HOUSE OF COMMONS

ORAL EVIDENCE

TAKEN BEFORE THE

JUSTICE COMMITTEE

THE GOVERNMENT'S TRANSFORMING LEGAL AID CONSULTATION PROPOSALS

TUESDAY 11 JUNE 2013

LUCY SCOTT-MONCRIEFF, BILL WADDINGTON, MICHAEL TURNER QC and MAURA McGOWAN QC

TUDUR OWEN, ROGER SMITH OBE and STEVE BROOKER

Evidence heard in Public Questions 1 - 122

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Oral Evidence

Taken before the Justice Committee

on Wednesday 12 June 2013

Members present:

Sir Alan Beith (Chair)
Steve Brine
Rehman Chishti
Jeremy Corbyn
Nick de Bois
Gareth Johnson
Mr Elfyn Llwyd
Seema Malhotra
Yasmin Qureshi
Graham Stringer

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Examination of Witnesses

Witnesses: **Lucy Scott-Moncrieff**, President, Law Society, **Bill Waddington**, Chair, Criminal Law Solicitors Association, **Michael Turner QC**, Chair, Criminal Bar Association, and **Maura McGowan QC**, Chair, Bar Council, gave evidence.

Chair: A very warm welcome. I am sorry we are in such a large room and you are so far away from us. It is one of the consequences of getting a lot of interest and needing to have a significant amount of seating available for people who want to hear these proceedings.

I would like to welcome Michael Turner from the Criminal Bar Association, Lucy Scott-Moncrieff from the Law Society, Maura McGowan from the Bar Council, and Bill Waddington from the Criminal Law Solicitors Association, our first group of witnesses. Good morning to you all.

At the start of this session I should perhaps make clear that, when the Government announced their consultation and put forward their proposals, they not unnaturally unleashed a great deal of evidence from a wide range of bodies, but in particular a large amount from lawyers and lawyers' organisations. We did not see any value in the Committee taking a separate set of written evidence since we have access to that material and it was important that you should all concentrate on putting the case to the Government, whose proposals these were. There was a considerable focus in the representations on the proposals for price competitive tendering for criminal legal aid and we are making that the main focus of this session today.

We want to test some of the arguments that you have put forward, as we will do when we have the Justice Secretary in front of us and we challenge him with some of the issues that you will raise. In the course of doing so, we will ask questions that will not necessarily be expressive of the point of view either of the Committee as a whole, if it comes to one at any stage, or of individual members. We want to test the arguments—the arguments on both sides of this question—and find out how soundly they are based.

There are other issues as well as price competitive tendering, some of which we may pick up by other means. It is not the Committee's intention, so far, to set out a complete set of alternative proposals, but, if there are alternative ideas coming forward—particularly from

bodies like yours—as to how the Government might achieve its savings without making changes that you find unwelcome, we are obviously interested in that point as well.

I must ask members of the Committee to declare any relevant interests that they have.

Gareth Johnson: Mr Chair, I have a registered interest, as set out in the Register of Members' Financial Interests, that I am an employed solicitor.

Mr Llwyd: I have undertaken legal aid work, both as a solicitor and at the Bar.

Yasmin Qureshi: I used to take legal aid work at the Bar, but since February 2010, I have not done any legal work. I stopped practising.

Andy McDonald: I practised criminal law many years ago.

Rehman Chishti: I am a member of the Bar but not practising while a Member of Parliament; previously I prosecuted and defended, and I have undertaken legal aid work.

Chair: The rest of us you can assume have no declarable interests. One of those who has not is Mr Brine, and I am going to ask him to open the questioning.

Q1 Steve Brine: Thank you, Sir Alan. Good morning, everybody. Thank you for coming.

I will start with money because, ultimately, in part that is what it comes down to. We are aware of the claim that many have made in submissions to us, and which has been reported, that the Ministry of Justice is using the wrong baseline for its savings targets. Indeed, the consultation paper itself says that there have already been reforms to legal aid through the Legal Aid, Sentencing and Punishment of Offenders Act last year, which itself should deliver savings of £320 million per year in 2014 and 2015. So we are aware of that, the accusation being that it is failing to take into account those reductions before it produces this paper.

Starting with Lucy Scott-Moncrieff from the Law Society, do you accept the Secretary of State's argument, as a starting point, that significant savings need to be made from the legal aid budget? Indeed, should the legal sector be protected from cuts?

Lucy Scott-Moncrieff: We accept that the budget of the Ministry of Justice is going down and will continue to go down, and we do not think that legal aid should be exempt from any cuts that are made. We do not have access to the figures that the Ministry of Justice is using for setting the level of the cuts and so we cannot possibly say that it is a fair level or an unfair level. Our main concern, though, is that the level of cuts is pretty divorced from the PCT proposals. PCTs are not a way of delivering the cuts; they are intended to be a way of surviving the cuts, but, actually, we think they will make it even more unsurvivable. We do not really have very much to say about the level of cuts—we cannot address that—but our concerns are with the PCT proposals.

Q2 Steve Brine: It is important that you all have a go on this one because this is the key point. Maura McGowan, do you accept that savings need to be made from the legal aid budget?

Maura McGowan: Rather as has just been said, it is not really for me to accept or not accept. If the budget has been cut, the budget has been cut and we have to work within that. What we do not accept, necessarily, are the figures that are used for the basis of saying we need to save £220 million at the moment. You are right—the overall budget was something in the order of £2.2 billion. LASPO took, we think, £350 million out of civil legal aid, but the difference may not matter for these purposes. What is proposed at the moment is a saving of £220 million on the criminal side of the budget. The figures that are in the consultation paper suggest a spend of £1.14 billion for the year 2011-12, but, when we have looked at the Legal

Aid Agency's budget, that looks forward to a spend of £914 million in the year 2013-14. So, without these cuts, there appears to be a fall of nearly £200 million on the way. In addition, it is important to note at this stage that crime, or at least the number of cases going through the courts, has consistently fallen in recent years. It looks, unless something terrible happens in the next year or so, as though there will be another percentage fall—something in the order this year of about 9% or 10% on last year.

Q3 Steve Brine: Having opened by saying that you are not sure it is for you to say, you then went on to say. Do you think there is a necessity for reductions in the criminal legal aid budget?

Maura McGowan: Sorry, I do not think I did go on to say. What I did was point out what we say are at least queries about the figures upon which this analysis is based. If the Ministry of Justice's budget has been reduced by 10% by the Chancellor of the Exchequer, we accept that move has to go somewhere. This is not the right way, as Lucy says, to achieve that, but in any event there are, we think, savings in the system already that will find at least the greater part of the £220 million that the Lord Chancellor is looking for, and we have made other suggestions as to how savings can be made within the system without rewriting it.

Q4 Steve Brine: We will come on to that. Bill Waddington of the Criminal Law Solicitors Association, do you agree with the Secretary of State that we have one of the most expensive legal aid systems in the world?

Bill Waddington: Do I agree with that? No, I fundamentally disagree with that. The National Audit Office did a report in 2010—you may well have had sight of it, certainly in our response—which indicates that it is an average spend across Europe and not the most expensive in the world.

Q5 Steve Brine: Mr Turner is Chair of the Bar Council, for those watching. Do you take, on face value, the Secretary of State's assertions that we need to make significant savings here?

Michael Turner: No. As has already been pointed out, we think in the first place that he has achieved his target figure when he says he wants to reduce the budget to £1.5 billion once it is worked through. The real point here and where the taxpayer is losing out is that there is huge waste in the system, as we have pointed out. There is at least £100 million that can be saved by plugging the gaps in the system. As we have also pointed out, if he wants real savings to the taxpayer and listens to the proposals that we have put forward, he can have himself £2 billion for a legal aid budget. The real sadness, for us, of all of this is that we are just not being listened to. There are huge savings that can be made here, but Mr Grayling will not even see me to hear what we have to say.

Q6 Steve Brine: Would you just outline two for me? You said huge gaps in the system, so which parts then of the criminal legal aid expenditure do you consider do not give our constituents value for money?

Michael Turner: Let me just give you an example from Friday. One of my members, last Friday, attended court to do three cases. In the first case, the prisoner was not delivered, so the case could not take place. In the second case, the CPS had failed to instruct a prosecutor, so that case could not take place. In the third case, the Punjabi translator, who was meant to be delivered by Capita, did not turn up either. None of those three cases could go ahead. That is a picture that is happening all across the country on a daily basis.

In terms of the Crown Prosecution Service, which has been advertised as saving the taxpayer £27 million, if you look at their internal audit report, you realise, in fact, that they do

not deliver those savings at all because that figure is based on counsel's savings rather than taking into account the cost of their employees. Once you do that, that £27 million disappears altogether.

Then you have to take into account again what is happening on a daily basis, which is that cases are not being properly prosecuted. One example from four weeks ago is a case at Southwark. A five-handed kidnap trial collapsed because disclosure was not done properly. There was a £500,000 costs order against the CPS, with a conservative estimate of £3 million to the taxpayer. There will be a retrial. Again, that is a picture that is happening across the country.

If things were done properly, those are the gaps that will produce huge savings. In addition to that, an entire budget can be produced by three very small measures. If you delivered the magistrates court back into the hands of the Magistrates' Association—it was taken into the MoJ in 2005 and was probably the best example of David Cameron's Big Society in action—that would produce a saving of £1.5 billion. We have suggested an insurance scheme, which would mean that the banks contribute to the cost of the fraud prosecutions. At present, when a bank loses any money, the only person who suffers is the taxpayer. The bank is allowed to write the money off against tax; the taxpayer pays for the investigation; the taxpayer pays for the prosecution. If the prosecution is successful, lo and behold, the bank is delivered free of charge all it needs to get its civil recovery.

Q7 Chair: We have your written evidence on some of these points. It raises the general question of whether it is the common view among the four of you that the Government should not attempt to make fundamental changes to the system at this point but should simply find ways of achieving those savings, perhaps from among those you have suggested, and achieve their budget requirements in that way rather than making a change in the system, moving to price competitive tendering?

Lucy Scott-Moncrieff: As I said, the cuts that are being proposed are not intended to be achieved by price competitive tendering. That is to do with the restructuring. We accept that there needs to be restructuring because this is a very fragile and unsustainable market because of mistakes that have been made in the past in procurement. We certainly think there needs to be reorganisation, but it certainly should not be this reorganisation. If the reorganisation is accompanied by a much more realistic idea about how the savings can be made, it is more likely to be successful. We see it as a double progress that needs to be made.

Maura McGowan: So far as the Bar is concerned, our view is slightly different because, of course, the restructuring that price competitive tendering would bring with it does not have a direct effect on the way in which we work. Our view, put simply, is that there are savings that can be made by efficiencies and reorganisation, without a total restructuring, that would achieve the budget cuts that are required, if they are required. That would allow a short opportunity—a year or two—to have a commission to review the entire system properly. This is piecemeal; these are sticking plaster measures.

Q8 Nick de Bois: I am confused by something. Should not many of the examples you gave, Mr Turner, which were effectively inefficiencies, be taken out as well as potential procurement savings? Why should we be tolerating inefficiencies anyway? You seem to be thinking the goal is to save x money, which may be a fair assumption, but I would argue that you should get rid of the efficiencies regardless of what the budget is, and then look at the structural reforms that have been proposed and challenge those perhaps on quality and outcomes, which would be a fair point.

Michael Turner: I would not necessarily disagree with that. The only reason we put it in this way is that Mr Grayling has said in terms that, if we produce these savings, they will

not be banked; he is genuinely looking for them. But I tend to agree with you. Our only point is that everyone, if they see the proposals, realises that this absolutely devastates the profession and has a real impact upon victims of crime in particular. What we are pointing out is that restructuring can deliver the Government the money they need to run a legal aid service that does what it says on the tin for the citizens of this country.

Q9 Rehman Chishti: Coming back to Ms McGowan in relation to the point you made, where you said a lot more cases now are not going through the criminal justice system, is that by way of saying that there is a lot more use of cautions and conditional cautions where police officers will now be able to give a community penalty—not simply a matter of giving a caution? That, in itself, would be contrary to the interests of administering justice, whereas one is simply looking at financial savings and not the administration of justice.

