months
Criminal damage, s.1(1) over £5000	0601	EW	10 years
With intent/Aggravated, s.1(2)	0602	IO	Life
Arson, s.1(3)	0603	EW	Life
Threats, s.2	0604	EW	10 years
Possession with intent, s.3	0605	EW	10 years
Theft	07		
Going equipped, s.25	0701	EW	3 years
Abstracting electricity, s.13	0702	EW	5 years

¹⁷⁴ IO – Indictable only; EW – Either way; SO – Summary only

Making off without payment, s.3 1978 Act	0703	EW	2 years
Deception	0704	EW	5 years
False accounting s17	0708	EW	7 years
Theft	0709	EW	7 years
Handling/receiving etc s22	0710	EW	14 years
Blackmail	0711	IO	14 years
Taking vehicles without authority/consent (includes "being carried" offences)	0712	SO	6 months
Aggravated TWOC s.12A	0713	EW	2 years
Forgery/false instrument etc.	0714	EW	10 years
Conspiracy to defraud	0715	IO	10 years
Public order etc.	08		
Drunk and disorderly	0801	SO	Fine level 3
Harassment, alarm or distress s.5	0802	SO	Fine level 3
Threatening behaviour/intentional harassment etc s.4, s4A	0803	SO	6 months
Affray s.3	0804	EW	3 years
Offensive weapon s1 PCA 1953	0805	EW	4 years
Bladed or pointed instrument s139 CJA 1988	0806	EW	2 years
Violent disorder s.2	0807	EW	5 years
Riot s.1	0808	IO	10 years
Breach of the Peace	0809	Non-criminal	
Drugs supply, possession, etc.	09		
Class A			
Importation ¹⁷⁵	0901	EW	life
Supply	0902	EW	life
Possession	0903	EW	7 years
Possession with intent to supply	0904	EW	life
Production	0905	EW	life
Occupier, etc., permitting	0906	EW	14 years
Class B			
Importation*	0907	EW	14 years
Supply	0908	EW	14 years
Possession	0909	EW	5 years
Possession with intent to supply	0910	EW	14 years
Production	0911	EW	14 years
Occupier, etc., permitting	0912	EW	14 years
Class C			
Importation*	0913	EW	5 years
Supply	0914	EW	5 years
Possession	0915	EW	2 years
Possession with intent to supply	0916	EW	5 years
Production	0917	EW	5 years
Occupier, etc., permitting	0918	EW	5 years
Driving offences	10		
Failure to produce documents	1001	SO	Fine level 3/4
Alcohol offences (incl. Failure to provide breath test)	1002	SO	3-6 months
Driving without insurance/tax	1003	SO	Fine level 5
Driving without an MOT	1004	SO	Fine level 4
Driving whilst disqualified	1005	SO	12 months
Failure to stop/report	1006	SO	6 months
Careless driving	1007	SO	Fine level 4
Other, incl. speeding, etc.	1008	SO	various
Driving without a licence	1009	SO	Fine level 3
Driving otherwise than in accordance with a	1010	SO	Fine level 3

¹⁷⁵ Includes evading prohibition on importation under Customs and Excise Management Act

licence			
Dangerous driving	1011	EW	7 years
Breach proceedings	11		
Breach of community order	1101		Fine
Fail to surrender to bail/absconding	1102	SO	3 months
Administration of Justice Offences	12		
Intimidating witnesses	1201	EW	5 years
Perjury	1202	IO	7 years
Perverting the course of justice	1203	IO	Life
Other	13		

Notes:

- Treat Attempt as the substantive offence
- Treat Racially Aggravated offences as the substantive offence.
- Conspiracy, incitement, aid, abet counsel or procure, treat as the substantive offence (except conspiracy to defraud)
- If uncertain as to whether it comes within one of the categories, enter under 'Other'.
- When entering an offence under 'Other', specify the relevant statutory provision including section number.

Appendix 3.1 Multivariate Analysis of Outcomes at the Investigation Stage

In Tables 1 to 6 below, we present multiple regression analyses on cases where clients are retained throughout for six measures of outcome: two relating to the investigation stage (charge brought, no further action taken) and four relating to the proceedings stage (case withdrawn or discontinued, guilty plea, trial/hearing, cracked trial).

The regressions are all estimated using data from all claims paid in the comparator regions. The independent variables in each case are the number of defendants, whether the claim is for a youth or duty solicitor case, supplier size (as measured by the number of claims made), and type of offence (11 indicator variables). In addition each regression controls for the location of the local police station (for investigation claims) or the court (for proceedings claims). The coefficients labelled Birmingham, Liverpool, Middlesbrough, Swansea, Cheltenham and Pontypridd show the size of the outcome differences for each of these PDOs compared with private suppliers, and the associated (robust) t-statistics show the statistical significance of these differences.¹⁷⁶ The results can be summarised as follows:

1. After controlling for case complexity and location, *the likelihood of a client having charges made against them* at the investigation stage was significantly lower in three of the PDOs [Middlesbrough, Swansea and Cheltenham] relative to private supplier cases, and no different in the remaining three [Table 1].
2. After controlling for case complexity and location, *the likelihood of a client having no further action taken against them* at the investigation stage was significantly higher in two of the PDOs [Middlesbrough and Cheltenham] relative to private supplier cases, and no different in the remaining four [Table 2].
3. After controlling for case complexity and location, *the likelihood of a client having charges withdrawn or discontinued* at the proceedings stage was significantly higher in five of the PDOs [Middlesbrough, Swansea and Cheltenham] relative to private supplier cases, and significantly lower in only one: Liverpool [Table 3].
4. After controlling for case complexity and location, *the likelihood of a client having a guilty plea entered* at the proceedings stage was significantly higher in three of the PDOs [Birmingham, Liverpool and Pontypridd] relative to private supplier cases, and significantly lower in one: Middlesborough [Table 4].
5. After controlling for case complexity and location, *the likelihood of a client having a formal trial/hearing* at the proceedings stage was significantly lower in Liverpool and Pontypridd relative to private supplier cases, and insignificantly different in the others [Table 5].
6. After controlling for case complexity and location, *the likelihood of a client having a cracked trial* at the proceedings stage was significantly lower in Birmingham, Middlesbrough and Pontypridd relative to private supplier cases, and no different in the other three PDOs [Table 6].

¹⁷⁶ T-statistics are calculated using standard errors which are robust to heteroskedasticity. Without this correction estimates may be inefficient.

Table 1: Regression of outcome= "charge made" in relation to PDO status controlling for offence type and police station (all investigation claims in comparator regions where solicitor was retained throughout)

Regression with robust standard errors

Number of obs = 133513
 F(21,132753) = 175.75
 Prob > F = 0.0000
 R-squared = 0.0430
 Adj R-squared = 0.0375
 Root MSE = .46881

charge	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
noofdefe	-.0153689	.0031225	-4.92	0.000	-.021489	-.0092489
you2	-.0160266	.0051495	-3.11	0.002	-.0261195	-.0059337
dut2	-.0556985	.0032442	-17.17	0.000	-.0620572	-.0493399
sumsup	.0000159	8.03e-07	19.77	0.000	.0000143	.0000175
off2	-.102802	.0133888	-7.68	0.000	-.1290439	-.0765601
off3	-.1030544	.0077981	-13.22	0.000	-.1183384	-.0877703
off4	-.0202533	.0064084	-3.16	0.002	-.0328136	-.0076931
off5	-.0047187	.0050447	-0.94	0.350	-.0146062	.0051688
off6	-.0474002	.0060446	-7.84	0.000	-.0592474	-.0355529
off7	-.0183074	.003963	-4.62	0.000	-.0260748	-.0105399
off8	-.0179331	.0078756	-2.28	0.023	-.0333692	-.002497
off9	.0695947	.0056998	12.21	0.000	.0584232	.0807662
off10	.0299994	.0057436	5.22	0.000	.018742	.0412567
off11	.1866816	.0050076	37.28	0.000	.1768668	.1964963
off12	-.0061466	.0060007	-1.02	0.306	-.0179079	.0056147
bham	.0167715	.0206534	0.81	0.417	-.0237088	.0572519
lpool	-.0248979	.0183826	-1.35	0.176	-.0609274	.0111316
mboro	-.0629752	.0193543	-3.25	0.001	-.1009093	-.025041
swnsea	-.0531092	.0189424	-2.80	0.005	-.0902359	-.0159824
chelt	-.0468063	.0191802	-2.44	0.015	-.084399	-.0092135
ponty	-.01831	.0271053	-0.68	0.499	-.0714358	.0348158
_cons	.6348343	.0050193	126.48	0.000	.6249966	.6446721
stat	absorbed				(739 categories)	

