



CDS DIRECT **RESPONSE TO CONSULTATION**

Introduction

On Tuesday 4 May 2004, the Commission published a consultation paper proposing a pilot of a project named "CDS Direct". The consultation period closed on Wednesday 16 June 2004 and this paper summarises the responses received and the Commission's intentions.

Overall Conclusion

The Commission appreciates those suppliers and professional bodies who took time to provide detailed suggestions which have been helpful.

The Commission has decided to proceed on the following basis:

- The pilot will cover Liverpool region (all schemes) and Boston scheme for all police station duty solicitor work excluding indictable only cases and those cases where the time of interview is known at the point that the request for a duty solicitor is made. London region will not be included in the handling of all duty solicitor work as proposed in the consultation paper but will be included in scope for those cases limited to telephone only advice.
- The new Community Justice Court in Liverpool should be excluded from the pilot.
- No payment for telephone advice will be available if CDS Direct has been involved.
- The pilot will cover all duty solicitor work nationally (including London region) where the matter is restricted to telephone advice only i.e. Driving with excess alcohol; Client detained for non imprisonable offence; Warrant. If the exceptions permitted by the General Criminal Contract for attendance, such as to attend an interview, apply then the matter will be referred to a crime supplier in the usual way by the Duty Solicitor Call centre.

- The Commission will investigate the option of including the provision of immigration advice for clients detained at the police station until an interview for a criminal offence is to take place.
- The Commission has listened and responded to the points made in the consultation responses and will be publishing a further consultation document to the professional bodies shortly. The Commission will also invite representatives of the professional bodies to meet with the Commission to discuss any detailed concerns that remain.
- The intention is that the pilot will commence on 4th April 2005 and last for at least 6 months.
- The detailed summary of the responses to consultation will be sent shortly to all respondents and will also be posted on the Commission's website. The revised consultation paper will also be published on our website. You are more than welcome to download the revised consultation paper and provide any response to john.sirodcar@legalservices.gov.uk

Responses

Responses were received from:

FAITH Advocates
Belshaws Solicitors
Mr. Graeme Hydari Porters Solicitors
The Home Office Police Powers and Standards Unit
John D Sellars and Co Solicitors
Needham Poulter & Partners Solicitors
Bunting & Riley Solicitors
T C Clappe Gartside Solicitors
Mr. Julian Conningham Conninghams Solicitors
Mr. Julian Tanikal Harland and Co Solicitors
Ms S A Kelly
Mr. James Subbani, Lowless & Lowless Solicitors
Mr Kevin Lowry Mullins
Mr. Steve Nunn, Nunn Rickard Solicitors
Mr. Mark Bagshaw, Bagshaws Solicitors
Mr. Jason Halsey, Constanti Shah Solicitors
Mr. Michael Cohen, Thos Boyd Whyte Solicitors
Mr. Stuart Blackburn, Hallinan Blackburn Gitting & Nott Solicitors
Ms Julie Brice, Brice and Co Solicitors
Mr. Michael Robinson, Jacqueline Emmerson Solicitors
Wessex Solicitors Chambers
Mr. Jeremy Ornstein, Lewis Nedas & Co Solicitors
Seema Dosaji, Berri's Solicitors
Mr. Christopher Baldwyn
Navy Command Secretariat (Law)
JS Spicer and Co Solicitors
Leeds Law Society Criminal Sub-Committee
London Criminal Court Solicitors' Association
J P Cairns
Peter Bonner & Co Solicitors
Mr. David Harvey, Ford Simey Solicitors
Mr. Andrew Moxon, Claude Hornby & Cox Solicitors
Metropolitan Police
Mr. Ed Cape, Professor of Criminal Law and Practice, University of the West
of England, Bristol
Mr. Philip Kazantzis
Mr. Robin Rose Solicitor
Head of Corporate Governance Audit & Assurance (RAF)
Taylor Nichol Solicitors
Charles Kurut and Co Solicitors
Lawrence & Co Solicitors
Army Criminal Legal Aid Authority
Edward Fail Bradshaw Waterson Solicitors
Mr. Michael Burdett, Solicitor

