

Methods for Researching and Evaluating the Public Defender Service

by

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1. INTRODUCTION

1.1 This paper has been produced by the team of independent researchers commissioned by the Legal Services Commission (LSC) to monitor and evaluate the Public Defender Service (PDS) in England and Wales. It sets out our conclusions on how best the new service can be evaluated, and in particular how effective comparisons can be drawn between the work of salaried public defenders and LSC contracted criminal defence practitioners. This follows an extensive consultation carried out by the researchers with various legal professional bodies, criminal justice agencies and socio-legal researchers. We received written comments from practitioners and representative bodies and held a series of meetings with groups of private criminal defence practitioners in each of localities in England and Wales where pilot public defender offices (PDOs) have been established. The paper begins by briefly describing the objectives of the Public Defender Service, the work that has already been undertaken in establishing the pilot PDOs, and a general outline of the research. We then set out in detail our proposed research methodology, taking account of the responses received to our consultation paper.¹

1.2 It is not usual for researchers to consult on the methods they intend to use in their work. Normally such matters are left to the researchers, as the supposed technical experts, to be agreed with the organisations funding their work. We wanted to consult for a number of reasons. First, there is very little consensus within the research literature on how such services should be evaluated. Secondly, the public defender pilot has raised amongst some, within the legal professions and more widely, a number of sensitivities and indeed suspicions, and there was a risk that these would spill over onto the research unless some attempt was made at the outset to consult on the evaluative methods being employed. Thirdly, the Government and Legal Services Commission have agreed that the research on the PDS should be allowed to run for four years. We are conscious of the level of resources this will require, and this made it all the more important that the final outcome of the research was not compromised by disputes over the methodology employed.

1.3 As noted above, 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. There are a number of complex questions as to how this comparison can best be carried out. We also recognise that, 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. We are also acutely conscious of the fact that the conditions under which criminal defence solicitors operate have recently been subjected to a major change, with the introduction in April 2001 of a national system for contracting for criminal legal aid services. We have not been commissioned to carry out a full-scale evaluation of the impact of criminal contracting, yet comparisons between public defenders and firms operating under contracts will require an awareness of the new conditions under which these firms are now working.

¹ For convenience, our summary of the consultation responses and conclusions we have drawn are shown in bold in section 4 of this paper.

1.4 The Government and Legal Services Commission have stated consistently that it is not their intention to see a public defender service entirely replace private firms. Rather, both are committed to the maintenance of a 'mixed' system of provision combining the best features of salaried and contracted services. Nevertheless, some private practitioners regard the PDS with a degree of suspicion, if nothing else as a source of increased competition in those localities where PDOs have been established. We very much hope that these suspicions will not adversely affect the conduct of our research. Certainly, we have found in the past (and in our recent consultations) a high degree of openness amongst criminal defence practitioners to the work of independent researchers and hope to maintain similar levels of co-operation in this new study.

1.5 Part of our purpose behind consulting on our methods has therefore been to ensure that the research causes a minimum of inconvenience to the private criminal defence practitioners with whom we are seeking to compare the work of public defenders. The Legal Services Commission's general criminal contract contains important provisions requiring contractors to co-operate with research. In some instances we are suggesting ways in which these requirements might be varied both to expedite our research and to minimise the inconvenience caused to practitioners. But we also genuinely hope that private practitioners will want to assist in our evaluation of the PDS in other ways, precisely because they recognise the importance of sound comparative data to such an evaluation and, by implication, to the development of their own working relations with the Legal Services Commission and the Government.

1.6 As independent researchers we are fully committed to adopting methods that will be seen to be robust, transparent and reliable. We trust that the methods described in this paper will meet these objectives, although we also recognise that they will need to be adapted to meet changes in the development of the PDS, contracted criminal defence services, and the wider criminal justice system over the next four years. Any such changes will be made public.

2. CONTEXT OF THE RESEARCH

2.1 Publicly-funded criminal defence services in England and Wales have traditionally been provided under a ‘judicare’ model, through solicitors and barristers in private practice remunerated on a case-by-case basis. This has been true even of ‘duty solicitor’ services which, since their inception, have been administered through a national network of local schemes consisting of private solicitors taking it in turns to provide duty coverage for magistrates’ court and police stations. Since the mid-1990s, it has been the policy of successive Governments to overhaul the ‘judicare’ system, primarily by aiming to provide criminal defence services through private firms of solicitors operating under contracts. Such contracts were introduced nationally on 2 April 2001, with the result that only solicitors’ firms holding contracts (and therefore meeting minimum quality standards laid down by the LSC) are now able to undertake publicly funded criminal defence work. It is not intended that any single firm will have an exclusive, or monopoly, right to such services in any given geographical area. The first contracts cover police stations and magistrates’ courts (plus some specialist services for prisoners’ rights, Criminal Cases Review Commission cases, and High Court criminal work). It is intended that contracts will be extended to all Crown Court criminal legal aid, subject to the Government’s response to Lord Auld’s recommendations for the criminal courts.

2.2 The Government also began a public defender service (PDS) in May 2001, to work alongside contracted defence lawyers in a mixed system of delivery. Six public defender offices (PDOs) were due to be opened in the first phase. The first four opened in Swansea, Middlesbrough, Birmingham and Liverpool during 2001. Another PDO in Cheltenham opened in April 2002, and this is due to be followed by a further office in Pontypridd in South Wales. They will be evaluated over the four-year period by this research. Some key features of the new service include:

- The salaried service consists of individuals, both lawyers and others, employed directly by the LSC but within a separate structure devoted exclusively to the delivery of criminal defence services to members of the public. Alternative models, such as the LSC making grants to other bodies to develop salaried defence services, have not been included at the initial stage.
- There is a legal head, responsible for each PDO.
- Overall responsibility for the service within the LSC lies with the Head of the Criminal Defence Service. In addition there is a professional head of service (currently a highly experienced private criminal defence practitioner serving as a member of the Legal Services Commission on a part-time basis) who oversees the professional development and delivery of public defender services.
- Each PDO has been set up to provide from the outset a comprehensive service, extending from advice in police stations through to representation of clients in magistrates’ courts, the Crown Court, and on appeals. The latter involves them in providing direct advocacy services including higher courts advocacy where appropriate, as well as instructing specialist barrister and solicitor advocates. There is also the potential to develop, within the context of a comprehensive service, specialist expertise in some areas (such as youth court work).