Table 2: Regression of outcome= "no further action" in relation to PDO status controlling for offence type and police station (all investigation claims in comparator regions where solicitor was retained throughout)

Regression with robust standard errors

Number of obs = 133513
 F(21,132753) = 130.52
 Prob > F = 0.0000
 R-squared = 0.0382
 Adj R-squared = 0.0327
 Root MSE = .4441

nfa	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
noofdefe	.0197669	.0032254	6.13	0.000	.0134452	.0260887
you2	-.0192662	.0047646	-4.04	0.000	-.0286048	-.0099277
dut2	-.0139752	.0030006	-4.66	0.000	-.0198562	-.0080941
sumsup	-8.53e-06	7.64e-07	-11.17	0.000	-.000001	-7.03e-06
off2	.1234857	.0131913	9.36	0.000	.0976309	.1493404
off3	.1336451	.0076489	17.47	0.000	.1186534	.1486368
off4	.0683755	.0062678	10.91	0.000	.0560907	.0806603
off5	.0382797	.0048761	7.85	0.000	.0287226	.0478367
off6	.0025255	.0055951	0.45	0.652	-.0084408	.0134917
off7	.0230377	.0037551	6.14	0.000	.0156777	.0303977
off8	.0210543	.007489	2.81	0.005	.006376	.0357326
off9	-.074996	.0051862	-14.46	0.000	-.0851609	-.0648312
off10	-.065126	.0051522	-12.64	0.000	-.0752241	-.0550278
off11	-.1361145	.0047082	-28.91	0.000	-.1453425	-.1268865
off12	.0003781	.0057108	0.07	0.947	-.0108149	.0115711
bham	-.013565	.019004	-0.71	0.475	-.0508125	.0236825
lpool	.0325463	.0171745	1.90	0.058	-.0011154	.0662079
mboro	.0597143	.0190586	3.13	0.002	.0223598	.0970687
swnsea	.0080046	.0171542	0.47	0.641	-.0256173	.0416264
chelt	.1003696	.0187724	5.35	0.000	.0635761	.1371632
ponty	.037367	.0258935	1.44	0.149	-.0133837	.0881178
_cons	.2868168	.0049395	58.07	0.000	.2771356	.2964981
stat	absorbed				(739 categories)	

Table 3: Regression of outcome= "case withdrawn/discontinued" in relation to PDO status controlling for offence type and court (all proceedings claims in comparator regions where solicitor was retained throughout)

Regression with robust standard errors

Number of obs = 164705
 F(21,164375) = 240.41
 Prob > F = 0.0000
 R-squared = 0.0509
 Adj R-squared = 0.0490
 Root MSE = .37288

withdrn	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
noofdefe	.0047609	.002722	1.75	0.080	-.0005741	.0100959
you2	.0069463	.0030725	2.26	0.024	.0009242	.0129684
dut2	.0000189	.00621	0.00	0.998	-.0121526	.0121905
sumsup	-7.05e-06	5.13e-07	-13.75	0.000	-8.06e-06	-6.05e-06
off2	-.1007216	.0218064	-4.62	0.000	-.1434617	-.0579815
off3	-.0834398	.0087692	-9.52	0.000	-.1006272	-.0662524
off4	-.092351	.0087081	-10.61	0.000	-.1094187	-.0752833
off5	-.0859191	.0045519	-18.88	0.000	-.0948407	-.0769975
off6	-.0276682	.0052946	-5.23	0.000	-.0380456	-.0172909
off7	-.146387	.003099	-47.24	0.000	-.152461	-.140313
off8	-.1457637	.0048713	-29.92	0.000	-.1553113	-.136216
off9	-.0377843	.0043142	-8.76	0.000	-.0462401	-.0293285
off10	-.1682863	.0041286	-40.76	0.000	-.1763783	-.1601943
off11	-.1761978	.0031835	-55.35	0.000	-.1824375	-.1699582
off12	-.1191419	.003852	-30.93	0.000	-.1266916	-.1115922
bham	.0416237	.0194992	2.13	0.033	.0034056	.0798418
lpool	-.0275772	.0110799	-2.49	0.013	-.0492936	-.0058608
mboro	.0707712	.0189441	3.74	0.000	.0336411	.1079013
swnsea	.0400192	.0192647	2.08	0.038	.0022608	.0777776
chelt	.1209709	.0210126	5.76	0.000	.0797866	.1621552
ponty	.0760714	.0281866	2.70	0.007	.0208264	.1313165
_cons	.2891803	.0040746	70.97	0.000	.2811941	.2971664
cort	absorbed				(309 categories)	

Table 4: Regression of outcome= "guilty plea" in relation to PDO status controlling for offence type and court (all proceedings claims in comparator regions where solicitor was retained throughout)

Regression with robust standard errors

Number of obs = 164705
 F(21,164375) = 1137.50
 Prob > F = 0.0000
 R-squared = 0.1460
 Adj R-squared = 0.1443
 Root MSE = .46055

guilty	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
noofdefe	-.0505616	.0073894	-6.84	0.000	-.0650447	-.0360784
you2	.0176988	.0036447	4.86	0.000	.0105552	.0248424
dut2	.0231509	.0074566	3.10	0.002	.0085362	.0377656
sumsup	7.19e-06	6.75e-07	10.64	0.000	5.86e-06	8.51e-06
off2	-.0048347	.0223299	-0.22	0.829	-.0486008	.0389315
off3	-.0731411	.00747	-9.79	0.000	-.0877822	-.0585001
off4	-.0571125	.0075945	-7.52	0.000	-.0719976	-.0422273
off5	.0806033	.0049227	16.37	0.000	.070955	.0902516
off6	.1947209	.0057046	34.13	0.000	.18354	.2059017
off7	.401957	.0034231	117.42	0.000	.3952478	.4086662
off8	.3088448	.0064474	47.90	0.000	.2962081	.3214816
off9	.1388407	.0044769	31.01	0.000	.1300661	.1476154
off10	.2750611	.0056472	48.71	0.000	.2639927	.2861296
off11	.3788896	.0038162	99.29	0.000	.37141	.3863692
off12	.3580966	.0044823	79.89	0.000	.3493113	.3668819
bham	.0955933	.0209057	4.57	0.000	.0546187	.136568
lpool	.0918143	.0145789	6.30	0.000	.06324	.1203886
mboro	-.0496352	.0214189	-2.32	0.020	-.0916158	-.0076546
swnsea	-.0085875	.0236984	-0.36	0.717	-.0550358	.0378609
chelt	-.0455269	.0244884	-1.86	0.063	-.0935236	.0024698
ponty	.1432506	.0296975	4.82	0.000	.0850441	.2014571
_cons	.2471989	.0082571	29.94	0.000	.2310151	.2633826
cort	absorbed				(309 categories)	

Table 5: Regression of outcome= "formal trial" in relation to PDO status controlling for offence type and court (all proceedings claims in comparator regions where solicitor was retained throughout)