East Berkshire Solicitors (Associate & Co, John Francis & Co, J R Hobbs & Co, Martin Murray & Associates, Mylles & Co, Wilson & Berry)
Liverpool Law Society
Mr. Michael H. Macdona, Solicitor
C R Burton & Co Solicitors
The Law Society
Tremletts Solicitors
Criminal Law Solicitors' Association
Hickman & Rose Solicitors
Burnley-Jones Bate & Co Solicitors
BSB Solicitors
Hayes-Burcombe & Co Solicitors
Legal Aid Practitioners Group
Wilson & Co Solicitors
Mr. J Young Solicitor
Mr. J Smith, Solicitor GSE Legals
Mr. B Lansbury, Lansbury Worthington Solicitors
Mr. G. Wordsworth, Mackesys Solicitors
Mr. A Mulrenan, Lound Mulrenan Jefferies Solicitors
Mr. J Smith, Solicitor

In addition 2 responses requested that their name is not published in the consultation summary.

Responses to Individual Questions

The responses to individual questions follow. Please note that not all respondents responded to all questions and that several respondents did not respond specifically to questions raised. Some respondents made additional suggestions, outside the scope of the consultation paper. These will be considered by the Commission.

Where comment was made in addition to an answer, a summary is shown together with the Commission's view which is shown in italics.

Question 1i

Do you agree that, for the pilot sites, indictable only cases should be excluded from the pilot?

Yes 28

No 15

Such cases should never be included.

The Commission notes this view.

If CDS Direct is good enough for one case, it is good enough for all.

This view is not held by the majority of respondents.

No cases should be included.

The Commission does not agree. There are significant benefits to assessing a pilot to determine whether cost savings can be achieved and service improvements implemented.

The pilot should be restricted to summary only matters.

The Commission believes that the pilot must cover a range of cases so that the lessons to be learned for a future tender are as realistic as possible. A restriction to summary only matters would significantly reduce such benefits.

The scope of the pilot should be limited to non-imprisonable offences.

See above answer.

The pilot should also exclude either way matters that are serious arrestable offences.

See above answer.

The pilot should also exclude cases where an appropriate adult is involved.

See above answer.

CDS Direct should only deal with cases over night.

See above answer.

Excluding indictable only will also result in all either way cases being excluded.

It is unclear why this view is taken.

Only solicitors who attend court are capable of providing advice for apparently simple matters such as breach of the peace as representatives do not deal with telephone work.

This is not the current position whereby representatives may advise by telephone for duty work (accredited representatives after a duty solicitor has provided initial advice) and for own client work (both accredited and probationary representatives – probationary representatives may not advise on indictable only matters).

Indictable only matters should be included.

The Commission wishes to exclude such cases from the pilot but will consider whether such cases should be included in a future tender. This issue will be considered during the pilot.

It will be virtually impossible to identify indictable only matters e.g. burglary where violence is used, third time domestic burglaries.

The Commission understands the point made but the only solution would be to include indictable only cases in the pilot.

The offence under investigation may change as the investigation progresses or the police may not provide sufficient description of the offence to enable indictable only matters to be excluded.

The Commission notes this view and will explore this in more detail during the pilot. If a case changes from non indictable to indictable, deployment to a supplier will take place.

SUMMARY

Responses are divided on this issue. The Commission believes that indictable only cases will often require attendance prior to an interview being arranged and therefore intends to remove such cases from the pilot. We will review this position as part of the pilot evaluation.

Question 1.ii

Do you agree that for all non indictable only cases in the pilot sites, CDS Direct should provide initial advice to the client and continue to contact the police until the time for interview/ identification procedure is known?

No 31

Yes 5

Partial

Early advice should be provided to suppliers if CDS Direct are dealing with a case.

The Commission understands the point made and will consider this point further in discussions with the professional bodies.

Calls from one police station should, wherever possible, be dealt with by the same CDS Direct advisor.

In practical terms this is unlikely to be achievable. In addition, if the processes to be used are standard, the benefits of such an arrangement will be minimal.

CDS Direct should only be involved if there is no intention for an interview to take place. In all other cases, the call should be deployed direct to a supplier.

The Commission understands the point made and will consider this point further in discussions with the professional bodies.

There is no reason why accredited representatives cannot provide this advice.

The Commission notes this view.

Attendance should also take place if an appropriate adult is required.

The Commission does not agree for the pilot. If an interview is not arranged, the criteria for deployment are not met and, in the professional opinion of the advisor, attendance is not required, legal advice can be given both to the detainee and the appropriate adult by telephone.

The proposals will encourage officers to deal with matters expeditiously and diligently.

The Commission notes this view from The Metropolitan Police.

Attendance should also take place to advise on samples and charge.