- Under the terms of the Access to Justice Act 1999, clients cannot be required to use the public defender service (as occurred initially under a system of ‘direction’ in the Scottish pilot public defender scheme). Public defenders have been given ‘slots’ on police station and court duty solicitor schemes in their areas in order to assist them in building up a client base. Although it would have been open to the LSC to give PDOs priority in such allocations, it was decided that they should only be assigned duty solicitor slots on a par with private practice firms. There will therefore be a ‘lead-in’ time before the public defender offices establish a sufficient client base to make meaningful comparisons with the services of private practice firms operating under contracts.
- PDOs are required, at a minimum, to meet the same quality standards as laid down for private practice defence firms operating under contracts. An important objective of the PDS is to assist in the development of improved quality standards and assurance mechanisms for the Criminal Defence Service as a whole.²
- Public defenders are subject to a Code of Conduct which the LSC has been required to adopt under the Access to Justice Act 1999.³ This includes provisions intended to guarantee the integrity and independence of those employed within the service and to avoid their being required to undertake excessive caseloads.

² The Criminal Defence Service (CDS) is currently one of two arms of the Legal Services Commission (LSC) and consists of private firms with criminal defence contracts and the PDS.

³ *Code of Conduct for Employees of the Legal Services Commission who provide services as part of the Criminal Defence Service*, London, LSC, 2001.

3. OBJECTIVE OF THE RESEARCH

3.1 A team of independent researchers has been commissioned by the Legal Services Commission to carry out an evaluation of the pilot public defender service in England and Wales. The team consists of Professor Lee Bridges of the Legal Research Institute at the University of Warwick; Professor Avrom Sherr of the Institute of Advanced Legal Studies in London; Professor Ed Cape of the University of the West of England in Bristol, and Mr. Richard Moorhead of Cardiff University. All have had considerable experience of conducting research on legal aid and/or criminal defence services, both for the Legal Services Commission and for the legal professional bodies and charitable foundations. Three members of the research team are qualified as solicitors. A fifth member, Anona Mitchell, joined as a full-time researcher in April 2002.

3.2 The aims of the research can be summarised as:

- 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**.
- To assist the **Government** in deciding whether the PDS should form part of future service provision.
- **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.

3.3 These specific objectives will aid a general evaluation of whether a system of delivering criminal defence services based on a mixture of salaried and contracted services would perform better than one based solely on contracted private practice providers and how any benefits may be maximised. Predicted benefits of a mixed approach include improved quality; better value for money; a closer alignment of objectives between the Criminal

Defence Service (CDS), as purchaser of services, and providers; availability of more comprehensive management information on service provision; pressure on private practice to improve quality and control costs; and flexibility in ensuring access to services. Criticisms made of salaried services in other jurisdictions (particularly where they have a monopoly of service provision) include a perceived lack of independence; system pressure by the funding body; lack of independence of mind among individual salaried defence staff; interference with the conduct of individual cases; lack of choice of representation for clients; under-funding and potential case overload; poorer quality; higher rates of guilty pleas, worse outcomes and lower client satisfaction; and restrictions on physical access to services.

4. DETAILS OF THE RESEARCH AND PROPOSED METHODS

A. Phasing of research

4.1 The research team has proposed to the Legal Services Commission that the evaluation of the public defender service should be carried out in phases, as the caseload of the service develops. As part of this phasing, the initial stages of the research have been used to pilot and consult on the methods to be employed in the research. This has also allowed a period for the PDOs to begin working and, crucially, to build up a client base and caseload, before detailed monitoring and analysis of their work begins. The first PDOs opened in Liverpool, Middlesbrough and Swansea in May 2001, followed by Birmingham in July 2001. Another office in Cheltenham opened in April 2002, and a further PDO is due to open in Pontypridd in South Wales later in the year. During their initial phase of operation, the PDOs have been maintaining detailed records of their work in accordance with the requirements of the researchers, and the computerised PDS Case Management System (CMS) has now been installed.

4.2 We plan to focus the initial phase of analysis on the work of the PDOs in providing pre-charge legal advice and assistance, including police station work. This parallels the work that is covered under the 'Investigation' stage of criminal defence contracts with private practitioners. It is anticipated that PDOs are likely to build up a clientele and to complete cases covering pre-charge advice and assistance more quickly than in other aspects of criminal casework. The aim will be to analyse data on such cases from June 2002 onwards, beginning with the first four PDOs that were opened in 2001. We will include the fifth and sixth PDOs, not opened until 2002, later in the year.

4.3 A second phase of data collection will relate to the work of PDOs in relation to all aspects of preparation for and representation of defendants in magistrates' courts. This parallels the work that is covered under the 'Proceedings' stage of criminal defence contracts as currently structured (i.e. excluding Crown Court work). Data on the magistrates' court phase will be collected beginning in April 2003 (although it may include work undertaken before that date).

4.4 A third phase of the research will relate to the work of the PDOs in relation to Crown Court cases. Such work is not presently covered by criminal contracts with private criminal defence practitioners, as legal aid for Crown Court cases is still administered separately by the Lord Chancellor's Department. It is proposed to begin data collection in respect of Crown Court cases sometime after April 2003 (although again this may include work undertaken before this date) and to submit a report by September 2004.

4.5 Other aspects of the research, such as client surveys, will be carried out in similar phases, i.e. to cover the pre-charge, magistrates' court and Crown Court stages separately. However, in a parallel with this phased approach, there will be a number of more general elements of the research on which monitoring and evaluation will be continuous and on-going throughout the period of the pilot. In particular, we will keep under regular review the costs of the PDS; the overall caseload of PDOs in terms of broad case types and sources and types of client; staffing levels; and complaints about services and the operation of the Code of Conduct.

4.6 A final phase of the research will be to bring all the above work together in order to provide an overall evaluation of the work of the PDS, in order that Ministers and the LSC can make decisions about its future. In particular, we will want to highlight issues which may span the pre-charge, magistrates' court and Crown Court stages of criminal casework.