Regression with robust standard errors

Number of obs = 164705
 F(21,164375) = 165.88
 Prob > F = 0.0000
 R-squared = 0.0330
 Adj R-squared = 0.0310
 Root MSE = .30613

trial	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
noofdefe	.0137847	.0031841	4.33	0.000	.0075438	.0200255
you2	.0460553	.0026833	17.16	0.000	.040796	.0513146
dut2	-.0424603	.0039911	-10.64	0.000	-.0502828	-.0346378
sumsup	4.45e-06	4.56e-07	9.77	0.000	3.56e-06	5.35e-06
off2	-.101044	.0154724	-6.53	0.000	-.1313695	-.0707185
off3	-.0929709	.006384	-14.56	0.000	-.1054834	-.0804584
off4	-.0426089	.0081374	-5.24	0.000	-.0585581	-.0266597
off5	-.1149667	.0033094	-34.74	0.000	-.1214531	-.1084802
off6	-.0398495	.0043893	-9.08	0.000	-.0484525	-.0312466
off7	-.1065692	.0026201	-40.67	0.000	-.1117046	-.1014337
off8	-.0995902	.0039398	-25.28	0.000	-.107312	-.0918683
off9	-.0511685	.0035287	-14.50	0.000	-.0580847	-.0442524
off10	-.138322	.0030552	-45.27	0.000	-.1443101	-.1323338
off11	-.0721939	.0029284	-24.65	0.000	-.0779335	-.0664543
off12	-.1030223	.0030628	-33.64	0.000	-.1090253	-.0970193
bham	-.0124267	.0137103	-0.91	0.365	-.0392986	.0144451
lpool	-.0189042	.007514	-2.52	0.012	-.0336316	-.0041769
mboro	-.0153703	.0107227	-1.43	0.152	-.0363866	.005646
swnsea	-.0132893	.0114805	-1.16	0.247	-.0357909	.0092123
chelt	-.006962	.0120239	-0.58	0.563	-.0305286	.0166046
ponty	-.0607234	.0136226	-4.46	0.000	-.0874234	-.0340233
_cons	.1519936	.0041157	36.93	0.000	.1439269	.1600602

cort | absorbed (309 categories)

Table 6: Regression of outcome= "cracked trial" in relation to PDO status controlling for offence type and court (all proceedings claims in comparator regions where solicitor was retained throughout)

Regression with robust standard errors

Number of obs = 164705
 F(21,164375) = 111.99
 Prob > F = 0.0000
 R-squared = 0.0213
 Adj R-squared = 0.0194
 Root MSE = .29224

cracked	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]	
noofdefe	.0042122	.0020853	2.02	0.043	.000125	.0082993
you2	.0355125	.0025352	14.01	0.000	.0305435	.0404814
dut2	3.10e-06	.004714	0.00	0.999	-.0092363	.0092425
sumsup	-4.57e-08	4.32e-07	-0.11	0.916	-8.93e-07	8.01e-07
off2	-.0869545	.013256	-6.56	0.000	-.112936	-.0609731
off3	-.1009301	.0047124	-21.42	0.000	-.1101663	-.0916939
off4	-.0586707	.0068589	-8.55	0.000	-.072114	-.0452273
off5	-.0734363	.0031653	-23.20	0.000	-.0796402	-.0672323
off6	-.0356737	.0039293	-9.08	0.000	-.0433749	-.0279724
off7	-.0684586	.0024299	-28.17	0.000	-.0732212	-.0636961
off8	-.0625546	.0037951	-16.48	0.000	-.0699929	-.0551163
off9	-.009521	.003415	-2.79	0.005	-.0162143	-.0028278
off10	-.1009033	.0028236	-35.74	0.000	-.1064374	-.0953692
off11	-.0306196	.0027913	-10.97	0.000	-.0360906	-.0251486
off12	-.0673968	.0028768	-23.43	0.000	-.0730351	-.0617584
bham	-.0582009	.0106804	-5.45	0.000	-.0791343	-.0372674
lpool	.0018692	.008358	0.22	0.823	-.0145123	.0182506
mboro	-.0248839	.0101897	-2.44	0.015	-.0448556	-.0049122
swnsea	-.0180035	.0109453	-1.64	0.100	-.039456	.0034491
chelt	-.000327	.0134108	-0.02	0.981	-.0266119	.0259579
ponty	-.0464823	.0132551	-3.51	0.000	-.0724621	-.0205025
_cons	.1328802	.0031594	42.06	0.000	.1266879	.1390726
cort	absorbed				(309 categories)	

Appendix 4.1 Peer Review of Police Station Files Guidance and Gradings

Scoring

Where numerical scale is used

- 1 = Excellent
- 2 = Competence Plus/Good
- 3 = Threshold Competence/Average
- 4 = Incompetent/poor
- 5 = Non-performance/Very poor¹⁷⁷

N/A = Not applicable X = Insufficient information recorded to make judgement

Data Collection Form

UFN..... Contractor name and area.....

Name..... PDS office.....

Offence for which arrested/detained.....

Length of consultation with client prior to first police interview:

.....mins N/A X

Comment?

1. Quality of written records

Standard form

Standard form used? Yes No

Adequacy of standard form 1 2 3 4 5
N/A

Comment?

¹⁷⁷ For the original data collection, the scoring scale was reversed (i.e. 1 = non-performance and 5 = excellence), but to provide consistency with the second stage peer review, the results as reported in Chapter 5 were recalculated according to the above scale.

Ease of use of file

Legibility 1 2 3 4 5

Layout 1 2 3 4 5

Comment?

Level of information recorded 1 2 3 4 5

Comment?

2. Timeliness

Was first contact timely? Yes No X
N/A

Was first attendance at police station timely? Yes No X
N/A

Comment?

3. Decision to attend police station

Was the decision to attend/not attend the police station appropriate?

Yes No X

Comment?

4. Decision to attend police interviews (where interviews were held)

Was the decision to attend/not attend police interview(s) appropriate?

Yes No X N/A

Comment?

5. Obtaining information/instructions

Does the lawyer appear to have acted appropriately in securing information from the police?

1 2 3 4 5 X

Comment?

Does the lawyer appear to have acted appropriately in obtaining instructions from the client?

1 2 3 4 5 X

Comment?

6. Giving advice

Does the advice given to the client regarding their legal position appear to be appropriate?

1 2 3 4 5 X

Comment?

Does the advice given to the client regarding strategy in police interview appear to be appropriate

1 2 3 4 5 N/A X

Comment?

7. Police interview(s)

Do the actions of the lawyer in the police interview(s) appear to be appropriate?

1 2 3 4 5 N/A X

Comment?

8. Representations as to charge and bail

Do representations regarding charge appear to be appropriate

1 2 3 4 5 N/A X

Comment?

Do representations regarding bail appear to be appropriate?

1 2 3 4 5 N/A X

Comment?

9. General standard of performance

Was the general level of service/performance adequate?

1 2 3 4 5 X

Comment?

10. Outcome

11. Was the result -

- A Better than expected
- B As expected
- C Worse than expected
- X Insufficient information to make judgement

Comment?

Guidance

1. Quality of written records

Adequacy of a standard form refers to whether the prompts are adequate, whether there is an appropriate mix between compliance and narrative prompts, layout, etc. Use of standard forms for police station work is not required under the criminal contract, but is recommended by the Law Society. Relevant factors in forming a judgement include:

- the extent to which the form prompts the securing/recording of relevant information
- the extent to which the form is designed to prompt the recording of relevant information as distinct from demonstrating compliance with contract requirements
- the extent to which the form is of practical use.

Legibility is relevant both because of non-continuity of representation and because of the need to demonstrate contract compliance by evidence on the file.

Layout refers to ease of use of the file bearing in mind the fact that information on the file may need to be readily accessible eg. in subsequent court proceedings, and discontinuity of representation.

Level of information refers to information that should be recorded as a matter of good practice, having regard to contract requirements, transaction criteria, etc. It differs from adequacy of any standard form used because, inter alia, forms may not be fully completed. In *Quality in Criminal Defence Services* a distinction was made between information required to be recorded as a matter of good practice and information that it is necessary to record in order to advise/represent competently at the time. In outline, they were as follows (with slight amendment indicated by *):

Information required for good practice

- Client's name, address, date of birth*
- Conflict of interests check noted
- Where attendance at the police station is required under the contract, and no attendance, reasons for not attending. [Attendance requirements for duty solicitor cases are governed by para 8.2.6 of the Contract Specification, and for own solicitor cases, by paras 3.1 and 8.2.6 (part).]
- The times of consultation with the client
- The advice given as to what the police have to prove and as to the client's legal position
- The advice given as to what to do in the police interview(s), especially as to whether to answer police questions
- Advice/representations following police interview(s)

Information that is necessary in order to advise/represent competently

- The time of and reasons for arrest and detention, and the time of the client's arrival at the police station
- The time and content of police interview(s)
- A note of consultation with, and information obtained from, custody officer and officer in the case
- Instructions from the client

2. Timeliness

Timeliness of first contact The contract requires that where a client has been arrested and requests advice and the contractor accepts the matter, first contact (in person or by telephone) must normally be within 45 minutes of the initial contact. [Para 5.1 Contract Specification. If first contact is not made within 45 mins, the reason must be noted (para 5.1.3).] This is to be used for the purposes of peer review as a guideline only.