Maura McGowan: It is difficult to be precise, but the figures that the police have issued would tend to contradict that. The number of cautions has not gone up to match the drop in the number of cases going through. It may genuinely be that there is a fall in the rate of crime or a fall in the rate of detection, but in any event there are something like 10% fewer cases going through the courts in London this year than last, and that is not mirrored by an equal increase in the number of cautions.

Q10 Rehman Chishti: How much of a cut is sustainable in the interests of administering justice by each of your different departments?

Lucy Scott-Moncrieff: I do not think you can put a figure on that. The research that we have done as part of our response shows what you need to do to remain profitable in terms of the salaries that you need to pay to attract the right quality of people. There are efficiencies that can be made within the way that service is delivered if we have enough time to convert to those different ways of working and different ways of achieving efficiencies. That would also require efficiencies on the other side. As Mike has said, efficiencies in prosecution lead to efficiencies in defence as well because you are not wasting your time, frankly. Given time, we can do quite a lot to make things a lot better, but just accepting a cut is going to drive a lot of people out of business and really destabilise the provision of criminal defence services. You can't put a figure on it.

Maura McGowan: For the Bar, we have had at least 15% cuts in fees across the board. In homicide cases there is an extra 25% on top of that; so we have had a 40% cut in fees already. What is clear on any daily experience is that an underfunded system is inefficient and costs more in the long run. An underfunded police service, an underfunded CPS, an underfunded courts service all have the sorts of problems that Michael Turner mentioned a few minutes ago. If three cases go awry in any given day, you have doubled or trebled the cost.

Q11 Gareth Johnson: Can I turn to competitive tendering, which all four of you said that you were against in your opening remarks? Is it that you are against it per se, or is it that you are against it if it is linked to the proposals that we have seen from the Ministry of Justice? What the Ministry of Justice would argue is that, if you look right across the public sector, in the main, competitive tendering has succeeded; it has worked. What is it about the criminal justice system that makes it unique, compared with other areas of the public sector?

Lucy Scott-Moncrieff: There is no ideological opposition to competitive tendering. We already compete on quality and have done for years. That is also when you are getting your contracts. With regard to price competitive tendering, when the initial statement is that you have to take off 17.5%, and then competitively compete below that price, that is completely unsustainable, as we have set out in our document. It may be that, when you have

very large organisations that can afford to lose a contract here because they are going to get one there, and so on and so forth, that might make it workable, but what we are talking about here are rather small organisations. Even the largest legal aid firms are small compared to solicitors' firms across the board. It is just not doable; it is not workable.

Proper price competitive tendering that allowed prices to go up as well as down and did not have artificial constraints would be another story, but this is not really price competitive tendering, this is a way of trying to force through reorganisation. The savings that this document proposes do not come from PCT; they come from what is going to be the 17.5% cut that we start with.

Q12 Gareth Johnson: Ms McGowan, are the Bar against it in principle?

Maura McGowan: Criminal justice may not be unique, but it is in a very special category, probably along with health and education. You cannot measure the services in lumps. You cannot say, "This is a commodity. It is worth x, but you can buy it for x minus 10% or minus 20%." This goes much, much deeper. We are not selling widgets; we are providing an institutional plank in a democratic society. I am sorry if that sounds pompous, but it is actually as important as that. Of course cost and efficiency are important, but they can never be the determining factor. As Lucy says, all of us have always competed in terms of quality. If I am not as good as the next person, I will not get the work, but I should not be getting it because I am cheaper than the next person if I am not necessarily better than them.

Q13 Gareth Johnson: Mr Turner, if you could have competitive tendering with the right safeguards in place, is that something that you could accept?

Michael Turner: You would have to give me the safeguards, but I would just counsel you to see how price competitive tendering has worked so far for the MoJ. It has been a complete and utter disaster in terms of the contracts that it has signed.

Chair: I think you can take it for granted that we are familiar with the contracts that have gone wrong with the Ministry of Justice.

Michael Turner: You can pick almost any contract, but I will just give you one example. If you take your tagging contract and they were done on the basis that they are in the United States, you would have saved yourselves £881 million over the 13-year period where we have had tagging. That would have given you 2,000 probation officers and 1,200 policemen. Price competitive tendering has not proved very successful for the MoJ thus far.

Q14 Gareth Johnson: Mr Waddington, on a different matter, can we perhaps move on to something that you may have some knowledge about, which is the fact that there is no pilot that is proposed by the Ministry of Justice for these changes? How do you feel the criminal courts would feel if there were to be pilots? Do you think that that would work? Do you think that that is something that would be desirable before these proposals were implemented?

Bill Waddington: A simple answer to this is that I am not sure it is a system that can actually be piloted. For example, if you take a geographical area and say, "Let's try the PCT system here," four successful bidders win a contract in a pilot area. Everybody else in the area goes out of business. The pilot then fails. Then you have just lost the criminal justice system within that geographical area. It is not a system that lends itself to a pilot scheme.

Q15 Gareth Johnson: Ms Scott-Moncrieff, can I put you on the spot? I accept that you may not be able to answer this question straight away, but do you feel these proposals are lawful?

Lucy Scott-Moncrieff: Not all of them, no. We think that particularly the issue of client choice is something that does not comply with the LASPO provisions and may not comply with the European Convention on Human Rights. I could give you all the details of that, but we have counsel's opinion to that effect. Certainly, if lack of client choice is imposed, we would be looking to challenge that. I know that the MoJ are saying that there is still some client choice in there because in exceptional circumstances you can have a different solicitor, but that is not choice either; that is just a different imposition. After the first relationship has failed, then there is a different imposition. So, yes, there is no choice and we think that that is unlawful.

Chair: We are going to come back to some aspects of that issue later.

Yasmin Qureshi: Can I just start by saying that I do not agree with my colleague Mr Johnson—

Chair: This is a supplementary question that you wanted to ask and not a row of questions.

Yasmin Qureshi: Yes, I know. I just wanted to say that I am not coming from the perspective that privatisation works or is brilliant, and you have seen the examples of G4S and Capita. What I wanted to ask you was that the whole basis of the contention that savings must be made is, supposedly, that our system is more expensive, but is it also right that our system is different from many of the other comparative European countries in that we have an adversarial system, where the lawyers are involved in the case right from the beginning, as opposed to, say, France or Germany because the —

Chair: What is the question?

Yasmin Qureshi: The question, really, is that trying to make savings is quite nonsensical in this particular situation because our system is very different from the other systems—and, for what it is, it is good value for money.

Chair: Ms Qureshi, I still have not heard a question.

Q16 Yasmin Qureshi: The question is that we have an adversarial system; other countries have inquisitorial systems. Would you agree with me that, in the light of that, it may well be that we may be slightly more expensive, but, in a comparative system with another country that has a similar system, we are not more expensive?

Michael Turner: I would certainly agree with that, if that is the question. The important thing to take from that question is that you see in the inquisitorial system, in the figures, a lot of times that the judicial spend is not put in there, and that is where the weight of the spend is; therefore, these comparisons are often false. That is the point that Ms Qureshi was seeking to make. It is a false comparison if you are not comparing like with like.

Lucy Scott-Moncrieff: Could I just add what is perhaps an even more significant point? We have a very small public defender service in this country; it was piloted as a way of showing private practice how to do things properly. It is still continuing, providing much the same sort of service as private practice but at greater cost. International research shows that, in those countries that have a public defender system and also private practice supplying criminal defence services, the public defender system is always cheaper. Only here is it more expensive, which I think tells you something about the efficiency of the way in which private practice provides these services.

Q17 Chair: We did hear a number of comments from people suggesting that this whole exercise was one in privatisation, but it is helpful of you to make clear what we are talking about here is whether a system of independent private contractors, solicitors and

barristers is preferable to one that means greater state involvement in the management of the professions.

Maura McGowan: Can I also make this observation, following up on Mr Brine's question at the start about it all coming down to money? Our system cannot be matched against many others, but one thing you can say about our system is that it is universally recognised as the best. We bring in 1.6% or thereabouts of GDP. That is what the legal services industry, as it is now called, brings in. You cannot measure that against many other European systems because our system is recognised as being so far superior. In part, that is because the criminal justice system in this country has a reputation second to none—or at least it has up until now.

Q18 Mr Llwyd: In your opinion—Ms Scott-Moncrieff referred to this in passing—what exactly is driving this consultation? Is it simply cost-cutting or is it a need to bring in a new model of legal aid provision?

Lucy Scott-Moncrieff: The Lord Chancellor has been pretty clear about this. He says, "The cuts is the cuts and we are going to achieve that 17.5% across the board"—or maybe a bit more with PCT. The point about price competitive tendering—the purpose of price competitive tendering—is to help this very fragile market survive those cuts. That is what it is all about. That is what it says in the consultation document. Putting the cuts to one side, we accept that it is a very fragile market, but this is not the way to reform it. There are much better ways of reforming it that will protect the criminal justice system, that will give proper credit for the work of existing practitioners and allow them to adapt so that they are survivable in the long term. We accept that the current system, for all sorts of reasons, is just making the situation worse and worse, and there is going to come a point at which nobody will want to come and work in the criminal defence system. It is not to do with, "This is how to deliver the cuts." It is how to survive the cuts, and it is not the right way to survive the cuts.

Q19 Mr Llwyd: You will know, of course—all of you—that the Secretary of State said in an article in the Law Society Gazette on 20 May: "Unless somebody's got a stunning alternative to PCT, it will go ahead in some form." Mr Turner has referred to several economies that could be bought in without shaking all the apples off the tree, as it were, and dismantling the system. You, as the Law Society, have also put in some suggestions I believe; is that correct?

Lucy Scott-Moncrieff: Yes, that's right. We do think there is an alternative way of doing this. We think that there is an alternative way of doing it that should appeal to the Government because it is market-driven rather than being a state controlled system, which is what is being proposed here. We have been focusing in the very short consultation period on putting in a response to the consultation questions, but we are speaking very widely with colleagues, with the Bar Council, with practitioner associations, to come up with good ideas about how the system can be made more sustainable. It will involve the co-operation of Government. It will involve them having to give up some of their much-loved habits such as having very short contracts—sometimes only six months or a year—but we think that something can be made to work if we all work together in the interests of the justice system.

Q20 Mr Llwyd: Is that the view of your organisation, Mr Turner?

Michael Turner: Of course it is. We can go on pointing out cuts until the cows come home and alternative ideas that will preserve the system. The most important thing for this Committee to understand is that, if this is introduced, ultimately, in 10 years' time, you are going to lose your independent judiciary, which is a fundamental cornerstone of this democracy—absolutely a fundamental cornerstone. The reason that that is going to happen is

because, once you introduce the corporate supplier into this market, your ethics disappear. You replace what the lawyer is brought up with, which is that ethical consideration, with a competing base that the corporate supplier wants to produce the best contractual price. The Bar supplies your independent judiciary. Once the Bar is brought up in that atmosphere, with those competing interests, your independent judiciary will disappear. It is a very fundamental point.

Q21 Chair: That is a pretty severe criticism of the apparent inability of your members to maintain professional ethics under a different system.

Michael Turner: You can already see it in the attitudes of certain of those in the CPS, when a judge is told, as they have been, at 5 o'clock at night when he has required a skeleton argument overnight, "I am sorry, you are not getting it from me, judge, because I clock off at 5 pm and I only come back at 9 o'clock in the morning. That is when I will start working." The independent Bar will stay up till 4 or 5 o'clock in the morning doing that skeleton, in order to supply the court.

Q22 Chair: You do know that Crown court advocacy is not covered by these proposals.

Michael Turner: I do. It is just an example though. When you say to me the ethics do not disappear in that kind of situation, there are any number of examples of where they have.

Lucy Scott-Moncrieff: Can I just say, on behalf of the solicitors' profession, that we do not think—

Chair: The witnesses are down there.

Q23 Mr Llwyd: I suspect—no, I won't go down that avenue. Solicitors being appointed as judges as well was perhaps the point you were going to make?

Lucy Scott-Moncrieff: No, I was actually going to say that the ethics of the solicitors' profession is exactly the same, whatever vehicle they are working in.