4.7 In our consultations, we found broad agreement that this phased approach to the research is the most realistic one, given the fact that the PDS is starting from scratch and requires time to build up a client base. However, we will reconsider the parameters of our case samples, particularly at the magistrates' court stage, so as to ensure that we are capable of comparing the PDS with private criminal defence firms in terms of the proportions of their cases being committed to the Crown Court. We will also keep the Crown Court caseload of the PDOs under review to see if it would be possible to begin this phase of the research at an earlier date. Finally, we will investigate the possibility, suggested by several consultees, of comparing PDOs with newly-established private criminal defence firms, which face similar problems in terms of building a client base.

B. Research Questions

4.8 The research team has identified a number of research questions, relating to the overall objectives of the research that will need to be addressed in the course of the evaluation.

4.8.1 Client recruitment and retention

How successful will PDOs be in recruiting and retaining clients? Not only will this have a bearing on the cost effectiveness of the PDS, especially in its early stages, but client retention (both during a particular case and for future cases) may be taken as evidence of client satisfaction with the quality and independence of the services provided.

4.8.2 Cost and cost effectiveness

This is one of the most important, but also most complex and difficult issues to be addressed in the research. It will involve a comparison of relative costs between the PDS with that of private practitioners delivering criminal defence services under contracts with the LSC.

The research team has identified two broad approaches to the assessment of costs. These are:

(a) *cost to the public purse*

The Government, through the CDS, is the ultimate funder of most criminal defence services, and it is therefore important for it to know the relative costs of providing such services under contracts with private practitioners or through salaried staff employed in PDOs. In this context, the cost of private practitioners is the price that the CDS pays for their services under contracts, rather than the costs to private practitioners in providing these services or the level of profit they derive from doing so. Assessing the costs of PDOs is likely to prove more complex, and we discuss a number of approaches to doing this below.

(b) *cost to the provider*

The Government has indicated that one of its objectives in establishing the PDS is to provide a basis for “benchmarking” the prices it pays to private practitioners under criminal defence contracts. This involves more than determining whether the price paid under contracts is more or less than the costs of the PDOs. For example, it could be that the PDOs will prove to be more expensive for certain types of case because they spend more time on them but provide a better quality or more effective service. On the other hand, PDOs might prove to be cheaper, and it will then be important to consider whether they are providing a better, similar or poorer quality of service.

In this respect, the ‘cost to the provider’ of PDO services will be the actual amounts paid by the LSC for the new service. However, the costs of service provision to private practitioners will be more difficult to determine. 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.

4.8.3 Types of case and patterns of case conduct

Costs of services cannot be analysed in isolation or separately from information on the types of clients and cases being dealt with, the ways these are handled by the service provider, and their outcomes. There may be significant differences in the types of clients and cases the PDOs attract when compared with private criminal defence contractors in their areas. Equally, even when dealing with similar types of case, the PDOs may handle them differently, because of the different funding system between them and private practice. The recently completed evaluation of the Scottish Public Defence Solicitors’ Office (PDSO) also showed significant differences in the pattern of case conduct and outcomes when compared with private criminal defence practitioners, with the PDSO having a somewhat higher guilty plea rate and also completing cases at an earlier stage in the court process, and private practitioners achieving a somewhat higher rate of acquittals.⁴ Other research from Canada suggests that public defenders have similar rates of conviction to private practice but achieve better sentence outcomes for their clients.⁵ A closely related factor will be the relative incidence of ‘cracked trials’ as between PDOs and private practice. The research will investigate all of the above issues.

4.8.4 Quality of service

One of the main criticisms made of public defenders in other jurisdictions is that they provide poorer quality services than private practitioners. PDOs in England and Wales are being required to meet the same quality standards as are required of private practitioners under

⁴ T. Goriely, et. al., *The Public Defence Solicitors’ Office in Edinburgh: An Independent Evaluation*, Edinburgh, Scottish Executive Central Research Unit, 2001.

⁵ P. L. Brantingham, *The Buranby, British Columbia Experimental Public Defender Project: An Evaluation*, Ottawa, Department of Justice, 1981.

contracts and will be subject to the same forms of audits by the CDS. The government has also indicated that it will look to the PDS as a base for developing additional quality standards for criminal defence work. It will therefore be important to subject the PDOs and comparative private practice firms to a rigorous assessment of the quality of their casework, and we propose to do this by adopting a number of methods (peer review, analysis of case outcomes, client satisfaction surveys, and interview with criminal justice practitioners) which can be ‘triangulated’ (compared) against each other to ensure robust and meaningful conclusions on quality

4.8.5 Independence

A particularly important aspect of quality is the extent to which PDOs operate independently and without improper pressure from the Legal Services Commission or the Government. Although this may be considered to be a particular issue in a situation where the CDS is the direct employer and overall funder of the service, they can also affect private practitioners through the operation of criminal defence contracts, commercial pressures and similar factors. Independence can be evaluated by examining the actual advice given to clients of both PDOs and private practitioners in specific cases, and their outcomes. In this respect, the research team has identified the process of advising on guilty pleas as one of particular significance. We will also wish to examine how independence may be affected by the overall management structures developed for the PDS and the relationship between PDS staff and the professional head of services, especially in the handling of complaints.

4.8.6 Caseloads and caseload standards

One mechanism developed in other jurisdictions to protect quality of salaried defence services has been caseload standards, and we would hope to use this research to advise the CDS on the need for caseload standards and, if applicable, the most appropriate standards to be adopted in this regard. The research should allow comprehensive information to be collected on the amount of time spent by different levels of PDS staff on specific types of case and with particular outcomes. However, care will need to be exercised in interpreting these data and in applying any findings arising from them to private practice. In particular, previous research has shown that case handling in private practice firms may be divided between various members of staff and that those staff may not be devoted exclusively to criminal work. These factors will need to be taken into account in deciding whether caseload standards, if appropriate, should be set for individual staff or for offices/firms as a whole.

4.8.7 Impact on pattern of supply

As noted previously, the PDS is intended by the Government to form part of a continuing system of ‘mixed delivery’ of criminal defence services. We will be interested in examining what impact PDOs may have on patterns of provision of criminal defence services in different local settings. How much of the local market for such service are the PDOs likely to capture and how will this affect the number and viability of alternative private practice providers? Is there any evidence of specialisation of PDOs in particular types of criminal defence work? Is there any evidence that PDOs have had an impact on the quality of criminal defence services within the locality?