Indicate N/A where timeliness is not relevant, eg., where the first contact relates to a bail-back.

Timeliness of first police station attendance The contract requires that where a decision to attend a client at the police station in person is made, attendance should normally be within 45 minutes of that decision. [Para 5.2 Contract Specifications. If attendance does not take place within 45 mins of decision to attend, the reason must be noted (para 5.2.4).] This is to be used for the purposes of peer review as a guideline only.

Indicate N/A where timeliness is not relevant, eg., where the attendance relates to a bail-back, or solicitor and client attend the police station together.

3. Decision to attend police station

Generally, attendance at the police station would be expected where the client has been arrested for an arrestable offence, where the police are planning an ID procedure such as a parade, where the client complains of serious police maltreatment, or where the client is a person at risk or a youth. Seriousness of the allegation is also a relevant factor. [Para 8.2.6 Contract Specification (duty solicitor cases) and paras 3.1 and 8.2.6 (part) (own solicitor cases).]

4. Decision to attend police interview(s)

The contract requires duty solicitors to attend all police interviews where the client is arrested for an arrestable offence. [Para 8.2.6 Contract Specification (duty solicitor cases) and paras 3.1 and 8.2.6 (part) (own solicitor cases).] Normally, it would be expected that where a solicitor attends the police station s/he will also attend police interview(s). However, relevant factors include seriousness of the allegation, instructions from client, vulnerability of client.

Indicate N/A where there was no police interview, or where telephone-only advice was given.

5. Obtaining information/instructions

Information from the police This includes information from the custody record, custody officer and officer(s) in the case, and is to be judged having regard to rights to information, the stage at which the information appears to have been obtained, attempts to secure information, seriousness of the case, etc. The lawyer is entitled to see the custody record on arrival at the police station (PACE Code C para 2.4), and this should be done prior to police interview. The lawyer has no legal entitlement to other information (except the first description given by eyewitnesses where the police intend to hold an ID procedure), but good practice dictates that the lawyer should seek disclosure from the police, and negotiate appropriately in the case of refusal. Note that the issue is not whether the lawyer has in fact obtained disclosure, but whether they acted appropriately in seeking to obtain the information.

Instructions from the client There is some professional disagreement as to whether it is always appropriate to obtain detailed instructions from a client in a police station. Some believe that reasonably detailed instructions should always be obtained and recorded - otherwise it will be difficult or impossible for the lawyer to give adequate legal advice. However, others are of the view that instructions need not be obtained where it is likely that this would professionally embarrass the lawyer if the client then wanted to deny the offence in interview. Allowance must be made for this. Other relevant factors include the nature and seriousness of the allegation(s), the level of detail obtained and recorded, and the stage at which instructions were obtained.

6. Giving advice

Advice as to legal position includes advice as to the apparent strength of the police case, and whether, on the client's instructions, they are guilty, have a defence, etc. Difficulty may arise where the file simply indicates that the client says that they are guilty. It can be argued that this is inadequate since it is for the lawyer to advise the client whether, on the basis of their instructions, they are guilty and whether the prosecution are likely to be able to prove guilt. One relevant factor in making a judgement will be the nature and seriousness of the alleged offence(s).

Advice as to strategy in police interview The principal advice will be whether the client should answer questions in interview, but there are variations eg. making no comment and handing in a prepared statement. Relevant factors include the apparent strength of the police case, the instructions from the client, the implications of the 'right to silence' provisions of the Criminal Justice and Public Order Act 1994, and the vulnerability of the client (including age, drug/alcohol dependency, mental handicap or disorder).

Indicate N/A if there is no police interview.

7. Police interview

This should be judged having regard to best practice requirements such as making an opening statement, and whether the lawyer should intervene eg. to challenge improper questioning, to give client further advice, or if 'evidence' is introduced which has not previously been disclosed to the lawyer.

Indicate N/A if there is no police interview or the lawyer does not attend the interview(s).

8. Representations as to charge and bail

Representations as to charge may be relevant if there is scope for negotiations as to the level or nature of the charge eg. ABH rather than GBH, or if there is scope for negotiation as to whether the client should be dealt with other than by charge eg. NFA, caution, reprimand or warning.

Indicate N/A if, for example, the client is bailed without charge.

Representations as to bail may be relevant if there is scope to affect the custody officer's decision regarding whether to grant bail, or whether to impose conditions or what conditions are appropriate.

Indicate N/A if it is clear that representations would have made no difference eg. client charged with a very serious offence or that unconditional bail would be granted.

9. General standard of performance

This requires the peer reviewer to give an overall score taking into account all relevant matters.

10. Outcome

Indicate the outcome (eg. NFA, bail without charge, caution, reprimand or final warning, charges) and the bail position.

11. Assessment of the outcome

The peer reviewer should give their judgement, on the information available, as to the outcome. However, the reviewer should indicate X if there is insufficient evidence to make a judgement. For example, judgement will be impossible if there is little indication of the strength of the police case and/or of the client's instructions.

Appendix 4.2 Criteria and Definitions for Second Stage Peer Review of Crime Files

Assessment Form

Client Name:

UFN:

Supplier/PDO name:

PDO Area:

Fee Earner (Where Known)

Case complexity/difficulty: Exceptional/Demanding/Routine/Minor

Case Seriousness: Most Serious/Moderately Serious/Least Serious

1 = excellent

2 = competence plus/good

3 = threshold competence

4 = below competent/poor

5 = non-performance/very poor

X = insufficient information to make a judgement

NA = not applicable

Lead charge:

Other Charge(s):

A. The file

- | | |
|---|-------------|
| 1. How effective is the composition of the file? | 1 2 3 4 5 |
| 2. How appropriate is the level of information recorded? | |
| (a) At investigation stage | 1 2 3 4 5 X |
| N/A | |
| (b) Post Charge | 1 2 3 4 5 X |
| N/A | |
| 3. How appropriate was the management of the case throughout? | 1 2 3 4 5 X |
| NA | |

Comments:

B. Communication

- | | |
|---|-------------|
| 1. How appropriate were the lawyer's communication and client-handling skills? | 1 2 3 4 5 X |
| 2. How appropriately was the client informed of: | |
| (a) the merits (or not) of their defence/case? | 1 2 3 4 5 X |
| NA | |
| (b) all developments (including conclusion) | 1 2 3 4 5 X |
| NA | |
| 3. How appropriate was the lawyer's communication with others, including the CPS, defence counsel etc.? | 1 2 3 4 5 X |
| NA | |
| 4. How timely was all communication? | 1 2 3 4 5 X |
| NA | |

Comments:

C. Information and fact-gathering

1. How effective was the lawyer in seeking relevant information from the client? 1 2 3 4 5 X
2. How effective was the lawyer in seeking relevant information from the police and/or prosecution:
- (a) At investigation stage 1 2 3 4 5 X
N/A
 - (b) Post Charge 1 2 3 4 5 X
N/A
3. How effective was the lawyer in seeking relevant information from others? 1 2 3 4 5 X
NA

Comments:

D. Advice and assistance

1. How good was the advice? 1 2 3 4 5 X
NA
2. (a) How appropriate was advice on plea? 1 2 3 4 5 X
NA
- (b) If (at any stage) the client was advised to plead guilty, was the timing of the advice:
- (i) too early
 - (ii) appropriate
 - (iii) too late
3. How appropriate was advice on appeal? 1 2 3 4 5 X
NA