Q24 Mr Llwyd: Absolutely. In order for this proposed model to work, which external factors such as the CPS and the courts system will require reform and restructuring, and, if so, how?

Lucy Scott-Moncrieff: It depends whether you are talking about the 17.5% cut or the restructuring. As far as the cut is concerned, clearly, if the overheads are less or if you are spending less time on a case because there are efficiencies elsewhere, it is easier to survive that cut. If you have to do 10 hours' work for something, that is one thing. If you have to do only eight hours' work, that is something else altogether. So, yes, reforms in other parts of the system are really important to make this survivable, but that is not all that we need to do. We also need to produce a proper coherent way to allow people to have a future in criminal defence work.

One of the things that is a real problem is that, because of the short-term contracts and because of the planning blight that exists in the criminal justice system or in the legal aid system and has done for years, people cannot go to the bank and say, "I want to invest in a really good IT system so that I can bring more people in and they can work at a distance," and so on and so forth, because the bank will say, "How are you going to pay back this money?" "Here is my business case." "How long is your contract?" "Two years or a year." It is hopeless—it is absolutely hopeless. There has to be a much greater continuity for solicitors' firms to be able to work in a businesslike way. They are providing professional services, but they have to be able to do it in a businesslike way and that does require the MoJ to play ball.

Maura McGowan: Given that the MoJ at the moment wants to look at the resourcing and the administration of the courts as a parallel proposal, that is not something that can be achieved in two, three or four months. I go back to what I said earlier. Put the whole thing on hold, take the savings that are there or the reduction in spend, if that is a better way of expressing it, and look at the entire system across the board. Look at the administration of the courts, if that is what the MoJ wants to do. Look at the restructuring. As Lord Carter recommended for the solicitors' profession, give it time to settle down. Once you have brought in a big change, allow it to settle and consolidate.

There is movement across the profession. Because of the fee cuts and the reduction in work already in place, some people are leaving the profession. That is happening, as it were, naturally, without it being forced upon us. Allow the whole thing to work organically for longer than the two or three months that is being proposed currently and the MoJ, I am sure, will see the move in the administration and resourcing that it looks for, and money will ultimately be saved, without losing a system that has quite genuinely worked so well up until now.

Q25 Mr Llwyd: There is a concern about the eight-week consultation period as well, isn't there?

Maura McGowan: Not just the consultation period, but what is proposed in the immediate future. We are told that the MoJ is likely to respond early September and, given the way that the timetables have worked so far, that seems likely. They will respond and everything will go ahead. That is the way—

Lucy Scott-Moncrieff: The complication is the tight time scale. It is a really serious problem. Law firms cannot start adapting until they know what they have to adapt to. They cannot start adapting until September because maybe these provisions will go ahead; maybe they won't. People are not going to start spending money on transforming their businesses until they know what they have to transform to. Even then, they are not going to spend money transforming their businesses unless they know whether they are going to get a contract. They can do all sorts of preparatory work; they can talk to people, they can discuss things, and they can try and gear things up. But, if you are not going to hear that you have a contract until next summer and then you have to provide the service in September, it is completely impossible.

Q26 Mr Llwyd: That is the reason why you think as a Society that there is a problem with this pre-qualification questionnaire?

Lucy Scott-Moncrieff: I understand why the Government have imposed this timetable, because these things will take these lengths of time, but they do not seem to understand what the profession needs to do to adapt to these timetables. To give a very simple example, we are a very heavily regulated profession and any time you want to change your business structure or whatever, you have to get the consent of the Solicitors Regulation Authority. If it is something quite simple such as bringing new people on board or opening a branch office, that is not a very big deal, but, if it is something major such as combining with other people to create a new structure that can bid for these contracts, that takes six to nine months. You are not going to start that process until you know you have been offered a contract, and yet you are not going to be offered a contract unless you can show that you are going to be able to deliver it in three months. It is just bonkers.

Q27 Mr Llwyd: What would you say to Ms McGowan's suggestion about putting all this on hold and looking at the economies that can be put in without fundamentally changing the system? What would you say to her view on that?

Lucy Scott-Moncrieff: We would be delighted if the whole thing were put on hold and we had enough time to do this properly. That would be an excellent idea.

Michael Turner: Could I just add to that in terms of our worries about the consultation process? Not only is eight weeks a very short time, but there have been 13,000 responses to this consultation, and we cannot see, if it is a genuine consultation, how on earth the MoJ can be reading these consultations properly and considering them properly in the time scale that they have set themselves. If this is a genuine consultation, they have to give themselves more time to consider what are very big responses. The Law Society's response is over 150 pages; ours is almost as big, as is the Bar Council's. These are huge responses to the consultation, which have set out our concerns about legality and all sorts of areas. They have to be considered properly.

Q28 Graham Stringer: It has been said a number of times that the market is fragile in this area. Is it possible to give indicative profit levels for the firms in giving criminal legal aid?

Lucy Scott-Moncrieff: They vary. Paradoxically, the most successful firms are very often the smallest ones, where it is a single person working from home, supplying a service without having an office, having terribly low overheads and therefore able to make a living. That is not really sustainable. In the larger firms, the profit levels can be very low. Some of them are in negative profit in the sense that their criminal legal aid work is supported by their other work, so if it was just criminal legal aid on its own, it does not make a profit at all. There are some firms that work very efficiently that might have profit levels of about 6%, which is not a huge return on investment considering the risk that the owners of these firms have to take and the risks of huge payouts if things go wrong, they have to close, there are redundancy payments and so on and so forth.

Q29 Graham Stringer: Is there any hard evidence in this area? It is an opportunity for you, really, to kill the myth, if it is a myth, of the fat cat lawyers.

Lucy Scott-Moncrieff: I would so love to kill the myth of the fat cat lawyers. The average salary of a legal aid lawyer is £25,000; the average salary of a nurse is nearly £30,000; for teachers it is £34,000; for GPs it is £56,000; and I believe for MPs it is £65,000. So we are not fat cat lawyers.

Q30 Graham Stringer: It is fat cat MPs, is it?

Bill Waddington: If I may say so, there is a lot of financial information in the Otterburn report that accompanies the Law Society's response, where there are real examples given of financial information that was provided by firms to Otterburn for him to do these calculations. Reading those will certainly kill the myth of the fat cat lawyer.

Q31 Graham Stringer: I was just going to move on to the Otterburn report and the economic projections that are in there and some of the bases for that. Why are the fees in the Otterburn analysis lower than the fees in the consultation document?

Lucy Scott-Moncrieff: The fees in the consultation were based on 2011-2012, I think, by which time the LASPO reductions were not showing up, so there was going to be a reduction as far as that is concerned, with these on top, in those areas of work. We have been told that the fees in the consultation document include VAT, so that has had to be stripped out as well. Then there is the 17.5% cut on top of that.

Q32 Graham Stringer: It assumes they have got it right.

Lucy Scott-Moncrieff: Yes. It is just assuming various things that seem to be pretty obvious.

Q33 Graham Stringer: Why are the levels of people required in Manchester and West Yorkshire so much higher than in West Mercia?

Lucy Scott-Moncrieff: We asked Otterburn about that, and the fact is that the case mix in West Mercia is quite different from in the other area. You have an urban area there that has much higher levels of crime, much higher levels of serious crime, many more police station responses are needed, and so on and so forth. Then you have a rural area where the level of crime is lower, the nature of the crimes is lower, and, therefore, the mix of people that you need to deal with those cases is different. We can send you chapter and verse. We have chapter and verse, but that is essentially it.

Q34 Graham Stringer: Finally in terms of detailed questions, why is it assumed that it will take 10 months for fees from Crown court litigation to be paid?

Lucy Scott-Moncrieff: Because you do not get paid until the end of the case.

Q35 Graham Stringer: That is 10 months, is it?

Lucy Scott-Moncrieff: On average, it takes that long.

Maura McGowan: Can I deal with the fat cat point as well, because that tends to come in our direction slightly more often?

Q36 Chair: Is that because some of your members conform to that category while others do not?

Maura McGowan: Allegedly so. I accept that there are occasional names that hit the headlines having earned a lot of money, but they are exceptional cases and they are based on all sorts of weird and wonderful accounting systems. Can I make this observation so that the Committee understands? The very high cost cases system, which we think is an administrative burden of itself but it exists currently, will pay a QC, in the most serious case, £500 a day gross for a full court day, plus two hours' preparation outside court. The Lord Chancellor himself accepts that, when you look at barristers' fees, you have to approximately halve them, to take account of overheads and expenses and things of that sort. That takes that down to £250 a day under the current system. Under the proposed system the gross fee would be £350 a day, going down to £175. There are only a few hundred QCs doing criminal work in the entire country. They work only in a limited number of cases. I accept entirely that £175 a day is not to be sniffed at, but it is not the sort of ludicrous wealth and luxurious fees that sometimes the newspapers might have you believe.

Michael Turner: To add to that, you should know that under the tapering system it is proposed that, at the end of that taper, junior barristers will earn £14 a day, which is an extraordinary figure, well below the minimum wage. Some junior barristers are even on income support. So be careful of the myth of the fat cat barrister.

Q37 Chair: The Government themselves have conceded that the levels of remuneration for most junior barristers are not adequate to sustain the profession at that level.

Lucy Scott-Moncrieff: Can I just add something else that is important to bear in mind about the solicitors' profession? All the consultations and so on assume that people know what solicitors do. I do not think a lot of people do really understand the service that solicitors provide in these areas. Solicitors still provide a 24/7 service to police stations. They have not outsourced that.

Q38 Chair: Do you know why the fees are so variable in police stations? There are huge variations.

Lucy Scott-Moncrieff: It depends, once again, on the case mix to a certain extent and also the amount. When those fees were set, they were set by taking averages. When it moved from hourly rates to fixed fees, averages in areas were taken and those were the fixed fees that were paid, so it reflects local custom and practice, the case mix and so on. That simply continued. People provide this service out of hours. I have friends, people of my age, who are still turning out to go to the police station in the middle of the night and then doing a full day's work the next day, going to court, preparing cases, seeing witnesses and so on and so forth. It is a very dedicated job and they are very dedicated people who do it, and that has to be borne in mind.

Q39 Andy McDonald: It has been suggested that the only companies who are going to be able to bid for these contracts are large companies—we have heard of G4S and others—and that the firms that are currently conducting the work, as you have already reported, Ms Scott-Moncrieff, the ones vested with the expertise, have little or no expertise in putting together large bids of this nature. The Secretary of State has told us that he has no doubt that firms will bid for these contracts. Do you think that optimism is well-placed, and who do you think he is talking about when he is talking about firms bidding?

Lucy Scott-Moncrieff: He certainly believes that and I expect he is right—that some firms will bid. I do not know if G4S and Serco would bid. I cannot see why they would bother. There are some larger firms that might be able to make this work, although they say that, as it currently stands, they would not be able to make it work because, paradoxically, although it is intended to give volume, the way that it has been structured—and the very concrete way that it has been structured—means that some firms are going to have to reduce the amount of work they do in particular areas and will only be able to continue employing the same number of people if they are covering much wider areas. For instance, Devon and Cornwall is a single area; Hampshire and the Isle of Wight is a single area. It will be very difficult for people to adapt to that kind of thing, whether they are large or small.

The most important point is that, yes, there may be firms that can do this, but what is being asked for is a national service covering everywhere—not just little pockets. As Bill said, you cannot have little pockets here and then the old system somewhere else. It is meant to be all or nothing, and, on that basis, it will be nothing because it certainly cannot be all.

Q40 Andy McDonald: You are quite dismissive of some of the names that have been bandied around in this context, with Serco and G4S. Are you saying that there is no incentive for new entrants into the market?

Lucy Scott-Moncrieff: It is difficult to see what the incentive would be. If they wanted to come into this market, they would have to become regulated by the Solicitors Regulation Authority. They would then have to maintain the same standards and provide the same supervision and so on and so forth as existing firms. My understanding is that they are not very interested in contracts that show a very small return—and they would only get a very small return. So why would they want to do it?