4.8.8 Effectiveness and accountability of PDS management structures

The PDS is operating, perhaps much more than is commonplace with private criminal

defence practice, with a centralised management and support system, although with autonomy for individual PDO heads in matters relating to the conduct of cases. Does such a management structure introduce ‘economies of scale’ or, alternatively, inefficiencies? Can some services, such as training, be delivered more effectively through central provision or by each PDO operating on its own, and how does the cost of such training compare with private practice? Are there alternative management structures that would better serve the PDS in the longer term? Is there a need for a full-time professional head of service for the PDS?

4.8.9 Accessibility of service

It is important to assess how accessible PDOs are to different client groups within their areas, whether on physical, cultural or social grounds. Specific data will be collected to enable such monitoring to take place, but there may be an issue of how comparative data on private practice can be made available to the research.

4.9 In general, our consultations have supported the view that the above research issues are both appropriate and comprehensive. However, there was a great deal of concern expressed by private criminal defence practitioners that, whatever particular approach is adopted to cost comparisons between them and public defenders, all the costs associated with the latter should be taken fully into account. These should include ‘hidden advantages’ that the PDS might gain from being comprehensively funded from the public purse, which could mean that their staff will be required to spend less time on non-legal and non-client work, such as “fending off bankers”, than those in private practice.

A view shared by almost all the private practitioners taking part in the consultation was that PDOs and private criminal defence firms were not operating on “a level playing field.”⁶

They pointed to the advantages the PDS had had in terms of LSC management expertise and funding for recruitment, office accommodation, computer equipment and systems, and staffing. The latter, which in a number of PDOs had been based on the minimum staff levels regarded as necessary to provide a comprehensive, 24-hour a day service from within the resources of each office, was seen as being far more generous than a newly-established private criminal defence firm would have during its initial stages of operation. This in turn meant that, until the PDOs built up their clientele, their staff would have more time available to spend on individual cases, as well as being under less pressure to work long hours. The Government, in response to their own consultation, had acknowledged that there would be under-utilisation of staff in PDOs during their initial stages of operation.⁷

4.10 There are two specific lessons we have drawn from this aspect of our consultations. The first is to reinforce our intention, in any comparison between the PDS and private criminal defence firms, to take fully into account all the costs associated with the former. In this respect, we would wish to stress that comparisons will *not* be based, as some consultees feared, on the ‘mock claims’ being produced by the PDOs showing the amounts they might have claimed for particular cases if working

⁶ *Criminal Defence Service: Establishing a Salaried Defence Service – The Government’s conclusions following consultations*, Lord Chancellor’s Department, April 2001, p. 4.

⁷ *Ibid.*, p. 5.

under criminal defence contracts. Rather, the costs of the PDOs will be calculated on the basis of the total amount spent on them, both directly and indirectly, by the LSC. Indirect costs will include the support provided to them by the LSC centrally, such as the supply of computer equipment and expertise, recruitment, and management input. These actual costs will be divided between cases undertaken by the PDOs (probably based on the amount of time spent on each case) to arrive at an average cost per case, which can then be compared with the average amount claimed for similar types of case under CDS contracts by private firms in the same areas. Therefore, if PDOs complete fewer cases or devote more time to those cases than comparable private firms, this will be reflected in PDOs having higher average costs.

4.11 Secondly, a number of consultees expressed doubt about the feasibility of comparisons based on a “costs to the provider” approach as outlined above. This was felt by one legal professional body to be “an extremely difficult exercise” as there are “many costs at the level of providers that cannot be easily assigned to the provision on one particular service”. It was also pointed out that the researchers evaluating the Scottish PDSO had considered such an approach but abandoned it as unrealistic and concentrated on a “cost to the public purse” comparison. Private criminal defence firms noted that there were differences in the cost base of individual firms and inconsistencies in their approaches to cost accounting and recording. On the other hand, they generally expressed a willingness to cooperate with the researchers in an attempts to quantify their costs more systematically, not least because they believed that this analysis would show that they tended to be under funded for their work by the LSC.

4.12 Whilst acknowledging the conceptual and practical difficulties of a “cost to the provider” approach, we regard some comparison on these grounds as important if the Government’s objective of using the PDS as a benchmark for costing contracted services is to be evaluated. We would also not wish to pass up the opportunity of obtaining at least some information on the cost base of private criminal defence firms. We have therefore begun further pilot work on a confidential questionnaire to be circulated to private firms to obtain information on their costs, and we will discuss the results of this pilot with the LSC, legal professional bodies and practitioners to see how best to carry forward this aspect of the research.

4.13 Another factor arising from the consultation was that many criminal defence practitioners consider that they and their staff are working under intense pressure, and with long hours, and because of the financial constraints of their contracts are unable to undertake proper staff planning and expansion. This is regarded as a key point of difference between their practices and the PDS as it has been established under the pilot. In our view, this is all the more reason why a “cost to the provider” comparison between PDOs and private criminal defence firms should be attempted, and also for consideration of the applicability of case and/or workload standards for both the PDS and private practice.

4.15 The consultation also suggested that private criminal defence firms may have widely varying practices in terms of their record keeping on client retention and loyalty, and that this could pose difficulties for the research in obtaining comparable data on this point.

C. Research data sources

4.16 We have identified a number of potential sources of data on which to base an evaluation of the PDS and comparative analysis with private practice solicitors operating under criminal contracts. Some of these are existing data sets developed for the purposes of monitoring criminal contracts and/or the work of the PDOs, but most will involve the research team collecting information directly from case files, interviews, peer reviews, etc.

4.17 SPOCC (Statistical Package on Criminal Contracting)

4.17.1 SPOCC is the information system established by the CDS to monitor the work performed and costs under criminal contracts with private firms of solicitors. It basically records information off the forms on which contracted firms report the work which they have performed. One of the features of contracting is that suppliers are now required to report more limited information on work they have performed than was the case with the previous system of claiming cost on a case-by-case basis. Although PDOs are directly funded by the LSC, they are being required to complete the contract work report forms (in particular the CDS6) in order to provide a basis for comparison of their casework with private practice, and the resulting data are also being entered into SPOCC.