Comments:

E. The work/assistance

1. Was all work done that should reasonably have been done? Y N X
If No, specify:
2. How effective was the work done in achieving the client's (reasonable) objectives? 1 2 3 4 5 X
3. What was the impact of the lawyer on:
- (a) Bail: better than expected/as expected/worse than expected/X/NA
 - (b) Mode/venue: better than expected/as expected/worse than expected/X/NA
 - (c) The Process: better than expected/as expected/worse than expected/X/NA
 - (d) What convicted of/or not: better than expected /as expected/worse than expected/X/NA
 - (e) Sentence: better than expected/as expected/worse than expected/X/NA
4. Was the client prejudiced in any way by the work done or not done? Y N
(If yes, specify)

Comments:

F. Efficiency

- | | | | | | | |
|---|---|---|-----|---|---|---|
| 1. How efficiently was the work carried out? | 1 | 2 | 3 | 4 | 5 | X |
| 2. Throughout the file, how effectively did the organisation use resources (including experts?)
NA | 1 | 2 | 3 | 4 | 5 | X |
| 3. Were any disbursements incurred appropriate? | Y | N | N/A | | | |

Comments:

G. General

- | | | | | | | |
|---|---|---|-----|--|--|--|
| 1. Where ethical issues arise were they dealt with appropriately? | Y | N | N/A | | | |
|---|---|---|-----|--|--|--|

Please state the following:

Claim Code:

Offence code:

Outcome code:

Overall mark

- | | | | | | | |
|--------------------------------|---|---|---|---|---|---|
| (a) At Investigation Stage | 1 | 2 | 3 | 4 | 5 | X |
| N/A | | | | | | |
| (b) At Magistrates Court Stage | 1 | 2 | 3 | 4 | 5 | X |
| N/A | | | | | | |
| (c) At Crown Court Stage | 1 | 2 | 3 | 4 | 5 | X |
| N/A | | | | | | |
| (d) Overall File Score | 1 | 2 | 3 | 4 | 5 | |

Please write any further comments below or on the extra paper provided.

Claim Codes

- 1A - Free Standing advice and assistance
- 1B - Police Station telephone advice only (including a&a where given)
- 1C - Police station attendance (including a&a and telephone advice where given)
- 1D - Police station attendance (including a&a and telephone advice where given) - Armed Forces Personnel only
- 1E - Warrant of further detention (including Terrorism Act 2000) (including a&a and any other police station advice where given)

- 1F - Warrant of further detention (including a&a and any other police station advice where given) - Armed Forces Personnel only
- 1G - Duty Solicitor Standby
- 1H - Breach of bail conditions
- 1I - Arrest on warrant following failure to appear at the magistrates' or Crown court
- 1J - Post-charge identification paragraph/recharge following discontinuance or dismissal of the case
- 1K - Administration of a reprimand, warning or caution
- 1L - Immigration Matter
- 2A - Free standing advice and assistance (this code was used before 17/05/2004)
- 2B - Early hearing (including a&a where given) (this code was used before 17/05/2004)
- 2C - Magistrates' court advocacy assistance (including a&a where given)
- 2D - Court Duty Solicitor session
- 2E - Representation order - LSF (including a&a and early hearing where given)
- 2F - Representation order - HSF (including a&a and early hearing where given)
- 2G - Representation order - NSF (including a&a and early hearing where given)
- 2H - Crown Court advocacy assistance (including a&a where given)
- 2I - High Court representation
- 2J - Second claim for deferred sentence
- 4A - Free standing advice and assistance
- 4B - Advocacy assistance at prison discipline hearings (including a&a where given)
- 4C - Advocacy assistance at parole board hearings (including a&a where given)

Offence Codes

- 1 - Offences against the person
- 2 - Homicide and related grave offences
- 3 - Sexual offences and offences against children
- 4 - Robbery
- 5 - Burglary
- 6 - Criminal damage
- 7 - Theft
- 8 - Fraud and forgery and other offences of dishonesty
- 9 - Public order offences and offences against public justice
- 10 - Offences in relation to supply, production and possession of drugs
- 11 - Driving offences
- 12 - Other offences

Outcome Codes

- A1 - No further instructions received from client
- B1 - Change of solicitor
- C1 - Client not a suspect/defendant on a criminal charge
- D1 - No further action to be taken
- E1 - Client released following warning/reprimand/caution
- F1 - Client charged with/summonsed for a criminal offence
- A2 - Arrest warrant issued/adjourned indefinitely
- B2 - Change of Solicitor
- C2 - Representation order withdrawn
- D2 - Acquitted at trial of all contested matters
- E2 - Convicted at trial of some contested matters but acquitted of other contested matters
- F2 - Convicted at trial of all contested matters
- G2 - Proceedings discontinued where the matter has not been listed for trial
- H2 - Proceedings discontinued where the matter has been listed for trial
- I2 - Guilty plea to all matters put where the matter has not been listed for trial
- J2 - Guilty plea to all matters put where the matter has been listed for trial
- K2 - Mix of guilty plea(s) and discontinuance or not guilty plea accepted where the matter has not been listed for trial
- L2 - Mix of guilty plea(s) and discontinuance where the matter has been listed for trial
- M2 - Committal and transfers for trial to Crown Court (election by client)
- N2 - Committal and transfers for trial to Crown Court (direction of the court)
- O2 - Committal proceedings that are discharged
- P2 - Extradition
- Z2 - Matter concluded on or before 16 May 2004 and reported on or after 17 May 2004

Rating Definitions

The ratings' definitions describe the work of the supplier as reviewed by the peer reviewer over a number of files. Similar concepts are applicable to individual files, although the wording of the definitions aims more to describe a range of work.

The criteria are marked on a sliding (in research terminology "Likert") scale (1–5), and, in some cases, with Yes/No. For each civil file peer reviewed, an overall assessment of quality is made with a 1–5 rating. For crime files, an overall rating of 1–5 is given for each stage of the case (Investigation Stage, Magistrates Court Stage and Crown Court Stage), followed by an overall assessment of quality for each file.

Following the review of a sample of files for a supplier, an overall rating (using the 1-5 rating) is given for the quality of legal advice and work.

The ratings are as follows:

- Excellence (1)
- Competence Plus (2)
- Threshold Competence (3)
- Below Competence (4)
- Failure in Performance (5)

Where a supplier's work is rated as Below Competence (4) or Failure in Performance (5), this indicates that the work falls below that required by Clause 3.2 of the General Contract¹⁷⁸ Standard Terms, which states that:

“You must perform all Contract Work and exercise your Devolved Powers in a timely manner and with all reasonable skill, care and diligence. You must perform your obligations to record and report data accurately. Your Claims must be true, accurate and reasonable.”

The definitions of the ratings are as follows:

Excellence (1)

Indicators of Excellence in the standard of work include:

- Clients' instructions are fully and appropriately recorded.
- Communication, advice and other work are tailored to each individual client's circumstances.
- Clients are all advised correctly and in full.
- All issues are progressed comprehensively, appropriately and efficiently.
- There is a demonstration of in-depth knowledge and appreciation of the wider context.
- There is excellent use of tactics and strategies, demonstrating skill and expertise, in an attempt to ensure the best outcomes for clients.
- The supplier adds value to their cases, taking a fully proactive approach.
- There are no areas for major improvement.

Competence Plus (2)

Indicators of Competence Plus in the standard of work include:

- Clients' instructions are appropriately recorded.
- Advice and work is tailored to individual client's circumstances.
- Clients are advised correctly and in full.
- Issues are progressed comprehensively, appropriately and efficiently.
- Tactics and strategies are employed to achieve the best outcomes for clients.
- The supplier adds value to cases and takes a proactive approach.

Threshold Competence (3)

Threshold Competence is the standard that meets that required by Clause 3.2 of the Contract Standard Terms.

Indicators of Threshold Competence in the standard of work include:

- Clients' instructions are appropriately recorded.
- There is adequate but limited communication with the client.
- The advice and work is adequate although it may not always be extensive and may not deal with other linked issues other than the presenting issue.
- There may be areas that the supplier will need to address in order to progress towards Competence Plus (2) or Excellence (1).