The Commission does not agree for the pilot. If an interview is not arranged, the criteria for deployment are not met and, in the professional opinion of the advisor, attendance is not required, legal advice can be given to the detainee by telephone.

There is the potential for breaches of PACE and Human Rights Issues.

No further details were provided by the respondent on this issue and the Commission cannot see what concerns exist, but will endeavour to monitor this as part of the pilot.

If a time for interview is known at the time the request is received from the Police, CDS Direct should not be involved.

The Commission understands the point made and has decided to exclude such cases from the pilot.

Discussions with the client should only be permitted by those who will represent the individual.

This is not reflective of the current position. There is no obligation either on suppliers, or upon clients, that the supplier or the individual providing police station advice must also provide court representation.

Particular characteristics of the client may require early attendance.

The Commission will need to investigate this issue in more detail during the pilot but accepts that an advisor will need to deploy such a case

It is only possible to determine whether a detainee is drunk or has mental health issues if you visit the police station.

Attendance at the police station must pass a sufficient benefit test. Not all requests for legal advice will achieve this test.

Tactical decisions/judgement calls need to be made.

CDS advisors will only deal with matters to conclusion if (a) the matter is restricted by the General Criminal Contract to the provision of telephone advice or (b) no interview is to take place. In such situations the advisors will be capable of making any such tactical decisions. If an interview or identification procedure is intended, the level of discussion between CDS Direct advisors and the client will be limited to those issues needing clarification prior to attendance by an advisor.

There is the potential for conflicting advice to be given to the client.

See above answer.

There is no guarantee that CDS Direct will be proactive enough.
CDS Direct will be proactive in obtaining details from the police. The systems to be used by CDS Direct will be documented and discussed with the professional bodies and then available for independent examination by the professional bodies. Such a level of assurance is not available for police station work conducted outside the pilot.

Telephones in police stations are not confidential.
The Commission understands the general concern regarding this long running issue. Nevertheless the Police Authorities are aware of their obligations under PACE and suppliers have provided substantial volumes of telephone advice claims over several years. The cost of such advice is calculated at £26 million per annum. If an interview or identification procedure is to take place, CDS Direct advisors will limit discussion with the client, in the Commission's view accordance with existing best practice, to the need not to enter into discussion with anyone at the police station until such time as a legal advisor attends.

CDS advisors will have incentives to minimise attendance.
This is certainly not so. CDS Direct advisors will operate standards which will be discussed with the professional bodies. One advantage is that attendance will be arranged, unless the client does not wish this, when an interview or identification is to take place.

SUMMARY

The Commission acknowledges the strength of views from respondents. The Commission agrees that cases where the time of interview is known at the time that the request for legal advice is made should be excluded from the pilot.

Question 1.iii

Do you agree that if deployment to a CDS supplier is needed following initial advice by CDS Direct, no claim for telephone advice should be payable for the pilot sites? The only exception to be if CDS Direct identify that a potential conflict of interest exists in CDS Direct dealing in which case the matter will be deployed to a CDS supplier and Police Station Telephone Advice and Assistance may be claimed by that CDS supplier.

Yes 2

No 41

Partially agree 2

Yes, regrettably, in the interest of saving costs.
The Commission notes this view.

There should be some form of acceptance fee.

The Commission has considered this suggestion and concluded that the financial pressures upon the Commission are such that this option should not be pursued.

Where appropriate routine calls (capped at a maximum of 3) should also be permitted.

See above answer.

Suppliers will need to spend a very long time speaking with CDS advisors to obtain relevant information.

The Commission does not believe that this will be necessary. If an interview or identification procedure is intended, the level of discussion between CDS Direct advisors and the client will be restricted to those issues needing clarification prior to attendance by an advisor. If a call is to be deployed by the Duty Solicitor Call Centre, the intention is that suppliers will be advised that either (a) no detailed specific advice has been provided (b) details of the advice will be read out by the DSCC or (c) the CDS Direct advisor will need to speak with the supplier. In the majority of cases it is expected that option (a) will apply when an interview or identification procedure is intended.

Work can be needed after a solicitor has left the custody suite e.g. review of detention, intimate samples.

The Commission notes this view and has considered allowing payment for the provision of telephone advice in specified circumstances. The Commission is however concerned that such a system cannot be managed with sufficient clarity and will bring conflict between suppliers and its bill assessors. The Commission also needs to control expenditure in a justifiable manner and has therefore decided that no payment for telephone advice will be permitted once CDS Direct has been involved.