4.17.2 SPOCC records data in relation to cases, as defined by the rules for assigning Unique File Numbers (UFNs), in relation to two stages of casework: the *Investigation stage* and the *Proceedings stage*. We intend to use cases as defined by UFNs as a basic unit of analysis in our use of SPOCC data and in drawing case samples from private practice. We also propose to adopt the distinction between the Investigation and Proceedings stages, as this fits in well with our planned phasing of the research (see above). However, we have identified cases with multiple defendants as ones that do not fit in precisely with the system of assigning UFNs, and we will need to consider whether special steps should be taken to analyse and sample such cases separately from others. Further consideration may also need to be given to the methods for sampling Crown Court cases, which are not currently covered by criminal contracts and SPOCC.

4.17.3 The data available from SPOCC cover the following:

- Supplier reference (including PDOs)
- Unique File Number (UFN)
- Type of claim classified by various claim codes
- Outcome in terms of furthest point in Investigation or Proceedings to which case progressed (not actual outcome of proceedings)
- Offence classified according to broad categories (12) of offences
- Profit costs
- Disbursements
- Cost of travel time
- Cost of waiting time
- Date work on case at Investigation/Proceedings stage completed
- Number of suspects/defendants
- Police station/court attended
- Number of police station/court attendances
- Whether any work on case was conducted on a duty solicitor basis
- Whether any work on case related to Youth Court.

4.17.4 As well as being able to use these data to profile the work done by PDOs and specific private practice providers, it can also be analysed on a national, regional and local basis in order to compare the work of the PDS as a whole, or particular PDOs, with that of contracted providers as a group.

4.17.5 We have identified three main purposes for which we would use SPOCC data:

- It will provide the main source of information on the “cost to the public purse” of work done under criminal contracts. It will also give an indication of the costs to which PDOs would have been entitled if operating under the rules of contracting, which can then be compared with the actual cost incurred by the CDS in running the PDOs. **However, as noted above, this will not constitute the main basis for comparison of costs between the PDS and private firms.**
- It will provide overview data to compare PDO and private practice cases in terms of broad types of offences covered, types of work undertaken, outcomes and overall patterns of casework. As indicated above, it will be possible to draw such comparisons on a national, regional or local basis, although the latter is likely to provide the most meaningful findings on how PDO work patterns may vary from those of contracted suppliers.
- It will provide a basis for sampling case files from the PDOs and from private practice firms in the same localities for more detailed analysis. We discuss further below how we would intend to carry out such sampling.

4.17.5 Respondents to the consultation generally regarded the proposed uses of SPOCC as outlined above as appropriate. There was some concern over the limited information on cases available through SPOCC, and it was pointed out that such factors as volume of witnesses, exhibits, etc. would not be detailed on SPOCC, although they are important indicators of the relative weight of cases. However, it is precisely in order to take account of such factors that we are proposing to include within the research a detailed case file analysis of a sample of cases drawn from both PDOs and private criminal defence firms (see below). In this respect, SPOCC will be used only as a basis for identifying the cases and case files to be included in this more detailed analysis.

4.18 PDS Case Management System (CMS) and Cost Data

4.18.1 A new computerised case management system has been designed for the PDS in consultation with the researchers. As well as ensuring that data directly comparable to that being collected from private practice firms working under criminal contracts is recorded and transferred to SPOCC (see above), the CMS will provide much more detailed information than is available through SPOCC on the types of client being served by PDOs, the types of case they are handling, how these cases are being processed, and on specific case outcomes. It will also enable the researchers to obtain detailed information on the amounts of time and other items of work done on cases by different types of PDS staff and therefore to cost their services more precisely than will be possible through SPOCC data alone.

4.18.2 In this latter respect, the LSC is maintaining records on all costs being expended on the PDS, including those incurred centrally at various stages in setting up and running the

PDOs. In particular, the costs of central services (e.g. for management, budgeting, recruitment and training of staff) will be fully taken into account, as will the time of LSC staff in supporting the PDS and local PDOs. Of course, how such cost information will be analysed and evaluated raises a number of complex issues, which we address further in section D below.

4.19 Information from PDO and private practice case files

4.19.1 The research team does not consider that data from SPOCC and the PDS case management system will be sufficient to meet all the objectives of the research and that it will therefore be necessary to extract data directly from a sample of case files drawn both from the PDOs and from private practice firms in the same localities. In particular, SPOCC will not provide information on the amount of time spent by contracted firms on cases, nor very much detail on the nature of the clients being served and the processes and outcomes of cases. All of these are likely to be vital to any realistic comparisons with PDOs. Detailed file analysis will be used for the following purposes:

- To understand more fully the characteristics of clients and cases being handled by the respective services (inputs).
- To reach a better understanding of similarities and differences in patterns of case conduct between the respective services (processes).
- To examine case outcomes across the respective services in greater depth than will be possible through the limited data recorded on SPOCC (outcomes).

4.19.2 The use of case files for the above purposes raises a number of issues, which need to be considered. First, what basis of sampling should be used to select files from the PDOs and from private practice? Secondly, how can the files from private practice be accessed for the purposes of the research so as to cause a minimum of inconvenience to all concerned? Thirdly, what use would be made of the information drawn from these files, both in terms of analysis and in drawing further samples for the purposes of client surveys and peer reviews.

Basis of sampling

4.19.3 There are two general approaches that might be adopted to analysing differences between PDOs and private practice firms in their criminal caseloads and handling of cases. The first would be to select a random sample of cases from each sector and then to use standard statistical techniques (e.g. multiple regression analysis) in order to take account of variations in client and case types between them and to isolate and measure remaining differences in the nature and quality of services provided, case outcomes, and costs. Such an approach normally demands very large samples of cases and amounts of data to be collected.

4.19.4 A second approach would be to seek to draw from private practice a sample of cases which are similar in key respects to those handled by PDOs. If it were feasible to achieve exactly 'matching' samples in terms of client and case types (inputs), it would eliminate much of the need for large-scale data collection as outlined above. Rather, more selective data on key variables to do with case handling, outcomes and costs could be drawn from smaller samples of cases. However, for reasons discussed below, it is not realistic to seek to obtain exactly 'matching' samples of cases from both PDOs and private practice firms.