Below Competence (4)

Peer review demonstrates that contract work has been conducted below the standard which clients are reasonably entitled to expect from a solicitor, and in breach of

Clause 3.2 of the Contract Standard Terms.

Indicators of Below Competence in the standard of work include:

- Information is not being recorded or reported accurately.
- Communication with the client is sometimes of poor quality.
- The advice and other work is inadequate.
- Some cases are not being conducted with reasonable skill, care and diligence.
- The timeliness of the communication, the advice or other work is sometimes inadequate.
- There are lapses below the required standard.

Failure in Performance (5)

Peer review demonstrates that contract work has been conducted substantially below the standard which clients are reasonably entitled to expect from a solicitor and substantially below that required by Clause 3.2 of the Contract Standard Terms (a fundamental breach as described in the contract). Additionally, there has been at least one major or complete failure to conduct work to this standard.

Indicators of Failure in Performance in the standard of work include:

- Information is not being recorded or reported accurately.
- Communication with clients is often of poor quality.
- Cases in general are not being conducted with reasonable skill, care and diligence.
- The timeliness of the communication, the advice or work is often inadequate.
- There is a detrimental service to clients, or there is no meaningful service at all, or there is a service that leads to potential prejudice for the client.

Additional notes

The matters set out in the ratings definitions above are examples of the standard of work they describe. Peer reviewers may take other causes of the failures in the work into account in order to determine the quality of advice and work evidenced by the peer review. For example supervision and file review (required as part of the Specialist Quality Mark (SQM)) are designed to prevent the provision of poor quality of advice and legal work, as evidenced by a rating of Below Competence (4) or Failure in Performance (5). The award of a rating of Below Competence (4) and Failure in Performance (5) suggest that supervision processes are not in effective operation.

The indicators outlined by the bullet points for each rating are indicative only. Each file is unlikely to evidence all the indicators and the peer reviewer is not restricted in the way he/she assesses the file. The indicators are provided to develop an understanding of each rating and how one rating differs from another. Peer reviewers

are able to use the experience of running their own cases and supervising the cases of others to assess what is in a case file and what may be.

Ratings of Excellence (1), Competence Plus (2) and Threshold Competence (3) indicate that a supplier is meeting or exceeding the requirements of Clause 3.2 of the Contract Standard Terms, whilst ratings of Below Competence (4) and Failure in Performance (5) breach this clause.

Making a Judgement on Quality

Following the assessment of 15 files in a category of law, the peer reviewer prepares a quality assessment report. This report details all the key findings extracted from the individual files, with particular emphasis on trends and patterns identified across the sample. The peer reviewer will consider all the findings and all pertinent information, as evidenced from all the files in the sample and will determine an overall supplier rating, which is recorded on the final report.

The peer reviewer will not automatically arrive at the final rating simply by averaging the scores on the individual files, although in some instances the final rating is likely to be the equivalent of the average of the scores on those individual files. The essence of the peer review process is that reviewers use their skill, experience and training to inform the overall rating of the supplier from the trends and patterns they see on the individual files. The entire process and the management by IALS of areas such as consistency and training, ensures that the rating given by the reviewer is essentially the shared view of the entire panel of reviewers.

The peer reviewer does not employ any specific formula to arrive at the overall rating. The fundamental nature of peer review is that it is the judgement of an experienced practitioner. Again, it is important to emphasise that the rating given by the reviewer is essentially the shared view of the entire panel of reviewers. The peer review methodology and framework enables peer reviewers to make a judgement on how they think the work of a supplier is managed, supervised and ultimately produced as a result of seeing the work in a category of law on the individual files. Their function is to assess the overall quality of work in the organisation from the sample of files. For example, no one would wish any client to receive advice or legal work, which is Below Competence (4) or a Failure in Performance (5). Peer reviewers' overall ratings may be influenced by the extent and the causes of poorer work.

Appendix 5.1 Multivariate Analysis of Estimated Costs in Police Stations and Magistrates' Courts of PDS and Private Practice

As before, in order to make the comparison of costs between PDO and PP suppliers statistically robust, we need to compare costs for like claims. In particular, we should be comparing claims of equal complexity and for similar localities. The data available from SPOCC and CMS allows us to estimate the differences in costs between PDO and PP supplier cases (where the former are estimated using CMS-derived estimates, and the latter are the actual bills claimed). In addition, it is possible to control for the type of offence, the number of defendants and the number of claims made by each supplier (a proxy for supplier size). Finally, it could be argued that the geographic variation in police station or court procedures means we should control for differences at the local level.

Tables 1 and 2 below show the results from a multivariate regression analysis of the SPOCC/CMS data on the costs of investigation claims (using lower and upper rate assumptions respectively). In Tables 3 and 4, we present multiple regression analyses on the SPOCC/CMS data on the costs of magistrate claims cases (again, using lower and upper rate assumptions respectively). The independent variables in each case are the number of defendants, whether the claim is for a youth or duty solicitor case, supplier size (as measured by the number of claims made), and the type of offence (11 indicator variables). In addition, the investigation claim cost regressions control for the location of the police station (704 indicator variables), and the magistrate court claim cost regressions control for the location of the court itself (297 indicator variables); the coefficients labelled Birmingham, Liverpool, Middlesbrough, Swansea, Cheltenham and Pontypridd show the size of the cost differences (in £) for each of these PDOs compared with private suppliers, and the associated (robust) t-statistics show the statistical significance of these differences.

The results strongly support the existence of very significant differences in costs between PDOs and private suppliers, using the CMS-derived estimates of PD costs. It is immediately evident that, after controlling for case complexity and location, costs were found to be significantly higher in all PDOs by comparison with PP claims. This was true for both investigation claims and magistrate court claims. The costs per investigation claim were between £152 and £216 higher (depending on the particular PDO) than in private practice, even using the lower rate assumptions. The costs per magistrate court claim were between £74 and £349 higher (again depending on the particular PDO) than in private practice, even using the lower rate assumptions.

On average, PDO investigations are predicted to cost between 71% and 93% more than the predicted PP average (£240.83). PDO proceedings are predicted to cost between 41% and 58% more than the predicted PP average (£450.42). The reasons for the higher cost per case in PDOs could in fact be:

1. the PDOs have not done enough hours in total, so our calculation of the mean hourly cost is relatively high due to undercapacity by comparison with PPs
2. the PDOs are doing too much work on each case relative to PPs, so their total costs are too high relative to PPs even when working at full capacity
3. the PDOs are paying more for each hour, so their total costs are too high relative to PPs even when working at full capacity and with the same time/case

So, a higher cost per case could be due to low caseload (1) or high time per case (2) or high hourly costs (3) or a combination of these in varying proportions.

Table 1: Total costs and disbursements (lower rate) for investigation claims (retained clients only), controlling for police station identity

Linear regression, absorbing indicators
 = 132699
 = 364.48
 = 0.0000
 = 0.1813
 = 0.1766
 = 163.42

Number of obs
 F(21,131942)
 Prob > F
 R-squared
 Adj R-squared
 Root MSE

	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]
totalowc					
noofdefe	.9207112	1.243163	0.74	0.459	-1.515865
you2	-4.100781	1.452557	-2.82	0.005	-6.947766
dut2	48.98787	1.232415	39.75	0.000	46.57236
sumsup	-.0013297	.0002485	-5.35	0.000	-.0018168
off2	302.8586	14.18873	21.35	0.000	275.0489
off3	93.28766	3.398177	27.45	0.000	86.6273
off4	74.64233	2.681023	27.84	0.000	69.38758
off5	3.079934	1.616575	1.91	0.057	-.0885243
off6	-34.66192	1.770699	-19.58	0.000	-38.13246
off7	-30.73491	1.190992	-25.81	0.000	-33.06923
off8	38.58979	3.250703	11.87	0.000	32.21847
off9	-35.76304	1.788989	-19.99	0.000	-39.26942
off10	8.329453	2.15935	3.86	0.000	4.097166
off11	-51.85667	1.677645	-30.91	0.000	-55.14483
off12	-38.47812	2.005649	-19.18	0.000	-42.40916
bham	151.6485	16.5767	9.15	0.000	119.1585
lpool	172.9698	16.11369	10.73	0.000	141.3872
mboro	216.2505	11.73629	18.43	0.000	193.2476

swnsea		176.9116	23.40861	7.56	0.000	131.0312
222.7921						
chelt		157.5261	12.56683	12.54	0.000	132.8953
182.1568						
ponty		195.9017	19.05391	10.28	0.000	158.5564
233.247						
_cons		236.3901	1.793164	131.83	0.000	232.8756
239.9047						
-----+-----						

stat		absorbed				(736
categories)						