Q41 Andy McDonald: There is no scope, as you see it, for them to come into this market and make a turn on it by trying to retain the very people who are delivering the service at the moment? You do not see that as a possibility?

Lucy Scott-Moncrieff: No. I have just been handed a note that says Deloitte, who did some work for us, say there has been very little interest from these large organisations.

Michael Turner: Could I just add to that, if I may, in terms of the type of supplier that might come in and look at how they are behaving at the moment? If you take a name that is well known now, which is Eddie Stobart, who is wishing to come into this market, at present he is advertising a service to the public that the public can get for free and he is taking money from them for that service. He advertises as Stobart Barristers. He has not a single barrister on his books. What he is doing is taking the Bar Direct Access Directory and he is charging the public for putting his finger in those pages and saying, "You can go to that barrister." The public can get that service completely and utterly for free. That is the kind of behaviour that it is going to come into this market.

Q42 Andy McDonald: Could I ask a more generic question, perhaps, and throw it open to the entire panel? The fundamental principle that is the foundation of the relationship between solicitor and client is that the solicitor, the lawyer, the barrister must always act in the best interests of their client.

Lucy Scott-Moncrieff: Not always.

Q43 Andy McDonald: Not always.

Lucy Scott-Moncrieff: Duty to the court comes first.

Q44 Andy McDonald: There is a duty to the court, but they have a duty to their client. Do you see that that principle is in any way at risk with these proposals if there are financial pressures upon people in terms of the length of time they have available, the amount of money they are going to be paid for the duration of a trial, be it cracked, guilty plea or what have you? Is that principle at risk?

Lucy Scott-Moncrieff: Yes. People will always do the best they possibly can, but they can only do the best they possibly can. If they are under enormous pressure, their best is not going to be as good as in other circumstances. What is really important though, in the issue of the flattening of fees between guilty pleas, cracked trials and short trials, is not what the lawyer is doing or what the lawyer is advising, but what the client thinks. If the client thinks and knows that the solicitor or the barrister has a financial interest—quite a big financial interest—in whether they choose one of those different options, that will make it more difficult for the client to trust the solicitor to give them good advice.

With regard to the advice that is being given here, this is not the solicitor and client sitting down and working out what is best to do. "Let us all lay our cards on the table. Yes, I know you did it, but let us see if you can get away with it," or whatever. That is not how it works. The way that it works is that the client holds their cards close to their chest. Why would they admit to something if they think they might be able to get away with it? Why would any of us admit to something if we think we might be able to get away with it?

What is necessary at that point is to have a solicitor whom they can trust, so that when the solicitor says, "Actually, I know you are saying you didn't do it, but the evidence is overwhelming," or when the solicitor says, "I know you say you didn't do it, but the evidence is overwhelming, and if you plead guilty, you will get credit for this and credit for that," if the client believes that, that is going to help the proper administration of justice. If the client does not believe that, then why not plead not guilty, take a chance, and maybe you will get off? Doing your best is not just the solicitor doing their best; it is the client believing that the solicitor or barrister is doing their best.

Maura McGowan: It works in some cases already in the system. There was a massive reduction in what was paid if a defendant had chosen a Crown court trial and then pleaded guilty once he got to the Crown court. That pays the barrister £180 or £190—something of that sort. It does not matter how many hearings that takes. The defendant turns up one day and

pleads guilty. It gets put over for a report to see what the sentence should be. He does not turn up on the next occasion; it gets put over again. The interpreter does not turn up.

We had an instance in chambers where a young member of chambers went to King's Lynn six times for a total fee of £190 and had to pay his own travel on top of that. That sort of financial pressure is not going to mean that the person who does the final hearing will do any worse job by way of mitigating for the defendant, but it does mean that you are going to start struggling to find anybody who is going to do that sort of work at the most enormous financial loss.

Michael Turner: Those pressures are going to be very real. I came across an example the other day, which I can give you, of someone who was employed within a firm to do work, and, when they had gone down to the police station and they had seen a client whom they knew and who was trusted, they got them to speak in interview and that resulted in a caution. When they got back they were royally ticked off. "Why did you allow your client to speak? Why did you proceed to caution, because, if you had not allowed him to speak and it had gone through the system, we would have made x number of more pounds?" That is the problem. It is already there to a certain extent. It is just going to get worse and worse and worse as those financial pressures for people to make the profit and make profit for their shareholders put—

Q45 Chair: But there were not any shareholders in this partnership.
Michael Turner: No, there were not.

Q46 Chair: It was a partnership of independent barristers.
Michael Turner: It was not actually a partnership of independent barristers, but it does not matter. I am saying it is already there. Hopefully we can drive it out, but it is going to get an awful lot worse, which is one of the points I am trying to make.

Q47 Nick de Bois: I want to pick up on that point because I am not a barrister and I have never practised in the business, which is probably a good thing for the purposes of this exercise. I am confused. You seem to be saying that it is not very good now because there are financial pressures and someone is earning only £25,000 a year doing legal aid. Surely, from what you are saying, they are now facing the same pressures to go for early mitigation just to move on and get the next case. I am not quite sure where your evidence is for extrapolating and saying it is necessarily going to get worse. You seem to be almost at the point where you are saying, "I am opposed to this. I am now looking for reasons to assume it is going to get worse." Remember, I am only asking the question to challenge you.

Lucy Scott-Moncrieff: In any system where people have too much to do, they have to do the best they can. If you have even more to do because you have more cases to do to earn the same amount of money, it does not mean that you are not going to try and give the best advice you possibly can and make all the investigations you properly can. But there is a reason why wealthy people decide—apart from the fact that they are not eligible for legal aid very often—to pay privately, because you can then spend an enormous amount of time and money investigating everything and trying to find the loophole, trying to find the way through. We see examples of it. There have been recent examples that we all know about.

That does not happen in legal aid. Legal aid lawyers will only do what is necessary. They know that they have a duty to the fund; they know they have a duty to the court. They will do the very best they can, but they will have to cut corners if they are having to do more cases.

Nick de Bois: That is my point—
Chair: We will have to move on because we will not get through all the questions.

Q48 Rehman Chishti: Client choice has been touched on briefly, but can I start with some specific questions on that? First, some would ask whether we should be trying to retain a system of choice that benefits repeat offenders.

Maura McGowan: Repeat offenders may not actually be guilty on the next occasion. There has never been a system here that says, "You have done it before. Therefore, you must have done it this time." You have to nail that lie to start with. A repeat offender who is guilty, or who might be guilty, is likely to be a connoisseur of the system, to use the phrase. If he is that, then he is somebody who is much more likely to take robust advice from someone he has trusted in the past than somebody he has never set eyes on.

Can I nail this lie? On the current question of choice, the public, I suspect, are being left at the moment with the idea that some old lag sits in a cell at a police station, flicking through a directory and deciding whether he wants Allen & Overy or Linklaters. That is not how it works. Stuck in a cell in a local police station, he has a choice of a few local firms. That is the current system.

Q49 Rehman Chishti: I have a clarification on that. A repeat offender would be in a different category from others because he would come under the category where his previous offences would put him in a different category in relation to being before the jury, whereas somebody who has not committed a crime before would not be in that category where offences are put before the jury.

Bill Waddington: There is another argument for the repeat offender having the choice of going back to his solicitor, which is of course that the solicitor has his history. There are a great many examples of cases where a solicitor acting for a client, for whom he has acted for a number of years, will of course have, for example, psychiatric reports, pre-sentence reports, up-to-date previous convictions, details of when he was last at court, whether he is on bail conditions and so on and so forth. To take away the choice for the repeat offender and shove them with a different person—

Q50 Chair: But should the repeat offender be able to say, "I am not having him. He knows too much about my history"?

Bill Waddington: The repeat offender is very unlikely to say that.

Lucy Scott-Moncrieff: Can I invite you to think about the opposite way round? Let us suppose that people have no choice about who they choose, and either they go to the same person every time who is allocated to them or they go to different people every time. If they go to the same person every time who is allocated to them and they really do not feel they are getting a good service from that person, they are not going to co-operate with them. The current system relies on most people pleading guilty, and they plead guilty on advice. Some people will plead guilty anyway and they are not represented, but an awful lot of people plead guilty on advice. If you have a situation where not only do you think they did a rotten job for you last time but now you have them again and they are going to do another rotten job for you, the likelihood that people are going to co-operate with all that and go along with that seems to me to be rather remote. If you have people who are having a different solicitor every time because it is a different way of allocating work, you just have huge amounts of repetition.

This will result in innocent people being found guilty—this is the point that Maura was making—because they do not have the support that they need from the people who know them, and it is going to result in guilty people going free, because once you have somebody convicted of a crime, you are not going to look for the person who really did it. It is such a bad idea. As Maura says, this idea that it is a luxury is just so counter to the facts. It is one of

the best things about the system in terms of the system—not just in terms of the defendant but in terms of the system.

Q51 Rehman Chishti: On that very point, for me, I very much am in favour of having choice—of course I am—but in terms of the point you have just made and also that Ms McGowan has just made, is there any firm evidence to back up the reason that you have just given?

Bill Waddington: Yes.

Maura McGowan: All our experience.

Bill Waddington: We also have a number of case studies. We are more than happy to let you have those and I can give you details of them now, not only from defence solicitors but also CPS lawyers and, indeed, a member of the judiciary, who is able to comment that, in their collective experiences, the client having a choice of solicitor has resulted in an economic and efficient disposal of the case, saving the court time and therefore taxpayers' money, saving perhaps the defendant going to prison and therefore taxpayers' money.

Q52 Rehman Chishti: Is client choice really determinative of quality, and is the Secretary of State not correct in saying, "I don't believe that most people who find themselves in our criminal justice system are great connoisseurs of legal skills"?

Bill Waddington: I don't think you think that is correct.

Lucy Scott-Moncrieff: "Too thick to pick" is how that is being described.

Maura McGowan: That makes no sense at all, if you think about it, because the totally naive, first-time arrested individual is not going to choose anything other than a name from two or three names provided to them by the police officers at the police station. "Who is on the duty rota—x or y?" They will stick a pin in the list of names. That will not be an informed choice, in any sense, any more in the future than it is now. Unless somebody builds up a relationship or because of their own personal difficulties is befriended by and learns to trust a particular firm of solicitors, you might as well just go back. All that is happening now is they have a choice of a few firms; in the future they will have no choice at all.

Lucy Scott-Moncrieff: If I can also make a point, I live in London; my friends live round about. Their kids do the things that kids do and sometimes they say to me, "Little Johnny has got into trouble. Who is a good solicitor to use?", just like I would say to them, "There is something wrong with my boiler. Who is a good plumber to use?" You ask around; you ask your friends and that is a legitimate thing to do.

Q53 Chair: It helps if you know the president of the Law Society, does it not?

Lucy Scott-Moncrieff: You could go to the Law Society, of course, but even before I was president of the Law Society, you know who is good in your area; you know who is best; you know who is particularly good with juveniles; who is particularly good with people who have mental health problems, and so on and so forth. We all do it all the time when trying to find the best service that we can get, and it should apply in criminal legal aid as well.

Q54 Rehman Chishti: If I can perhaps clarify, the points I have made are not necessarily my own views on this matter. Let me ask one final question. Whether it is on the issue of client choice or consultation, would you agree with the view that the document and the consultation to a certain extent is flawed because it is written by people who have never practised in this area?

Lucy Scott-Moncrieff: I do not know whether that is why it is flawed, but I certainly agree that it is flawed, yes. We wish that the Government had come to us much earlier or,

indeed, had done the research that we have done so that they would understand the issues that they are facing.

Maura McGowan: It goes back to the point I have made. This is the problem. If you force the consultation through in eight weeks, you force the Government to respond within a few months—they set the timetable for themselves—and you push this all through too quickly. Draw breath. As the former Lord Chancellor said over the weekend, this is an opportunity for a full review. Run it in parallel with a review of the courts and the administration and the resourcing of the courts. Look again, for example, at the status of the magistrates court in relation to the Crown court, what is tried, where and how; look at financing of criminal legal aid and of the prosecution side, because the CPS is being stripped down to an absolute bare minimum and, as a provider of advocacy, is creaking, if not failing.