4.19.5 Our preferred sampling method would seek to combine these two approaches. We would first profile the cases being handled by the PDOs, in particular using SPOCC data on types of offence and claim and police stations/magistrates' courts attended. We would then plan to draw, from all cases reported by private practitioners in the same localities, 'structured' samples of cases displaying a similar profile in terms of offence and claim types and police stations/magistrates' court attended. However, this would not be a 'matching sample', as there are likely to remain significant differences between the PDO and private practice cases in terms of the types of clients served and cases dealt with, and data on these would need to be collected and subjected to statistical analysis in order to isolate and measure 'real' differences between the two sectors in respect of their case handling, outcomes and costs.

4.19.6 As noted earlier, the research would be carried out in a number of phases, and we would intend to draw case samples from PDOs and private practice at each of these stages. A number of factors are likely to influence the size of the samples, but our initial estimate is that we would require in the region of 300 files from PDOs (i.e. 50/60 files from each of five or six PDOs), and a similar number of files drawn from private practice, at each of the pre-charge, magistrates' court and Crown Court stages of the research.

4.19.7 It is important to emphasise that the private practice files to be sampled would be drawn from a number of firms within each of the local areas served by PDOs. The research team has concluded that, given the important influence local police and court practices can have on the conduct of criminal defence work, detailed comparisons between the PDO and private practice cases are best carried out on a local basis, rather than through regional or national samples. Equally, it is not considered appropriate to concentrate on particular firms as comparators for the PDOs. Rather, the aim will be to draw samples from across the full range of private practice firms in each of the areas so as to reflect the work they undertake on behalf of clients within the same police stations/magistrates' courts as are routinely served by the PDOs.

Access to files

4.19.8 One advantage of the above approach to sampling is that it should limit the number of files from any one firm of solicitors that we would wish to examine. We have given a good deal of thought to the most convenient means of obtaining access to files for the purposes of the research. Under their contracts with the LSC, solicitors are under an obligation to cooperate with researchers acting on behalf of the LSC and in particular to permit such researchers to have access to their premises in order to review client files.⁸ However, we recognise that attempting to visit and make use of the premises of a number of solicitors' firms within each of the localities served by a PDO, and at each of the three phases of the research, could prove both time-consuming and highly inconvenient to busy practitioners. Of course, it is recognised that there may be circumstances in which this would be the only practicable means of gaining access to the files.

4.19.9 An alternative would be to utilise the arrangements under which firms send case files to the Regional Offices of the Legal Services Commission for the purposes of carrying out audits under the criminal contract. Letters would be sent in advance to the firms indicating,

⁸ *Criminal Defence Service General Criminal Contract*, Contract Standard Terms, Clause 3.10.

by way of Unique File Numbers, the case files that would be required and asking for them to be posted in the normal way to the local LSC office. The researchers would then access the files at the LSC office, extract the necessary data, and the complete files would be returned to the firms by the LSC. While the contract does not oblige firms to send files purely for research purposes, we would hope that most firms would see the advantage in these arrangements and agree to cooperate with them.

Use of data from files

4.19.10 The researchers would be bound by requirements, as set out in the contract,⁹ to maintain the confidentiality of information gained from client files. In particular, the names of clients and of the solicitors' firms involved would not be revealed to the LSC or any other body or in any report or publication arising from the research. Similarly, all data collected from the files would only be used in a way that fully protects the identities of both clients and their legal representatives. This will primarily be in the form of statistical analyses.

4.19.11 At the same time, we would hope to survey the views of at least some of the clients as part of our work on client satisfaction (see below). The criminal contract provides that firms must permit the LSC to carry out surveys of clients and provide such information as may be required for these purposes. Great care would be exercised not to disclose details of cases during the course of interviews with clients.

4.19.12 Some files sampled for the research would also be subject to peer review (see below). Such reviews would be carried out by suitably qualified persons with specialist knowledge of criminal defence work, drawn from outside the localities where the research is based. They would also be managed independently from the LSC and be conducted, wherever possible, at the same time as other data collection from files.

4.20 The plans to draw comparative samples of cases from PDOs and private practice, based on a limited number of case characteristics as recorded under SPOCC, were regarded in the consultation as satisfactory, and no alternatives means of sampling were suggested. Since the start of the consultation, the research team have carried out further piloting on the use of SPOCC data for these purposes. Police station and court identifiers on cases recorded under SPOCC will be available in a sufficiently high proportion of cases (more than 90 per cent) to enable it to be used for sampling purposes. One legal professional body regarded the size of the samples set out above as the minimum that would be satisfactory.

4.21 Some private criminal defence solicitors were concerned that comparison based solely on the localities in which PDOs are based could "distort the national picture". However, it needs to be emphasised that, while very detailed analysis of case files will be confined to these localities, the research will also be carrying out broad comparisons using the data recorded on SPOCC between the cases undertaken by both the PDS and private firms on a national and regional basis. The research team is also carrying out further work to determine the most appropriate local areas from which to draw cases from private firms for comparison with those sampled from PDOs.

4.22 Private criminal defence firms taking part in the consultation were agreeable to the proposals for sending case files through to Legal Aid offices to be made available to

⁹ Clause 13.

the researchers, so long as this was limited to closed files. However, there was understandable reluctance on the part of these firms to releasing files relating to on-going cases in this manner, and the research team accept that this will require them to attend the offices of private solicitors if they wish to consult such files.

4.23 Surveys of clients and others

4.23.1 Although there are particular problems associated with surveying attitudes of criminal clients, it is important that some form of client assessment is included in the research, in particular to test out perceptions of independence and quality of public defenders as compared to private criminal defence practitioners. We would acknowledge that client satisfaction may not be the best indicator of the technical quality of criminal defence work, but it is also the case that a technically excellent service, if it is not perceived as such by clients, is unlikely to attract and retain them and therefore to succeed. We would also want to use client surveys to gain insights into other factors that may be significant in the future development of criminal defence services as a whole, such as how clients choose their lawyers, problems of access they may encounter in using such services, and their views on the use of non-solicitor staff.