Table 2: Total costs and disbursements (upper rate) for investigation claims (retained clients only), controlling for police station identity

Linear regression, absorbing indicators
 = 132699
 = 365.57
 = 0.0000
 = 0.1889
 = 0.1843
 = 165.77

Number of obs
 F(21,131942)
 Prob > F
 R-squared
 Adj R-squared
 Root MSE

	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]
totalupp					
noofdefe	.9242834	1.254629	0.74	0.461	-1.534768
you2	-4.056824	1.457474	-2.78	0.005	-6.913447
dut2	48.99408	1.256181	39.00	0.000	46.53199
sumsup	-.001306	.0002492	-5.24	0.000	-.0017944
off2	304.4928	14.55465	20.92	0.000	275.9659
off3	93.8329	3.44086	27.27	0.000	87.08888
off4	74.75294	2.693331	27.75	0.000	69.47406
off5	2.975625	1.638879	1.82	0.069	-.2365473
off6	-34.98075	1.796542	-19.47	0.000	-38.50194
off7	-30.90627	1.210355	-25.53	0.000	-33.27854
off8	38.79976	3.285031	11.81	0.000	32.36115
off9	-36.10261	1.809805	-19.95	0.000	-39.64979
off10	8.259278	2.191926	3.77	0.000	3.963143
off11	-52.07917	1.706233	-30.52	0.000	-55.42335
off12	-38.58584	2.035477	-18.96	0.000	-42.57534
bham	216.8382	19.00845	11.41	0.000	179.582
lpool	215.932	17.85577	12.09	0.000	180.935
mboro	277.4441	13.50429	20.54	0.000	250.9759

swnsea		226.9606	26.16549	8.67	0.000	175.6768
278.2445						
chelt		204.6541	14.27697	14.33	0.000	176.6715
232.6367						
ponty		241.4765	21.24418	11.37	0.000	199.8383
283.1147						
_cons		236.3844	1.811315	130.50	0.000	232.8342
239.9345						
-----+-----						

stat		absorbed				(736
categories)						

Table 3: Total costs and disbursements (lower rate) for magistrate court claims (retained clients only), controlling for court identity

Linear regression, absorbing indicators
 = 153413
 = 207.68
 = 0.0000
 = 0.0708
 = 0.0689
 = 491.29

Number of obs
 F(21,153095)
 Prob > F
 R-squared
 Adj R-squared
 Root MSE

lowallre Interval]	Coef.	Robust Std. Err.	t	P> t	[95% Conf.
noofdefe 152.6832	113.2037	20.14279	5.62	0.000	73.72427
you2 69.62478	61.29849	4.248152	14.43	0.000	52.9722
dut2 -93.97648	-101.9016	4.043494	-25.20	0.000	-109.8268
sumsup -.0050091	-.0062723	.0006445	-9.73	0.000	-.0075355
off2 223.3344	120.1696	52.63565	2.28	0.022	17.00478
off3 148.8127	111.0444	19.26975	5.76	0.000	73.27609
off4 94.96801	68.26209	13.62561	5.01	0.000	41.55617
off5 -72.8113	-86.03962	6.749211	-12.75	0.000	-99.26793
off6 -121.783	-131.1286	4.768229	-27.50	0.000	-140.4743
off7 -160.2816	-167.2688	3.564939	-46.92	0.000	-174.256
off8 -47.38664	-76.99614	15.10705	-5.10	0.000	-106.6056
off9 -88.14316	-98.06619	5.06282	-19.37	0.000	-107.9892
off10 -143.4912	-153.3359	5.022874	-30.53	0.000	-163.1806
off11 -137.0433	-144.3336	3.719583	-38.80	0.000	-151.6239
off12 -179.6037	-189.7153	5.158989	-36.77	0.000	-199.8268
bham 419.8742	348.9416	36.19048	9.64	0.000	278.009
lpool 109.8245	73.82933	18.3651	4.02	0.000	37.83411
mboro 293.7874	239.7524	27.56919	8.70	0.000	185.7173
swnsea 280.5925	201.9447	40.12684	5.03	0.000	123.2969

371.2318	chelt	306.0081	33.27776	9.20	0.000	240.7844
292.6333	ponty	218.8503	37.64477	5.81	0.000	145.0674
492.9517	_cons	451.4592	21.16986	21.33	0.000	409.9667

	cort	absorbed				(297
	categories)					

Table 4: Total costs and disbursements (upper rate) for magistrate court claims (retained clients only), controlling for court identity

Linear regression, absorbing indicators
 = 153413
 = 213.66
 = 0.0000
 = 0.0730
 = 0.0711
 = 492.75

Number of obs
 F(21,153095)
 Prob > F
 R-squared
 Adj R-squared
 Root MSE

upperall Interval]	Coef.	Robust Std. Err.	t	P> t	[95% Conf.
noofdefe 152.7006	113.2117	20.14763	5.62	0.000	73.72274
you2 69.68672	61.34204	4.257537	14.41	0.000	52.99735
dut2 -94.05182	-102.0492	4.080352	-25.01	0.000	-110.0466
sumsup -.0049901	-.006254	.0006448	-9.70	0.000	-.0075178
off2 223.3696	120.1674	52.65473	2.28	0.022	16.96523
off3 148.7476	110.9321	19.2938	5.75	0.000	73.11667
off4 95.0724	68.2998	13.65963	5.00	0.000	41.5272
off5 -72.94101	-86.19824	6.763963	-12.74	0.000	-99.45547
off6 -122.3744	-131.7641	4.790692	-27.50	0.000	-141.1537
off7 -160.7382	-167.7527	3.57884	-46.87	0.000	-174.7671
off8 -47.49075	-77.12711	15.12075	-5.10	0.000	-106.7635
off9 -88.59794	-98.55665	5.081031	-19.40	0.000	-108.5154
off10 -143.6977	-153.6148	5.05976	-30.36	0.000	-163.5318
off11 -137.5024	-144.8202	3.733621	-38.79	0.000	-152.138
off12 -180.1526	-190.2935	5.174004	-36.78	0.000	-200.4345
bham 557.7932	476.4398	41.50731	11.48	0.000	395.0863
lpool 162.5481	123.149	20.10178	6.13	0.000	83.74996
mboro 388.5175	328.0105	30.87123	10.63	0.000	267.5035
swnsea 357.0327	270.6754	44.06034	6.14	0.000	184.318

chelt		390.6727	37.27985	10.48	0.000	317.605
463.7405						
ponty		283.2761	41.10572	6.89	0.000	202.7097
363.8424						
_cons		451.7592	21.17647	21.33	0.000	410.2537
493.2647						

cort		absorbed				(297
categories)						

Appendix 5.2 Multivariate Analysis of PDS Notional and Private Practice Costs as Recorded on SPOCC

In Tables 1 and 2, we present multiple regression analyses of profit costs reported in SPOCC. While these are notional profit costs in the case of the PDOs, it seems likely that they will be based on the PDO records of time spent on each case, and may therefore be interpreted as proxies for such.

The regressions are estimated using data from all claims paid in the comparator regions. The independent variables in each case are the number of defendants, whether the claim is for a youth or duty solicitor case, supplier size (as measured by the number of claims made), and type of offence (11 indicator variables). In addition each regression controls for the location of the local police station (for investigation claims in Table 1) or the court (for proceedings claims in Table 2). The coefficients labelled Birmingham, Liverpool, Middlesbrough, Swansea, Cheltenham and Pontypridd show the size of the profit cost differences for each of these PDOs compared with private suppliers, and the associated (robust) t-statistics show the statistical significance of these differences¹⁷⁹.