The whole thing needs to be reviewed, and now is a perfect opportunity, particularly as we are all agreed that there are savings that can be made instantly to tide over the next year or two. At the end of it you will have a much better system, rather than something that lumbers on with sticking plaster and Sellotape patching it and holding it together.

Q55 Jeremy Corbyn: Thank you very much for coming and giving evidence to us today; it is extremely helpful. I represent an inner city constituency, as do some colleagues around this table. One of the main issues surrounding this whole change is that we have a considerable number of small legal aid practices, many of whom are managed by people from black and minority ethnic communities and many of whom have linguistic skills that are absolutely vital. They are also led by people who often have a great understanding and participation in the local community. What, in your view, will be the effect on those kinds of companies of the proposals that are being put forward at the moment?

Lucy Scott-Moncrieff: The simple answer is that, if they cannot scale up to cover a much larger area—for instance, Islington will be part of north and east London, so you would have to be able to cover the whole of north and east London; you would have to be able to turn out to any police station at any time of day—if they cannot scale up for that, which I guess probably most of them cannot, then either they would have to become agents or subcontractors of a firm that could scale up, or they would go out of business.

The trouble with being an agent or a subcontractor is that you are then very dependent on the contract holder to get a proper quality of work. Economics would suggest that the larger firm that has the contract would certainly use the smaller firms to go to the police station, but it would then take for themselves the more interesting and better paid cases and leave these agents and subcontractors to deal with the low value work. In criminal defence work it is always a balance. The low value work loses you money; you can sometimes make money on the high value work. So it is the total package; it is the swings and roundabouts. They would be very badly affected.

It is not just BME firms. There are firms that specialise in representing people who are deaf. They understand the culture. There are firms that have particular expertise in working with forces personnel who come out of the services and then find their lives falling apart. There are all sorts of areas of expertise within the profession. They are very highly skilled people. All that will be lost because, one way or another, with the loss of choice and with having to provide it over a much wider area, it will all just turn into a homogenised sludge.

Q56 Jeremy Corbyn: I have a related question, which any of you can feel free to answer. We have very effective law centres, as I do in my borough. Islington Law Centre is superb but very pressed and very stretched. They are not big organisations.

Lucy Scott-Moncrieff: Yes.

Q57 Jeremy Corbyn: I assume they are not going to be big enough to be part of this tendering process. They are absolutely essential to basic rights of access to justice.

Lucy Scott-Moncrieff: No, you are absolutely right.

Q58 Jeremy Corbyn: What happens to them in all this?

Michael Turner: They disappear. One of the points that is really important to understand, which is why this is not being thought through, just by way of example is that in Wales there is no requirement for anyone who is tendering for a new contract to have a Welsh speaker.

Chair: We are going to come on to that in the second part of this session.

Q59 Jeremy Corbyn: We have a Welsh speaker who is going to bring that up.

Michael Turner: Right.

Lucy Scott-Moncrieff: Just to come back on what you were saying, if we have enough time, we can help all these small firms to remain sustainable, to become part of something a bit larger perhaps, which will not disadvantage them but will give them proper prospects—but we have got to have time.

Q60 Jeremy Corbyn: There is a crisis at the moment with small legal aid companies going out of business. Particularly those dealing with immigration, refugee and asylum cases are just going out of business all the time. As a local MP, I get more and more people coming to me who cannot get any representation at the moment. What chance do they have in the future?

Lucy Scott-Moncrieff: That is to do with the LASPO cuts and that is a fall-out from that. This will just compound that. Firms that are still doing civil and family legal aid, and then they find they cannot afford to do the criminal legal aid or they lose the criminal legal aid, may well then say, "We cannot do any legal aid at all. We just cannot manage it because the bureaucracy is pretty horrendous and the cost of providing legal aid services is very significant."

Maura McGowan: That substantially increases the burden on those organisations that provide some form of legal advice or service pro bono. So you see now total removal of legal aid from whole areas such as family, immigration and welfare. Those people now have nowhere to go other than pro bono agencies. In the future, those pro bono agencies will be picking up even more and more of the overspill. We have seen it already. Big successful firms in London have just shut down their matrimonial practices within the last few months.

Lucy Scott-Moncrieff: The evidence from the CAB is that they are buckling under the strain of having to provide more and more because the lawyers are not there.

Q61 Chair: The point we are looking at here is not an area from which legal aid is being withdrawn, but obviously it has an impact on some of the same businesses, does it not?

Lucy Scott-Moncrieff: Yes, absolutely.

Maura McGowan: We have always worked on the swings and roundabouts, to go back to the question earlier. With regard to my example of the six trips to King's Lynn for £200, you will do that because that is a service both for the client but also to the firm of solicitors, and you hope that a month later they will send you a decently paying case. You need those checks and balances or swings and roundabouts, but, if there are no decently paying cases, then you are not going to work at a loss. You simply cannot.

Q62 Jeremy Corbyn: If you are a small solicitor in an inner urban area and you are a linguistically-based practice, your chances of getting anything other than legal aid work are

very low indeed, and so if they are relying totally on legal aid there is no balance they can make within their company because there is no alternative work.

Michael Turner: Correct.

Q63 Jeremy Corbyn: Is that your experience?

Lucy Scott-Moncrieff: It depends on the variety of work that people want to do, but, yes, there are not any swings and roundabouts left in the system.

Q64 Seema Malhotra: Just continuing with questioning around client choice, this particular question is around transferring solicitors. Given existing restrictions on transfer of clients between providers, do you see consultation proposals as a removal of client choice or a narrowing of client choice?

Lucy Scott-Moncrieff: It is a removal because the proposal is that you get allocated a lawyer, and then, if there is a very good reason for you not to have that lawyer allocated, you get allocated a different lawyer. You do not have a choice. The current system, which, as you say, is very restricted on your right to transfer from one solicitor to another once legal aid has been granted in a case, works very well. You have to get the court's permission. You can only do it in certain circumstances, either because the relationship has completely broken down or because the lawyer is professionally embarrassed. That has to be explained to the judge and the judge decides. There is already a perfectly good effective system that is not being abused. That is why we think it would be illegal, because it is not narrowing the choice—it is removing choice altogether.

Michael Turner: I agree with that. Some have said, because there is an exceptionality clause suggested within the consultation, that that is a narrowing, but that exceptionality clause is only where there is a conflict for the solicitor or the solicitor is embarrassed. It is not a matter of choice for the client, who says, "Actually, I think my solicitor is not up to it or doesn't know this area. Can I have another one, please?" The answer is no.

Q65 Seema Malhotra: Would you say that there are circumstances in which both the present and the proposed system could be open to abuse by defendants intent on delaying proceedings, and do you see that risk potentially increasing?

Michael Turner: No.

Bill Waddington: I have never come across that, I must say, in my experience. I do not know about the rest of the panel, but it is not something that happens, because we have currently this fairly robust system. If somebody wants to change solicitors, there is a hearing about it either in the magistrates court or in the Crown court, where incoming and outgoing will make their points to the judge. He will not allow a transfer if he suspects that, behind all this is an attempt by the defendant to delay proceedings.

Maura McGowan: In reality, the system works as well as it does because most defendants co-operate and work within the system. They will speak to their solicitors, they will give instructions, they turn up for trial, and they comply with most requirements. It works because there is a relationship of trust—not just the defendant with his solicitor but the defendant with the entire system. Once defendants no longer co-operate, even in small measure, that is going to cause absolute chaos.

Q66 Seema Malhotra: The clear aim of the policy is to remove client choice. Under the new proposals there is a variation in terms of how there might be a change; even if we go to court and the court agrees, the legal aid agency will select a new provider from the providers in each procurement area. Do you see that as another cause for concern in terms of delaying court cases?

Lucy Scott-Moncrieff: The reason for removing client choice is not actually intended to be tough on defendants. It is intended to ensure that contract holders get the same share of the work available. For the reasons we have set out in our response and many other people have set out, that does not work either, because you cannot be absolutely sure that people are going to get the same share. There are all sorts of variations that mean it will not work. Anyway, that also completely goes against what we think should be the proper level of competition in criminal defence work, which is people competing on quality. If the lawyers know that they are going to get the clients, regardless, at the very least they do not have to have any client care skills. They might do a decent job as lawyers, but they do not have to convince their clients that they are doing a good job, except there will be circumstances when the client is so unconvinced that they will then sack their lawyers and say, "I am going to defend myself. I don't want to be represented at all." That, of course, will save a certain amount of legal aid money, but, if you ask any criminal judge, they will say that that causes enormous amounts of chaos and disruption and so on, and delay and cost in other parts of the MoJ budget.

Bill Waddington: I agree with what Lucy has said there. We have hit the nail on the head with the issue of quality, because it has not been mentioned much. Quality is an essential ingredient at the present time; it drives the issue of competition and it drives client choice. If you do not do a good job for a client now he will wander off, and you might have some difficulty in convincing a court that you have done a good job for him if you have not. Taking away client choice will, of necessity, bring about a lowering of quality. That is even acknowledged in the paper.

Q67 Steve Brine: If PCT then, in your view, is removal of client choice, and we have heard the Law Society say they will challenge it if this goes ahead, I presume the logic would conclude, therefore, that there is no way that PCT can work. So many times you have all said today, "Pause. Put it on hold. Make the initial cut if you need to. Let us think again." Just bringing in some comments here from Twitter—people are watching us all around the country—a lot of people are asking this question. Do you want more time to review PCT or do you want no PCT? Let us ask Michael Turner that.

Michael Turner: It is no PCT. It is not going to work. We have pointed it out time and again, with the reasons for it. It is not going to work; it is not going to provide value.

Q68 Steve Brine: Just to be clear then, PCT is dead as far as you are concerned, if you had your way.

Lucy Scott-Moncrieff: If you think of the criminal justice system as a car, at the moment it is bumbling along and it could certainly bumble along a lot better. It could be improved and so on. What we have here is a proposal to give that car four flat tyres. It simply cannot work. We can make it work; we can put on tyres that will work; we can zhush the whole thing up, but not like this. It just won't work.

Q69 Yasmin Qureshi: I just wanted to explore the allocation of work at police stations in particular. The Government have suggested two main methods for allocating work under the PCT. One is the idea of equal shares of casework. Secondly, the Law Society has suggested that the current system of allocation of duty solicitor work does not work well. What are your views about the system of allocation of cases at the police station?

Bill Waddington: Again, it takes away choice, obviously, because how it works at the moment—forgive me, you may be aware of this—is that a client will be arrested, and, if they have had some involvement with the criminal justice system previously, the chances are that

they have a solicitor with whom they are satisfied. They may not have been involved in the system before but somebody may have recommended a solicitor to them. So, either they will ask for their own solicitor and receive representation at the police station, or, if they have no knowledge of any solicitor but want to have somebody present, they will rely on the duty solicitor scheme. That is how it currently works. Under this proposal, of course, the first choice has gone because they may as well just ask for a duty solicitor because they are going to get somebody whom they do not know and with whom they have never had any involvement previously. That is why choice, as we say, is so important in this.

Q70 Yasmin Qureshi: The Law Society has, however, suggested that the current system of allocation of the duty solicitor does not work very well also. What alternative suggestion do you have to the current system of the duty solicitor scheme?

Lucy Scott-Moncrieff: We are working on it. We think that the current system creates a distortion and that it could be successfully changed, but we are in discussions with the profession to come up with something that is not going to create its own perverse incentives. We will be talking to the MoJ about that as soon as we have agreement.

Q71 Chair: Presumably, it would be theoretically possible to combine the system of price competitive tendering with some elements of client choice, but the payment to the tenderer would have to be adjusted if they had a significantly larger or smaller share of the business, would it not?

Lucy Scott-Moncrieff: PCT has been presented as a whole structure and all the bits are seen to be essential. You have guarantees of volume, you have the same shares for everybody, and so on and so forth. If you start tinkering with it, the whole thing falls apart. Yes, of course you could do a different sort of PCT, and other sorts of PCT have been recommended in the past, but at the moment, if you started to try and pick bits out of this, then it would have an effect somewhere else in the assumptions that have been made. Certainly, we think that the duty solicitor scheme could be reformed at the same time as the provision is being reworked so that it becomes more sustainable.