The Police are often inaccurate in assessing when interviews will take place and the proposal will increase attendance costs.

The Commission will measure, as part of the pilot, whether attendance costs increase and whether it is widespread or confined to certain suppliers. In addition, samples of cases will be compared with custody records to determine whether interviews do take place by the time initially intended. If there is a significant discrepancy, this issue will be followed up with the Police.

SUMMARY

The Commission will measure the accuracy of interview times provided during the pilot.

The Commission recognises the strength of responses however the Commission has decided that no payment for telephone advice will be available for cases where CDS Direct has been involved. In reaching this decision, the Commission has considered the financial pressures upon the Commission, that clients would not be prejudiced by this decision and that the need for additional telephone advice should apply in a low number of occasions.

Question 1.iv

Do you agree that provided 45 minutes notice of the interview/ identification procedure is given, the CDS supplier should be advised for the pilot sites that a condition of accepting the matter is that attendance takes place by the time of the interview/ identification procedure?

Yes 6

No 30

Partially 2

Providing that 45 minutes notice applies from when the duty solicitor accepts the call.

The Commission notes and agrees with this view.

If the police provide 45 minutes notice, some time will be used locating a CDS supplier and the supplier will therefore have less than 45 minutes.

See above answer.

If the police provide more than 45 minutes notice, will the supplier be contacted at that point or only when 45 minutes remains?

Suppliers will be advised at the point that an interview time is set, not when 45 minutes remain. The only exception is likely to be where an interview time is set during the night (say at 2AM) for the morning (say at 9AM). The Call Centre intend to contact the rota duty solicitor at 7.30AM or when 60 minutes to interview remain whichever is the earlier.

The 45 minutes should relate to when the police are ready to provide disclosure.

This is an interesting idea and one which the Commission will explore further with the Police.

Paragraph 8.2.2 of the General Criminal Contract allows a supplier to refuse a case where a conflict of interest exists. This should be built into CDS Direct.

The Commission agrees.

We are already obliged to achieve this.

The Commission notes this view.

The 45 minute rule should be interpreted flexibly and not rigidly.

The existing contractual requirement is that a duty solicitor must be capable of attending the police station in 45 minutes. If unforeseen circumstances occur, then the Commission would not expect to query this with the supplier.

The time limit should be 60 minutes.

See above answer.

The time limit should be 90 minutes.
See above answer.

The improved “fixed appointment system” proposed by CDS Direct would significantly benefit the Metropolitan Police and the Criminal Justice System.
The Commission notes this view from The Metropolitan Police.

The proposal may increase the time needed to attend as a further level of advisors is involved.
This view is not supported by The Metropolitan Police.

What if a duty solicitor is already in interview at a different police station?
This is not a change to the current practice. A duty solicitor should not accept a duty cases where he/she is already busy with a previous matter unless he/she is confident of being able to provide advice within a short space of time.

The condition of acceptance should be to attend within a time period of when the interview is to take place.
The Commission believes that such a requirement would be difficult for suppliers to consistently achieve.

Suppliers should be given advance notice when a client is detailed.
The Commission understands the point made and will explore with the professional bodies.

Suppliers need advance notice of clients in detention to manage their and their colleague’s time effectively.
A rota duty solicitor should be capable of accepting a rota duty solicitor matter without the need for advance notice in the majority of cases. The existing system also provides the possibility of a client remaining in detention for a longer period of time than is necessary in order that a rota duty solicitor can deal with other matters first. This cannot be in that client’s interests.

The level of cases where a rota duty solicitor declines to deal because he/she is unable to attend the police station within the time specified will increase.
The Commission will monitor whether this is so during the pilot. Against this possibility we must balance the need to arrange attendance as quickly as possible.

Sanctions should not apply against suppliers.
The Commission intends to take the following approach during the pilot. If a supplier is unable to give a commitment to attend the police station within 45 minutes, the call will not be deployed to that supplier. No action will however be taken either under the General Criminal Contract or the Duty Solicitor Arrangements. The Commission will monitor this issue during the pilot.

The case should always be offered to the rota duty solicitor who can decide whether he/she can attend or whether another duty solicitor from the firm or an accredited representative can attend.

The Commission agrees with this view.

Conscientious solicitors will decline whereas less conscientious will accept.

There will be a perverse incentive to misbehave.