4.23.2 A particular problem with client surveys is the low levels of response they tend to receive. We would hope to improve response rates by conducting interviews wherever possible by telephone as soon as possible after the completion of cases. As noted above, we would plan to use the same sample of cases described above for detailed analysis of files in order to identify clients, both of the PDOs and private practice firms, for interview. Contact details, including telephone numbers where available, would be taken from the files. We would write to potential interviewees first, explaining the purposes of our research and of our proposed interviews with them, before contacting them directly by telephone. We would hope that where clients contact their solicitors about this, the solicitors would encourage co-operation with the research. Where telephone interviews prove impossible to arrange, we would send out postal questionnaires instead. We would also consider conducting some face-to-face interviews with clients, either as an alternative to the other methods or in order to explore in greater depth client's views.

4.23.3 As noted above, client views are unlikely to provide the only, let alone the best, means of evaluating quality of criminal defence services. We would intend to use peer review as the primary means of evaluating quality (see below), but also see a role for surveys of other criminal justice professionals in this aspect of the research. We will wish to explore using local court staff, Crown Prosecution Service staff, probation officers and the police as potential sources of information and views on differences between PDOs and private practice firms in their relations with these agencies. We also believe that the staff of the PDOs and of private practice firms in the same localities may provide useful insights into the relative merits and impacts of the two types of service. In particular, it will be interesting to present practitioners in both types of service with findings emerging from the research on differences between them in case handling and outcomes, and to ask them to comment on the reasons behind these differences.

4.24 A number of concerns were expressed about the plans to conduct client surveys. One legal professional body considered that this (and peer review) raised issues of confidentiality, although this concern was not shared by others. However, there was a more general view that sensitivity would be required both in approaching clients for the purposes of the research and in interpreting their views. One suggestion was that

clients should only be approached on the basis of their solicitors having first at least notified them that this might occur. Where clients showed a reluctance to co-operate, they should be given an opportunity to decline to participate. A number of criminal defence solicitors also predicted that there would be a poor response rate from their clients and that their views on the quality of service they had received might be unduly influenced by the outcome of their cases.

4.25 As noted above, the issue of access to files and to clients for the purposes of surveys is covered in the relevant legislation and the LSC General Criminal Contract. Nevertheless, the research team is aware of the general sensitivity surrounding approaches to those accused of criminal offences about their cases. The members of the research team have considerable experience in conducting such surveys and we are convinced of their potential value in evaluating client care aspects of the quality of criminal defence services provided through PDOs and private firms of solicitors. In particular, experience shows that criminal clients can distinguish between the outcome of cases and the quality of the services they receive, especially if questions regarding the latter focus on very specific aspects of criminal defence work, such as response times to police station call-outs and legal advisers conduct in police stations or at court. It is also possible to use statistical analysis to control for the effect of outcome in any analysis of client views.

4.26 The researchers are continuing to pilot different methods for obtaining client views. We will arrange for clients to receive a letter setting out the purposes of the survey and asking them to co-operate. This letter will make clear both the voluntary nature of participation in the survey and the researchers' obligations to protect the identity of individual respondents.

4.27 A number of suggestions were made as to additional groups in the criminal justice system whose views on the work of PDOs might be canvassed as part of the research. The research team would hope to include, as well as those mentioned in para. 4.23.3 above, District Judges (Magistrates' Courts). On the other hand, many of the other groups suggested (lay magistrates, Crown and High Court judges, members of the Bar, witness services, prison officials) are likely individually to have only limited experience of PDOs and are too numerous and dispersed conveniently to sample for research purposes.

4.28 Peer review

4.28.1 It is generally accepted among the legal professions that the best means of evaluating the quality of their services is through a process of 'peer review' conducted by persons with significant expertise in the relevant field. Limited forms of peer review have been employed in previous research on aspects of criminal defence services, in particular police station legal advice,¹⁰ and it has also been successfully used in a recent evaluation of civil advice services.¹¹ There are three issues in particular which need to be considered in terms of our

¹⁰ In particular, see L. Bridges and S. Choong, *Improving Police Station Legal Advice*, Law Society and Legal Aid Board, 1997, where the results of direct observations of the practices of police station legal advisers were subjected to review and analysis by a qualified barrister who was part of the research team.

¹¹ See R. Moorhead, et. al., *Quality and Cost: Final Report on the Contracting of Civil Non-*

proposed use of peer review. First, how are the criteria for judging the quality of criminal defence work to be defined? Secondly, how can consistency between peer reviewers be assured? Thirdly, on what basis of evidence are peer reviews to be conducted?

4.28.2 Fortunately, there has been a great deal of progress over recent years in developing recognised quality criteria and performance standards for many aspects of criminal defence work. Detailed standards for police station advice work were specified as part of the development by the Law Society and the Legal Aid Board of the accreditation scheme for non-solicitor police station representatives. A similar process has recently taken place in respect of magistrates' court representation as part of the extension of national accreditation to court duty solicitors. These standards are in addition to the Transaction Criteria laid down by the Legal Services Commission for the assessment of work done under criminal contracts. All of these agreed standards would need to be taken into account in formulating the criteria against which peer reviews would be conducted as part of this research. However, there may be gaps in this respect, particularly as relates to agreed standards for the conduct of Crown Court cases.

4.28.3 The aim would be to recruit a group of experienced criminal defence practitioners to act as peer reviewers. These would mostly be senior solicitors, although experienced non-solicitor police station representatives and clerks might also be employed in respect of particular aspects of criminal defence work, such as police station advice or case preparation. The process of recruitment and training of peer reviewers would be undertaken by the research team independent of the LSC. We would also ensure that no peer reviewer would be deployed to undertake review of cases in any locality where s/he had recently practised. Consistency between reviewers would be further assured by statistical monitoring and subjecting at least a sample of cases reviewed to assessment by more than one reviewer.