The results can be summarised as follows:

1. after controlling for case complexity and location, *the reported profit costs* at the investigation stage was significantly lower relative to private supplier cases in two of the PDOs [Birmingham and Liverpool], significantly higher relative to private supplier cases in one [Middlesbrough], and no different in the remaining two [Table 1].
2. after controlling for case complexity and location, *the reported profit costs* at the proceedings stage was significantly lower relative to private supplier cases in all but one of the PDOs, with Cheltenham being no different to private supplier cases [Table 2]. The lowest reported profit costs amongst PDOs were observed in Birmingham, Liverpool and Swansea.

¹⁷⁹ t-statistics are calculated using standard errors which are robust to heteroskedasticity. Without this correction estimates may be inefficient.

Table 1: Regression of reported profit costs in relation to PDO status controlling for offence type and police station (all investigation claims in comparator regions where solicitor was retained throughout)

```

Regression with robust standard errors
= 133513
= 318.55
= 0.0000
= 0.1400
= 0.1351
= 117.76

Number of obs
F( 21,132753)
Prob > F
R-squared
Adj R-squared
Root MSE

```

profitco Interval]	Coef.	Robust Std. Err.	t	P> t	[95% Conf.
noofdefe 5.506758	3.870471	.8348482	4.64	0.000	2.234184
you2 -2.535012	-4.597069	1.05208	-4.37	0.000	-6.659127
dut2 21.38524	19.75839	.8300294	23.80	0.000	18.13155
sumsup .0013079	.0009574	.0001788	5.35	0.000	.0006069
off2 254.2446	234.3347	10.15822	23.07	0.000	214.4247
off3 82.22941	77.25845	2.536228	30.46	0.000	72.28749
off4 59.22546	55.34865	1.977983	27.98	0.000	51.47184
off5 5.534611	3.260904	1.160065	2.81	0.005	.9871969
off6 -24.25234	-26.90058	1.351157	-19.91	0.000	-29.54882
off7 -23.02032	-24.65033	.8316433	-29.64	0.000	-26.28033
off8 30.92814	26.3235	2.349328	11.20	0.000	21.71886
off9 -23.00765	-25.49266	1.267874	-20.11	0.000	-27.97767
off10 9.265731	6.228633	1.549554	4.02	0.000	3.191535
off11 -37.72112	-39.95532	1.139905	-35.05	0.000	-42.18951
off12 -25.96647	-28.81507	1.453382	-19.83	0.000	-31.66368
bham -20.53297	-28.17609	3.899589	-7.23	0.000	-35.81922
lpool -9.77767	-19.19755	4.806103	-3.99	0.000	-28.61742

22.70675	mboro		15.40758	3.724101	4.14	0.000	8.108413
21.2941	swnsea		6.838652	7.375295	0.93	0.354	-7.616792
7.871289	chelt		-.1230454	4.07878	-0.03	0.976	-8.117379
22.53839	ponty		8.08559	7.373948	1.10	0.273	-6.367215
170.3727	_cons		167.9729	1.224422	137.19	0.000	165.573
-----+-----							

	stat		absorbed				(739
	categories)						

Table 2: Regression of reported profit costs in relation to PDO status controlling for offence type and police station (all proceedings claims in comparator regions where solicitor was retained throughout)

Regression with robust standard errors
 = 153413
 = 202.71
 = 0.0000
 = 0.0559
 = 0.0540
 = 414.9

Number of obs
 F(21,153095)
 Prob > F
 R-squared
 Adj R-squared
 Root MSE

profitco	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]
noofdefe	100.7205	18.31201	5.50	0.000	64.82937
136.6117					
you2	56.60525	3.707992	15.27	0.000	49.33766
63.87284					
dut2	-74.77589	3.161414	-23.65	0.000	-80.9722
-68.57958					
sumsup	-.0005884	.0005478	-1.07	0.283	-.0016622
.0004853					
off2	96.13103	47.77744	2.01	0.044	2.48823
189.7738					
off3	93.63549	16.87551	5.55	0.000	60.55983
126.7111					
off4	41.93081	11.69979	3.58	0.000	18.99947
64.86215					
off5	-94.19301	3.582418	-26.29	0.000	-101.2145
-87.17154					
off6	-106.9741	3.906215	-27.39	0.000	-114.6302
-99.31795					
off7	-145.0993	2.986503	-48.59	0.000	-150.9528
-139.2458					
off8	-57.29152	14.58742	-3.93	0.000	-85.88257
-28.70047					
off9	-76.51861	4.405098	-17.37	0.000	-85.15252
-67.88471					
off10	-131.0481	4.11656	-31.83	0.000	-139.1165
-122.9797					
off11	-126.1798	3.078592	-40.99	0.000	-132.2138
-120.1458					
off12	-150.1535	4.591963	-32.70	0.000	-159.1537
-141.1534					
bham	-72.93727	11.5085	-6.34	0.000	-95.49369
-50.38085					
lpool	-109.4245	6.695541	-16.34	0.000	-122.5476
-96.30136					

mboro		-38.49956	14.82681	-2.60	0.009	-67.55981
-9.439311						
swnsea		-67.31873	15.09281	-4.46	0.000	-96.90034
-37.73713						
chelt		8.872488	12.3741	0.72	0.473	-15.38049
33.12547						
ponty		-58.4402	14.52338	-4.02	0.000	-86.90573
-29.97467						
_cons		344.9621	19.19812	17.97	0.000	307.3342
382.59						

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cort | absorbed (297
categories)

Appendix 5.3 Regression Analysis of Estimated PDS and Private Practice Crown Court Costs

Table 1: Crown court costs (lower) in relation to offence type and PDO indicator [costs capped at £200,000]

Linear regression, absorbing indicators
 = 35567
 = 138.37
 = 0.0000
 = 0.1170
 = 0.1162
 = 9582.1

Number of obs
 F(7, 35533)
 Prob > F
 R-squared
 Adj R-squared
 Root MSE

lowercos Interval]	Coef.	Robust Std. Err.	t	P> t	[95% Conf. Interval]
Homicide 28765.7	25656.07	1586.525	16.17	0.000	22546.43
Violence -1225.669	-1764.921	275.124	-6.41	0.000	-2304.172
Sexual 1701.576	1030.443	342.4095	3.01	0.003	359.3099
Burglary -2645.769	-3185.616	275.4281	-11.57	0.000	-3725.464
Misc -1526.563	-2087.973	286.4293	-7.29	0.000	-2649.384
Pub justice -1885.671	-2547.805	337.8185	-7.54	0.000	-3209.94
PDO -444.2933	-906.8524	235.9959	-3.84	0.000	-1369.412
_cons 5168.344	4641.226	268.9332	17.26	0.000	4114.109
cort categories)	absorbed				(27

Table 2: Crown court costs (upper) in relation to offence type and PDO indicator
[costs capped at £200,000]

Linear regression, absorbing indicators
 = 35567
 = 138.66
 = 0.0000
 = 0.1173
 = 0.1165
 = 9584.7

Number of obs
 F(7, 35533)
 Prob > F
 R-squared
 Adj R-squared
 Root MSE

uppercos Interval]	Coef.	Robust Std. Err.	t	P> t	[95% Conf.
Homicide 28805.81	25693.71	1587.783	16.18	0.000	22581.6
Violence -1225.133	-1764.404	275.1336	-6.41	0.000	-2303.674
Sexual 1702.918	1031.746	342.429	3.01	0.003	360.5749
Burglary -2646.595	-3186.463	275.4384	-11.57	0.000	-3726.331
Misc -1526.408	-2087.856	286.4487	-7.29	0.000	-2649.305
Pub justice -1886.166	-2548.323	337.8299	-7.54	0.000	-3210.48
PDO -98.20625	-605.2227	258.6778	-2.34	0.019	-1112.239
_cons 5167.875	4640.739	268.9427	17.26	0.000	4113.603
cort categories)	absorbed				(27