Q72 Yasmin Qureshi: Could I just now explore the question of quality? We have had quite a lot of discussion about the fact that the quality of the service provided will be adversely affected by these measures. In fact, the former Lord Chief Justice Lord Woolf said to *The Independent on Sunday* that the proposal would lead to a "factory of mass-produced justice" and miscarriages of justice. He went on to say that there have never been votes in crusading on behalf of people who may be guilty, but the principle of fair justice is important, and the rule of law and our systems should be fair and we should continue to have pride in it.

My question is, really, can you see any ways in the current proposals, if the Law Society and the Bar Council work together, of improving matters in any way?

Lucy Scott-Moncrieff: I do not think we can improve the current proposals. We can make suggestions for improving the system, but it would not involve improving the current proposals because, as I say, it is a whole structure and you just have to say, "No, that will not work."

Maura McGowan: We make no secret of this. It has been perfectly open all along. We are more than happy to work with the Ministry to improve the current system. There is no question of any lack of willingness on our part or of the Law Society or the Institute of Legal Executives. We are all willing to work to find improvements in the current system. It is not perfect; we recognise that. One thing that is very important to remember is that we do not do the job we do just on behalf of those accused of crime. We do the job we do and it has a knock-on effect on everybody—witnesses to crime, victims of crime, people who sit on a

jury. So many people beyond the person in the dock are affected by this, and that determines—or should determine—the requirement for a real quality service.

Michael Turner: In terms of quality, all you have to do is learn the lessons of history. Look at the demise of the Forensic Science Service, where in one brilliant fell swoop the Government lost all their most experienced scientists whom they had trained up over years because the private sector did not want to take on the most experienced and they ended up with the least experienced. That is exactly what is going to happen. You have had example after example of it. Please learn from it.

Bill Waddington: I agree with everything that has been said there. It is important just to repeat that all the representative bodies that are here today are currently working together. We have been a little pushed for time, obviously, with an eight-week consultation, in getting everything ready, but we are working together now on a regular basis in order to come up with some proposals that, hopefully, will be acceptable to the Secretary of State.

Q73 Chair: When you say "we", is that the four organisations that are in front of us?

Michael Turner: And more that are not here today. It is the four organisations that are represented here today—the LCCSA—the London Criminal Courts Solicitors Association,—LAPG, BME—all the organisations that are involved in the system.

Lucy Scott-Moncrieff: Can I also say that the Ministry has been quite receptive to our wish for further discussions? The Lord Chancellor has said he is really open to other suggestions and he has followed that through, so we are hopeful that we are going to be able to work together to find a way through this, but fiddling with PCT is not going to be that way.

Bill Waddington: Our concern is that a lot of the counter-proposals, I should say, that have been put forward in responses are counter-proposals that have been put forward before and not really considered. When we say we are quite willing to work with the Government, we really are. Whether they want to work with us is a different matter.

Q74 Yasmin Qureshi: Continuing with the issue about quality, it has been said that there is no quality control mechanism built into the current PCT system to ensure that providers provide a good quality service. First, do you agree with that, and, secondly, what would be the impact of these proposals on access to justice for the poor and vulnerable?

Maura McGowan: Can I answer the first bit? Clearly, there is no quality mechanism in the proposals other than what looks like it might be a kitemark for the firms that are going to bid, because, if there were, the Secretary of State would not be asking the Bar Council and the Law Society to work on providing one now. We have every interest in quality in the system. That is what drives us. What we are not prepared to do is work on a system that will facilitate PCT. The question answers itself, given what the MoJ has said most recently.

Lucy Scott-Moncrieff: If I can come back to the analogy of the car with the flat tyres, trying to put in quality criteria will be the equivalent of saying, "You have to pass a driving test to drive this car." Actually, what you need is someone to change the wheels.

Q75 Yasmin Qureshi: My final question is about the impact on the vulnerable and the poor under the new proposals.

Michael Turner: It has an enormous impact, as has already been identified. We have the most vulnerable in society being unable to access these services already. We have our citizens advice bureaux and our law centres that are on their knees in terms of trying to provide advice. This is just another absolute attack on their ability to access what, for a long time, we have taken for granted in this country.

Q76 Chair: The issue here is not that there will not be a police station solicitor but that you will not have a choice?

Michael Turner: You will not have a choice, and the point is you will not have a choice of that expertise. What is absolutely not recognised in these proposals is that one solicitor is not necessarily the same as another. They have different experience. They have huge experience in injustice cases, terrorism cases or whatever it is. You want to access those people. You do not want to put it down to its absolute base level, which is what is going to happen.

Lucy Scott-Moncrieff: There may be an assumption for a lot of people that the vast majority of people who go through the criminal justice system are guilty and it is a matter of processing them in the most effective way. We do not have terribly good stats for the adult population, but certainly there are Government figures—Government stats—that show that, of the number of juveniles who are arrested, those between 10 and 18, over a third are either not charged or not cautioned, the case is not proceeded with, or they are acquitted. Those things do not happen just in a vacuum. They happen because there are lawyers in there testing the evidence, making the case, negotiating and so on and so forth. That is a third of that population who are not getting criminal records, who are not going to detention and so on and so forth, who are not being groomed to become adult criminals.

I do not know what the proportion is with the adult population, but still there are a significant number of people who are arrested and in the end do not get any kind of criminal record from that. That is a really important part of the job. It is not just that they are poor and vulnerable; it is also that they are innocent.

Maura McGowan: Of course the quality of the system—

Chair: We really need to move on because we have another group of witnesses to come in.

Q77 Nick de Bois: Given the time, I just wanted to touch briefly on the procurement areas. I can well understand the concern over some of the definitions of these procurement areas and the problems they throw up. The Carter review proposed reducing the number of duty areas by merging them according to more criteria rather than necessarily the way they have been done currently, so they take into account travel times and distance. On the assumption that we have PCT, which I know you are not all for, should the Carter area divisions be used by the MoJ instead of the proposed procurement areas now, which you seem concerned about? Perhaps it is best if I start with Mr Turner. Do you want to comment on that?

Michael Turner: Yes. The procurement areas that we have at the moment do not work.

Q78 Nick de Bois: You mean the ones proposed?

Michael Turner: The ones proposed, yes. They do not work. Do you want all the reasons why they do not work?

Q79 Nick de Bois: Let us assume you do not like them. What do you think of the ones that are proposed in the Carter review? Do you think they are the ones that should be adopted?

Michael Turner: I am going to pass that over to Maura, who will remember what they are. Can you remember them?

Maura McGowan: Is it not for the Law Society?

Michael Turner: It is probably the Law Society who had best take it.

Chair: How soon Carter has been forgotten.

Q80 Nick de Bois: I did not think I could silence so many people in the legal profession with just one stroke.

Lucy Scott-Moncrieff: The Carter areas are much more sensible than the current proposals. We objected to them then because we did not think that they were good enough, and, indeed, that never came to anything; so that turned out to be right. This is much worse. You could not just go back to the Carter procurement areas because, as I said earlier, I hesitate to say that the PCT proposals are a coherent structure, but they are internally consistent. That is perhaps the right way of putting it. Once you start changing the procurement areas, then everything else has to change as well.

Q81 Nick de Bois: But your concern is that they do not seem to factor in the fact that in one area it could take half a day to get somewhere?

Lucy Scott-Moncrieff: Absolutely.

Q82 Nick de Bois: What would you propose? Would you have no areas at all, do you think?

Lucy Scott-Moncrieff: We are still working on that, but we would certainly see something more coherent than we have at the moment and something more coherent than was proposed in Carter or is being proposed here.

Bill Waddington: Also, as far as the Carter procurement areas are concerned, it was a very different scene back then, and we have moved almost as far away from that now as it is possible to move. Of course, although he had smaller procurement areas, he was not also saying, "But let's start them all off with a plus 17.5% cut." He recognised that prices would go up as well as down, and that is why trying to find a mix of a small procurement area along with PCT on this basis of a 17.5% cut is just like comparing apples with oranges.

Nick de Bois: If any of you want to make representations on that, perhaps you will let us have that.

Q83 Chair: Thank you very much. We are grateful to the four of you for the evidence you have given this morning. We have further witnesses. While the witnesses are changing over, perhaps I should explain that at some point, while the next group of witnesses is giving evidence, bells will ring. This is not likely to be a fire or an evacuation, unless I tell you. It will be the bell for prayers and the bell for the start of proceedings. We may have to run over that for a time in order cover the main topics.

Lucy Scott-Moncrieff: Could I just ask you one question? I had the feeling, from the way that you started this, that you are thinking of looking into the other areas in the consultation to do with civil and family law, and to do with prisoners. I know that the profession would be enormously grateful if you did that because they consider that those are areas where there are equal risks to access to justice and the rule of law. Any indication would be very welcome, if not now then—

Chair: I am not going to do it by way of exchange across the room, but any further representations on what you would like to see worked on we would certainly look at carefully and sympathetically. Thank you very much.

Examination of Witnesses

Witnesses: **Tudur Owen**, Senior Partner, Tudur Owen Roberts Glynne & Co, **Roger Smith OBE**, visiting professor at London South Bank University and former director of Justice, and **Steve Brooker**, Consumer Panel Manager, Legal Services Board, gave evidence.

Chair: Can I welcome Steve Brooker from the Legal Services Consumer Panel, of which he is the manager? Elisabeth Davies had originally hoped to give evidence, but we are very grateful to Mr Brooker for taking over that slot. I welcome Tudur Owen, from Tudur Owen Roberts Glynne & Co, a solicitors' firm, and Roger Smith, who has given evidence to us before on different subjects. He is a visiting professor at London South Bank university and former director of Justice.

Q84 Jeremy Corbyn: Thank you very much for coming in to give us evidence today. We are most grateful. You will have heard the earlier questions from Nick de Bois about procurement areas. In your estimation of these proposals, what do any of you or all of you see as the problems over procurement areas?

Steve Brooker: One of the issues for us is that it will be harder for more vulnerable clients, such as those with a disability, to find specialist support in their local area. In addition to that, if you are accused of a crime that is more rare, such as under protest law, for example, again it might be more difficult to source specialist help. In an ideal world, all lawyers would be sensitive to the needs of the vulnerable client base that we have across the country, but we know from our research that that is not always the reality.

Last year, to give you an example, we carried out some research with the Solicitors Regulation Authority and Action on Hearing Loss with deaf clients. Those clients told us that they often felt in a battle to be understood with their own adviser, before making headway with the other side. We are doing research at the moment with Mencap and the Legal Services Board with consumers with learning disabilities. Again, the story is that, although some lawyers can adapt their practices and make the necessary changes, others find it much harder to be understood.

It might help to increase the number of contractors in each procurement area, but, ultimately, the expertise that those vulnerable clients need is quite thinly spread across the country. The fact that we have a national system now allows those specialist firms to thrive in the marketplace. If you cut off that supply to vulnerable clients, you potentially remove access to justice for them.

Q85 Jeremy Corbyn: Is it necessary to have procurement areas at all?

Steve Brooker: I do not think so, no.

Tudur Owen: All I can say is that, from my perspective, from north Wales, it is proposed that there will be four firms or providers covering the whole of north Wales as an entity. It is difficult to—

Chair: Can you speak up a little, please—that applies to all of you—because the acoustics are not that good in here?

Tudur Owen: It means then that the access would be denied to people for the simple reason that I do not think there is a single firm currently in north Wales that would be able to meet the criteria that are required. I am told by my colleagues in mid-Wales that it is the same situation for mid-Wales, and a number of colleagues from south Wales have told me that south Wales is in exactly the same position. As it stands at the moment, there are very few, if any, firms in the whole of Wales that would be able to provide the necessary expertise or the necessary requirements to meet the contract.

Roger Smith: In a sense, it is quite a detailed question. To be honest, you can probably make any procurement area work. The question is what the requirements are to do so, and, if

it involves long travelling, are you prepared to make the allowances for the cost that that requires? In a sense, that is a pragmatic issue.