4.28.4 In previous research making use of peer review, the case file has tended to be used as the main basis of evidence on which assessments of quality have been made. As indicated above, we would intend to use the same samples of case files, drawn from the PDOs and private practice firms in the same areas for other research purposes, as a source of cases for peer review, with the aim of carrying out the peer review at the same time as, but separately from, other elements of file analysis. However, we are aware that many elements of criminal defence work may not be fully reflected in case files, and as noted, observation has been used in previous research as a basis for assessing the quality of police station advice work. There may be an equally strong case for including an element of direct observation of advocacy in court within the research. We would be anxious to explore with the PDOs and other local practitioners, as well as with relevant police forces and courts, how the research might be extended to include such observations of criminal defence practice in police stations and at court.

4.29 There was a notable lack of response from the consultation on the general principle of using peer review as a means of evaluating the quality and independence of both PDOs and private criminal defence firms. This may reflect a general lack of familiarity with this method. However, some private criminal defence solicitors did not consider that it would be appropriate to use non-solicitors, even very experienced police station representatives, as peer reviewers, and those in one locality expressed concern that peer reviewers from outside the area might apply "London standards" in

evaluating their local practices. While the research team would consider the use of experienced police station representatives as peer reviewers as appropriate in evaluating the quality of police station legal advice, we now have doubts about basing such reviews solely on the information available in solicitors' case files, without accompanying observations (see below). We would propose only using solicitors as peer reviewers in the magistrates' court and Crown Court stages of the research.

4.30 Although the idea of including court observations as part of the research was generally welcomed, doubts were expressed by a variety of respondents, including one police force, about the feasibility of carrying out extensive police station observations. Having successfully organised direct observations of police station legal advice in several previous studies, members of the research team are fully aware of the value of such observations in evaluating quality but also the numerous practical difficulties. Following discussions with the LSC, we have concluded that it is unlikely to prove feasible, within the resources of this study, to include police station observations. We will carry out further pilot work on whether sufficient information on police station advice is likely to be available in case files to provide a basis for full peer review.

D. Analysis and Reporting

4.31.1 As indicated earlier, the phasing of the research will enable the researchers' annual reports on the progress of the research to be presented to the LSC and the findings published as part of their annual reports on the PDS. In this sense, the PDS will be subject to a 'rolling evaluation', and this should enable the evaluation at each successive stage to be informed by comments on earlier results of the research. We will seek at each stage to 'triangulate' or cross-check data from all the above sources in order to produce results that will be seen as reliable and objective.

4.31.2 We envisage that our findings on comparative costs between the PDS and private practice firms operating under criminal defence contracts may prove most controversial and subject to the greatest debate, and this has been confirmed in responses to the consultation. This is partly because the issue of costs is a very sensitive one for all concerned. However, it is also highly complex. As explained above, our general approach will be to calculate costs of the PDOs on the basis of averaging out all expenditure on the service against a unit of service, which we are likely to define in terms of the amount of time spent by solicitor and other fee earning staff on cases. We will exclude from this calculation any costs or time spent by PDS staff on additional tasks specifically related to the research. There are two particularly difficult questions of analysis and interpretation which will need to be addressed. First, how should the start-up costs of the PDS be dealt with in any analysis of comparative costs between salaried and contracted criminal defence services? Secondly, how can we account for the possible under-utilisation of the PDO services in their initial stages of operation?

4.32 Our preliminary view is that we should aim to provide a comparison of the costs of PDO and contracted services on a 'going concern' basis. This would include both the revenue and capital costs of providing services.¹² Certainly, the price paid to private criminal defence firms under contracts is intended to include an element to cover capital costs as well as profit. Unfortunately, there is little information available relating specifically to the capital costs of private criminal defence firms and how these are accounted for, and this is likely to vary significantly between individual firms. There are in addition a number of start-up costs that will have been incurred in establishing the PDOs in the first instance which may be distinguishable from on-going capital costs. The research team is clear that all such costs of the PDS need to be accounted for and reported on in an open and transparent manner. However, it is likely to be necessary to carry out a series of costs comparisons, each involving a different approach to accounting for start-up costs, so that these can be subject to wider discussion.

4.33 The second issue relates to how the potential under-utilisation of the PDOs in their initial stages of operation should be dealt with. This arises in particular from a policy decision initially taken by the Government and the LSC, in setting up the first few pilot

¹² A legal interest group responding to the Government's original consultation on establishing the PDS pilot, has suggested that the following should be included in any such analysis: IT and IT developments, including software; human resources; training; LSC support in administration (e.g. payroll); notional interest on set-up costs; indemnity and other insurance; cleaning; subscriptions; practising certificates; maternity cover; and the value to the PDS of receipt of non-capped funding.

PDOs, that they should be able to offer from the outset a fully comprehensive, 24-hour service from within their own staff resources, without having to rely on local duty solicitor services to provide cover for them on a routine basis. Although we have very little information on how private practice firms go about setting up new offices, anecdotal evidence would suggest that they often adopt a different strategy, limiting services initially to only a few fee earners and taking on additional staff only when there is sufficient work available to justify this. The implications of this are that some PDOs may experience under-utilisation of their staff resources until they have built up a sufficient client base, and this could result in average costs per unit of service being artificially high, either because of the overall costs having to be averaged out over relatively few cases or the PDOs spending more time on cases that they would expect to do when operating a full capacity. One possible approach to this problem would be to adjust the PDOs' unit of costs on the basis of an assumed number of hours per annum of 'billable' time spent on cases per caseworker when operating a full capacity and calculating the costs of actual cases on this basis, either writing off 'unused time' or carrying it forward to later periods. In this respect, information on the casework targets or the numbers of hours of 'billable time' expected of caseworkers in private criminal defence firms would be helpful to the researchers.

4.34 It was suggested that the research should include a direct comparison between PDOs and newly-established private criminal defence firms in the same areas as a means of evaluating relative success in building up a client base, differences in approaches to staffing and the under-utilisation of staff during the initial stages of operation, and their respective methods for accounting for this and for start-up costs. The feasibility of including such comparisons is now being investigated by the researchers.

4.35 While as noted previously, all costs of the PDS will be included in our analysis, it will be necessary to develop a number of methods of accounting for such costs in the process of drawing comparisons with the "cost to the public purse" of similar cases being conducted by private criminal defence firms operating under contracts. We would note that the Scottish PDSO study similarly carried out a number of cost comparisons. So long as the full data and reasoning behind each method are made explicit, we believe that this approach is not only acceptable but will also provide the best basis for wider discussion and debate.