There are much more fundamental issues about price competitive tendering. This is a public defender scheme. This is what it would be called in any other country in the world. It is a contracted public defender scheme with a limited number of contracted public defenders. You can make that work. You can make it work with various procurement areas. I have seen it work, but you have to get much more involved in the questions of quality and delivery, which will unavoidably arise, than this document does.

Q86 Jeremy Corbyn: In a relatively sparsely populated part such as mid-Wales or the south-west, it is very unlikely you would have specialist firms dealing with a whole range of cases.

Roger Smith: It is highly unlikely. Therefore, to make it work you are going to have to meet the costs that will come from that. You can make anything work. Around the world there are all sorts of different models. You can make it work. It is just that you cannot shave the cost that far down on some of the models that are less well worked out than others.

Tudur Owen: One size fits all might not be appropriate.

Steve Brooker: There is provision in the proposals, if you do have a specialist need, for the legal aid agency to allocate you to a firm in a different procurement area, but we can safely cut out the middlemen here. Those clients and the charities that represent them know where those specialist support networks are and can make the necessary referrals instead of relying on the bureaucracy to randomly allocate clients and get things wrong the first time and then have to come back and try again.

Q87 Chair: For the Government's proposed system to work, there would have to be some exceptionality in which certain types of case required you to bring in someone from another firm, in which case your firm has then lost the proportion of cases that it is supposed to be getting.

Tudur Owen: That would be correct, yes.

Roger Smith: Yes, that is the problem. You are imposing this rigid, arithmetical formula and you are depriving people of choice to do it to get the price right down. There are all sorts of problems with that. One is geography, but there are a number of reasons why choice is desirable. It is not absolutely essential in a way and we do not have an absolutely free choice at the moment because there are quality criteria that are imposed. But, if you start to say you do not have a choice of solicitor, constitutional issues arise. We all want to choose our solicitors. Why can't the poor? Secondly, there are quality issues of competition, but, thirdly, there is a rule of law issue.

A lot of people who go through the criminal justice system are pretty angry about society as a whole. The obvious example would be somebody accused of a terrorist offence. They are pretty angry. What you want to happen at the end of the system is that the process of going through the court gives them a lawyer in whom they have confidence and, to the maximum extent you can, you reassert the fairness of this society against anybody who wants to challenge it, if they want to challenge it. That is the sort of accommodation that you can make in the current system. If you are accused of a terrorist offence, there are probably three solicitors you would go to at the moment, whether you were guilty or innocent. You have that choice to do that. They will be carved out of the system.

There will be problems in Wales about geography; there will be problems with deaf people who cannot get somebody else; there will be problems with types of cases where you cannot get choice. You can remove choice, but you have to do it much more carefully than these proposals do.

Q88 Chair: Turning now to the Welsh language issue, in which Mr Owen has expertise, can you tell us how you think the Welsh language issue is expected to be provided for under the Government's proposals, which did not appear to have been mentioned at an early stage?

Tudur Owen: It is not mentioned at all. It is not as if it has been considered, as far as I can see, in any of the documentation that I have seen. Welsh is a living language in Wales. You will find statistics that show perhaps that it is not recorded as being used as much as it is. The reality is that it is used all the time. Custody records will show they are being completed in English, but the whole process will be undertaken in Welsh. The review by the inspector will be in the Welsh language; the interview will often be in the Welsh language. There was recently a murder case where the interview was conducted throughout in the medium of Welsh. The charge procedure might take place in Welsh. The subsequent procedure then, obviously if charged, will go on to the magistrates court to start with. Some of that may be in Welsh. I did a duty stint on Friday. I saw about nine people, and I spoke to five in Welsh, three of whom chose to have either the whole or part of their cases dealt with in Welsh.

There does not seem to be any provision, as far as I can see, in these proposals for the need for Welsh language solicitors to be dealing with the work, which touches on the point Mr Corbyn raised earlier about communities in inner-city areas as well. That is my understanding of the position.

Duty solicitor schemes now in Wales—for instance in north Wales, Anglesey—will have everybody there fluent in Welsh. In the Gwynedd scheme, of 16, about four are not fluent in Welsh. That will all be lost according to these proposals. That is of concern, obviously.

Q89 Chair: Could that need be met by a contractual requirement in Wales that the bidder must deliver services in Welsh in any case where the client seeks it?

Tudur Owen: There would have to be a clause in the contract that insists on that throughout Wales. It is my understanding—I am not an expert on the Welsh Language Act—that certain requirements are met. It is somewhat unusual, on reading the policies of the CPS and the North Wales police, that those who prosecute the individuals concerned seem to be far more concerned about the linguistic concerns than those who defend them, which seems a very incongruous situation to be in.

Q90 Mr Llwyd: Does it concern you that, in fact, the consultation document was not produced in Welsh until halfway through the consultation period?

Tudur Owen: Yes, it does. It was only produced after complaints were made to the various institutions involved. The Commissioner for the Welsh Language has responded in some detail.

Q91 Chair: We have his response.

Tudur Owen: Her response.

Chair: Her reponse, sorry.

Q92 Mr Llwyd: You and I both know that it is quite routine for Welsh language trials to be conducted throughout Wales.

Tudur Owen: Exactly; that is the whole point. The statistics will show you a relatively low level of use, for the simple reason that they do not record, for instance, that in a trial you can have one witness or two giving evidence in Welsh, you can have the defence conducted in Welsh, and you can have the prosecution perhaps conducted in Welsh. There will be a

mishmash of various aspects as to how it is done. You can have the prosecution case produced in English; the defendant may mitigate in Welsh.

Q93 Mr Llwyd: You said earlier that you do not believe in north Wales, and indeed mid-Wales as well, that there will be any existing firms there that can actually take on the contract being offered.

Tudur Owen: I cannot think of an existing firm in the north Wales area that can do it. We spoke last night with various people about mid-Wales, and they were indicating that they could not. My colleagues in south Wales, who are present here today, also indicated they cannot think of a firm in south Wales that would meet the criteria.

Q94 Mr Llwyd: If this scheme is to work, there will have to be some movement from outside to try and comply or bid for the contract.

Tudur Owen: There is that possibility, or the other possibility is for various firms to link together either as a unit or hive off the criminal work. The problem with that has been covered already by those who have gone before me, who have said, first, it is financial, and, secondly, there are going to be regulatory problems involved in doing that, especially in such a short period of time.

Q95 Chair: Thank you. I just want to be clear about that. The problem you are describing, which will be common to a number of other parts of England as well—

Tudur Owen: Yes; it is the rurality problem. The language problem is obviously different. Some aspects of the language matter will crop up on other matters, but the rurality of it will cover areas such as Cornwall, Devon, Cumbria and other areas.

Q96 Chair: When you said that the people you contacted felt that their firms could not bid, were they excluding the possibility of working with others in order to get the bid, or was that not the question that you asked?

Tudur Owen: We are all waiting at the moment to see what comes of this. That, again, was covered in earlier comments that were made.

Q97 Chair: Is it your judgment that, faced with the potential loss of a significant part of their work, if the scheme went ahead, they would in fact get together and try and produce some sort of ad hoc criminal legal aid business or work as a partnership?

Tudur Owen: It is pretty difficult, within the time span that is granted to us, to see how that is workable.

Q98 Nick de Bois: I just want to return briefly to client or consumer choice, if I may, principally for you, Mr Brooker, but I would just like to start with you, Mr Smith. Broadly speaking, the question is to what extent do you think restrictions in consumer choice will undermine the client trust in their solicitor or barrister? In a way you have touched on that. If you go to the Crown court, you can effectively choose your barrister through a solicitor. Can you bear that in mind in the context of the question of how it will ultimately undermine trust, because you said it could possibly work but needed more work, effectively?

Roger Smith: Yes. The ability to choose has some advantages to it. It allows in a diversity of provider. We have talked about the Welsh language, but suppose you are a Nigerian. It would be reasonable to say, "I want a Nigerian solicitor", and at the moment you will probably be able to get one. You might not under a PCT situation. If you are facing a charge of murder, terrorism or serious fraud you go to a specialist provider now. There is nothing in the document about doing that, so there are problems with taking it away.

Q99 Nick de Bois: Could you choose a barrister who had a record in that and ask for that barrister?

Roger Smith: Yes, you could.

Q100 Nick de Bois: That is the point that I am pressing, because they are very serious cases.

Roger Smith: Yes, you could. So far as the court presentation in these proposals is concerned, you would be preserved, but all the pre-trial stuff, which is the person you will actually see for the majority of the case, is going to be someone who is chosen for you on the basis of your date of birth or the first letter of your name. That is the relationship that is the primary one, in the sense of chronologically primary, and is really important. You can say there are overriding considerations that restrict that, and at the moment we restrict it in terms of quality and that is reasonable. If you are thinking about replacing client choice, then you have to think about how you compensate for all the things that are going to go.

What is going to go? All the experienced practitioners are going to go. We know this from what happens in other jurisdictions. The contractor comes in; all the older experienced people go within two or three years. They are hired by juniors; they are overworked. When we talk loosely about quality, what do we mean? The number of guilty pleas will go up and the number of trials will go down. There will be fewer appeals and fewer challenges to the prosecution; there will be less looking for witnesses, because the economic necessity will be to do the least amount of work for the maximum amount of money as you are being cut so close to the bone. Those are neutral effects of the system.

If you are going to put in a PCT system, you have to think how you are going to counteract it. Other jurisdictions have found various ways of counteracting them to various degrees, but you have to think about it. The only quality provision in this paper is a suggestion that, after nine months, you might get the barest acceptable level of peer review quality.

Q101 Nick de Bois: It is very helpful, but is it possible that you could identify—I may be asking the impossible—a type of defendant who will suffer particularly from this change? You pointed to minority ethnic groups possibly, but is it possible to identify a typical type of client who would be most affected by this change that you have outlined? What are we talking about?

Roger Smith: You can see the potential effects in a number of ways. I would be—*[Interruption.]*—stopped by the bell.

Nick de Bois: That is up to the Chairman.

Chair: You would be paused by the bell just because it makes it more difficult to hear. Continue.

Roger Smith: Constitutionally, my big concern would be in big cases. There is a sub-story to the Birmingham Six, which has never really been told. Part of the problems for the Birmingham Six arose because, on the day when they were arrested, they were acted for by the duty solicitor on the day—two of them—who were intimidated by the armed security, and things were not done when they should have been done. You are going to get somebody barely qualified in the midst of a really heavy police operation and they are not going to do the job properly. That would be one example. You are not going to get, potentially, the empathy. There are going to be a whole range of problems about the personal relationship and the professional relationship with the client.

Q102 Nick de Bois: Very briefly, because that bell is no doubt hurrying us, Mr Brooker, can you explain the analogy to me a little more about school places as a model of managed choice? The LSCP submitted that and I did not quite grasp it myself, which is more a reflection on me than you, I am sure.

Steve Brooker: I will try my best. Our research shows that people value choice in the current system. In fact, people are more likely to shop around when they are funded by legal aid than when they purchase legal services privately, which is slightly counterintuitive, but that is what the stats say.

The circle that the Government are trying to square is how you allow consumers to exercise a degree of choice, while giving providers sufficient certainty about caseload volume to make it attractive to them to bid. Our consultation response refers to what the Office of Fair Trading has called a managed choice, where you allow a degree of choice in the system. As you know, in schools, parents are allowed to express a preference about which school their child goes to. The vast majority of parents exercise that choice and most get either their first or second preference. The system is not perfect because parents do not always get their preferred option, and it does not force failing schools out of the market because, ultimately, they still get those school places, but it does allow a degree of choice.

A second example is the social care system, where we have a system of personal budgets where people can choose the treatment options and the services, in consultation with their medical team, that they feel will best suit their needs. Government expenditure is capped so it does not cost the taxpayer any more, but it does afford a degree of choice in the system. What those systems of managed choice allow is an incentive for those providers to design and deliver services that are tailored towards the needs of the users rather than some artificial criteria imposed by the Government in a PCT mechanism.

Q103 Mr Llwyd: Following on what from Mr de Bois asked earlier on, Professor Smith, you referred to the attendance of the solicitor at the police station being the primary relationship.

Roger Smith: Not just at the police station; in the preparation of the case.

Q104 Mr Llwyd: Yes. May I perhaps ask you about the attendance at the police station? If that relationship somehow does not work out, a lot of harm can be done at an early stage if the solicitor does not do a proper job. At the end of the day, the fact that there is a choice of barrister later on is merely trying to pick up the bits. Would you agree with that?

Roger Smith: Yes.

Q105 Gareth Johnson: If I can pick up on some of the points I made earlier, under the present system there is a financial incentive for a firm receiving a case from another firm of solicitors. If there is a transfer of legal aid, then there is a legal aid order given to the subsequent firm. Equally, if a case is given, because of speciality reasons, to another firm, there is a financial incentive for that firm to receive that case. As I understand the current proposals, there is a financial disincentive for firms to receive cases from other firms. It may be that you can force firms to take on other cases, but it does seem to me that you are not going to be proactive. A firm is not likely to be proactive in seeking out cases that they specialise in because there is no financial gain at all for them, and, actually, there will be a disincentive for them to do so. Do you think that will compound some of the issues you have been talking about?

Roger Smith: It would depend whether it came within the quota of cases they got. Nobody outside the system is going to want the case because they are not going to be paid for it. If you are in the system and it counts towards the quota for which you are being paid, that

is fine. The jurisdictions that I have seen with this sort of system have people who are managing the caseloads to the providers. This thing is not a fire and forget mechanism. If you are managing four contracts in an area, you could have, just by force of circumstance, five murders coming in all with the same birth date. You need to have some management of the system. It will not just work like clockwork from day one. One of my concerns about the paper is that there is no understanding in it that, even if you go to this system, it will need managing. We need people who will need to—

Tudur Owen: If we are going by initial surnames, can I bag all the Js, please?

Q106 Chair: Can I just follow that up? Can you envisage a system in which a number of larger firms have contracts—perhaps on this random basis they have a fixed number of contracts—but that there is sufficient of a financial incentive for them to put out a specialised case or, indeed, a case in a more distant area to another firm that is not a major bid contractor?

Roger Smith: Yes; you could run it like that. That is the sort of system of thinking that you need. Terrorism would be my example. Those are highly specialised cases where the police want the specialist lawyers, the people accused probably want specialist lawyers, and you would want to set up a specialist unit. You could imagine, potentially, the same for murder and serious fraud, certainly. Yes, if you start to look at how you would make PCT work, you would get a much more sophisticated and thoughtful approach than there is in this rather derisory document.

Q107 Mr Llwyd: Professor Smith, in that instance, for example, where, if I can call them that, an ordinary solicitors' firm might engage a specialist firm, are they really going to work for the rates of pay now being canvassed—an initial cut of 17.5%? I do not think they are going to do the work, are they?

Roger Smith: That would be a question that you should put to the Secretary of State, because the Secretary of State has to come up with rates of payment that will ensure that the constitutional duty to provide representation is met.

Tudur Owen: You all seem to assume that barristers will be used for advocacy by these institutions when they start. The reality of it will be that these institutions will employ their own barristers, who will not necessarily be the right people to do those jobs. There is no incentive on them to use an independent Bar, because once they have the case they have nothing to keep the client; there is no incentive to keep that client ever again. That is something that needs to be considered as well.

Q108 Chair: I suppose, if you are assuming they have a set lot of cases, they can calculate how much barrister time they need.

Tudur Owen: They can put their own in-house person in to do the work. There is nothing preventing them doing that throughout. Then they get the extra fee on top of the work that they get because the advocacy in the Crown court is not covered within the scheme, so that is an extra incentive for them to employ in-house people who might not be the right people. They may be but they may not be either.

Q109 Chair: We are talking about junior barristers, are we not, because we are talking about magistrates court work?

Tudur Owen: No; we are talking about Crown court work, because they could easily employ in-house counsel. They would do so because that is the only way they can make it pay in any better way. They would employ in-house counsel, and those would be used both in the magistrates court and for Crown court trials.

Steve Brooker: Can I make a wider point that there are financial incentives in any system of lawyer remuneration? If you are paying by the hour, the incentive on a lawyer is to drag out the case. If you are paying a fixed fee, the incentive is to cut corners. So, whichever system of pay we introduce, we have to accept that there will be financial incentives and find ways to monitor and control those. One of the criticisms I would have of the current proposals is a lack of accountability for the providers who are potentially awarded quite lucrative contracts paid by taxpayers. Where is the information about their success rates? Where is the information about their peer review scores, their complaints history, or their customer satisfaction? That information is either collected and not publicised or not collected at all. If we are to ensure proper value for money for taxpayers, shouldn't we be collecting that information and putting it into the public domain? It is the Government's default policy that public bodies and complaints organisations should now publish that information in order to drive up quality in the marketplace.

Q110 Seema Malhotra: Could I direct this question to Mr Smith initially? You have already alluded quite a lot to your argument that what we are seeing is the creation of a public defender system, and, in a sense, you are probably arguing that the Government should be coming more clean about that, rather than talking about this as just a reform. Could I ask for some clarification? You have talked about considerable domestic prejudice against public defenders. Could you explain what you mean by that and your evidence for it?

Roger Smith: Talk to any lawyer. A public defender is what you threaten your child with if they misbehave. "If you misbehave, I will get you a public defender." There is an enormous prejudice. If I say this is a public defender scheme in this context, that is a prejudicial comment. If I said it in the state of Oregon, Washington State or Washington DC, they would just shrug their shoulders; that is how it is. It is prejudicial in this jurisdiction, which is why the Government are not using it, but I think it is really helpful to use it because it identifies the differences in this scheme from what we have had until now, which has been a judicare legal aid individual scheme.

Q111 Seema Malhotra: Could I ask about the differences and particularly the point about quality, which you also raised a lot in terms of any quality review or quality management? In your experience and your research, was there a decline in the quality of provision through a public defender system in the US, and were there any variations in that—good and bad services within the US?

Roger Smith: Yes, there is enormous variation. In some of the southern states you had cases where the public defender fell asleep during a murder trial. I have watched a Supreme Court case on basically that point. This public defender system has been coming here for the last 15 years. I went in 1998 to states that I thought had good public defender schemes that were worth looking at. Yes, the federal public defender in the States is a really impressive operation and I saw a number in a number of states. They are well resourced, and when you ask them what they do, one said, "Yes, I have quite a lot of trials. I have three a year." It is a very different system and it is a much more process-orientated system for a variety of ways. But, yes, in another life I could be a public defender in the state of Oregon and go canoeing in the evenings. It would be wonderful.

Q112 Seema Malhotra: What do you think is the real underlying intention of these proposals? Do you think it is to fundamentally change our model to reduce the number of firms? What do you think is really behind this?

Roger Smith: This is an unholy deal between the big providers of solicitors who want this scheme and who have been arguing for it for ages—they are a bit taken aback to find out

they are expected to come up with 20% savings; it was not quite what they imagined—and a Government who think that, if they can get a public defender scheme in, they will be able to cut more money than they would otherwise.

Tudur Owen: I would agree with that.

Q113 Chair: Let us just explore that a little more. If this is a public defender scheme, it is not a salaried public defender scheme run by a state organisation. It is the contracting of defence legal advice and representation on what basis? In what sense is it a public defender scheme?

Roger Smith: It is a public defender scheme in the sense that it is contracted, there are a limited number of providers, and you have no choice. In the old days when I was a lad, it was judicare, legal aid, private practice on the one hand and then salaried services on the other. With the advent of contracting, it basically means there is not all that much of a distinction if you are a contractor. Chile contracts with firms of private solicitors. There will not be much difference being a member of a firm there and in the public defence operation in Washington State. There is no difference, effectively, except in one you are directly salaried and in the other you are indirectly salaried.

Q114 Chair: There is quite a significant difference, though, between a state agency—something like the Crown Prosecution Service, if you like—a defence equivalent of the CPS, although even the CPS of course contracts a significant part of its work. This is, or at least it is intended to start as, a system in which all the providers are private. The nature of the contract is what the state does.

Roger Smith: Yes. All the providers are selected by the Secretary of State—not you. Indeed, the proposals make it absolutely clear that the small public defender office that exists at the moment will be potentially used as back-up when, as is probably quite likely, some of these people go bust. I am not sure there will be that much distinction between the public defender office as now is and these contracted providers.

Q115 Chair: In your description of the Chilean model, you say that the model aims to protect experience.

Roger Smith: Yes. I thought that was really interesting. I interviewed, in a way slightly by chance, this Chilean public defender who was working with Justice, and was asking her questions as she was referring back to the firm that she was part of to get the answers. They have a system whereby in the bid process there are allowances made for experience. I may come in with a bid for £2 million and Tudur may come in with a bid for £2.5 million, and Tudur may still get it because he is putting up 20 experienced lawyers who are coming into the bid process with a financial premium. The point is that you have heard all the objections to PCT, and, if it is done crudely, they are all there, but one of the objections is that the experienced people go. You can correct for that, as the Chileans do, and it is an interesting way of doing it. The other thing that almost everybody who has implemented this sort of system has found is that the junior staff get exploited and so you need to have maximum caseload levels on what they can do in the contract. No lawyer can be required to do more than x numbers of cases a year, otherwise it is absolutely predictable what will happen.

Q116 Chair: Do you know if the Government have engaged in any examination of either the Chilean model or other similar models or, indeed, asked people like you who have looked at these things for guidance?

Roger Smith: Certainly, no, they have not asked me, but I would not expect that. There is no evidence from the paper that they have lifted their head above the desk. Out there in the big wide world there is massive experience here. The ineptitude of Government never ceases to amaze me.

Q117 Steve Brine: It has been suggested that this weighty tome has been written by people who have no—dare I say zero?—experience of practising at the criminal Bar. Would any of you disagree with that statement?

Roger Smith: It has been written by civil servants, and, in a way, it is an unfair question because of course it has been written by civil servants in the Ministry of Justice.

Q118 Steve Brine: Not by but closely with.

Roger Smith: If your essential point is do you get the reek of sweat and smell of blood and fear from this document of someone who has actually seen it in operation and knows what they are talking about, no.

Tudur Owen: It would seem to have no bearing on my day-to-day existence as a solicitor hack going around the courts and the police stations of north Wales.

Steve Brooker: It is a false question. Why should I have to have a heart operation in order to comment on the performance of a surgeon? Why should I have to go through a bereavement in order to comment on the workings of the funerals system? Politicians are there to represent the taxpayers, not to represent the practitioners. Yes, they must have close dialogue with lawyers in order to understand the system and to make proposals that would work for both lawyers and consumers, but I would feel uncomfortable if the proposals were made in very close consultation with the lawyers, and consumer representatives were excluded from that process.

Q119 Jeremy Corbyn: Going back to the public defender parallel that Roger Smith was quoting from Chile, what about the perhaps more apposite parallel with the United States, where public defenders are seen as the worst option and there is a general perception that there is often very poor defence offered by them? Does that not lead to the possibility of serious miscarriages of justice?

Roger Smith: You just have to be quite precise. There was a big study done of New York, in part by Mike McConville, who was a professor at Warwick. The good guys in New York turned out to be the public defenders and the bad guys turned out to be the scrabbling private practitioners who took the conflict of interest cases.

Q120 Jeremy Corbyn: What about the small town in the mid-west?

Roger Smith: I have no idea because I have never been there. The southern states are a big example. There are whole swathes of states that have unsatisfactory public defenders. The point that you are getting at, which I would absolutely agree with, is that public defenders vary. When I looked at the variables, the chief one I found was level of resources. I would have no problem about instructing the federal public defender in a major case in the US. If I was in the state of Arizona, would I trust a public defender? Not on your life.

Q121 Chair: It is actually public defender systems that you are saying vary.

Roger Smith: Yes.

Q122 Yasmin Qureshi: You talk about the fact that there are the good ones and bad ones. The truth of the matter is that the public defender system in theory is very good if it is resourced properly and the staff in it are paid properly, but if, as most of these attempts are, it

is to cut costs and to reduce money, then you are not going to have very good public defender systems, are you?

Roger Smith: No.

Chair: Thank you very much. We like straight answers. We are very grateful to you for your help this morning. Thank you.