The Commission notes this view and clearly does not wish to provide such an incentive. During the pilot, the Commission will compare the actual attendance times against the time that the interview actually took place. .

SUMMARY

The Commission understands the wishes of suppliers for advance notice of possible interviews and will discuss this issue further with the professional bodies. However the need of clients for speedy attendance, where justified, of course must be paramount and the Commission therefore is not willing to reduce the existing requirement that attendance must be capable of taking place within 45 minutes.

Question 2i

Do you agree that for the pilot sites calls should be deployed to a CDS supplier in the circumstances shown?

Yes 18

No 15

Partially 3

The responses that did not agree with this proposal mainly considered that the pilot should not proceed.

Will the call be deployed to the duty solicitor on rota at the time the request is made or the time an interview time is known or the interview time itself?

The call will be deployed to the duty solicitor on rota at the time that the interview time is fixed, not the rota duty solicitor who is on duty at the time of set interview.

Why is “serious maltreatment” required rather than maltreatment to justify attendance?

This reflects the current position in the General Criminal Contract.

There should be an additional reason for deployment that the client refuses to discuss matters with CDS Direct.

The Commission accepts this additional reason for deployment if an interview is to take place.

If no attendance is required but the client will want representation at court, telephone advice should be chargeable and form part of a regulation 44 cost claim for a representation order if granted.

Such advice will only be claimable once the defendant has been charged. The Commission is not currently able to bring any post-charge work forward.

It is almost unheard of for attendance within 45 minutes to be required at night.

The Commission notes this view which, if it is correct, will mean that attendances out of hours can be reduced.

SUMMARY

The Commission intends to deploy calls to suppliers in the following circumstances:

- the police intend to conduct an interview/identification procedure; or
- CDS Direct identify that a potential conflict of interest exists; or
- the client is unable to communicate over the telephone; or
- the client complains of serious maltreatment by the police; or
- in the professional opinion of the advisor, attendance at the police station is desirable.

with an addition reason “That the client refuses to discuss matters with CDS Direct and an interview is intended”.

Question 2.ii

Do you agree that for the pilot sites a Duty Solicitor must still accept a deployed case but may arrange for initial advice to be provided by an accredited representative?

No 20

Yes 16

Partially 3

Is the Commission proposing that duty slots will be provided to accredited representatives?

No.

Initial advice should always be provided by a duty solicitor.

The Commission has decided to allow suppliers the flexibility, when CDS Direct has been involved, of providing initial advice by either a duty solicitor or an accredited representative.

SUMMARY

The Commission notes a strongly held view that initial advice should always be provided by a duty solicitor. Given the range of advice that will usually be provided by CDS Direct and the practical difficulties in recruiting duty solicitors for the pilot, the Commission intends to permit the employment of accredited police station representatives for the pilot.

In addition, suppliers will be allowed the flexibility to decide, if CDS Direct have been involved in a matter and deployment to a supplier is required, whether initial advice should be given by a duty solicitor or an accredited police station representative. Not to allow such flexibility could result in a situation where further telephone advice is not chargeable, yet a call must be accepted by a duty solicitor and hence attendance must be undertaken by a duty solicitor or additional unremunerated telephone advice provided by a duty solicitor. Such a situation is considered by the Commission to be unreasonable.

Question 2.iii

Do you agree that the Commission should explore further, during the pilot, the possibility of allowing suppliers to arrange for initial advice for duty work to be provided by an accredited representative?

Yes 11

No 28

Partially 1

Research should take place into the quality of advice provide by police station representatives.

The Commission is discussing with The Law Society whether any additional joint research to that already conducted would be desirable.

The representative should not be freelance.

The Commission notes this view which will be considered during the review.

Initial advice should be provided by a duty solicitor. Accredited representatives are not experienced enough.

There is a majority view against this proposal however the Commission believes that to allow CDS advisors, who will not be duty solicitors, to provide initial advice whilst not allowing suppliers such an option is not equitable. The Commission therefore intends to investigate this option further during the pilot.

Many accredited representatives have years of experience and can easily deal with this area of work.

The Commission notes this view.

Yes this proposal should be introduced. It is ridiculous that own client murder is less regulated than a duty shoplifting.

The Commission notes this point.

SUMMARY

The Commission intends to pursue this review during the pilot.

Question 3i

Do you agree that advisors should be recruited and initially located within the Duty Solicitor Call Centre?

No 17

Yes 13

Are probationary representatives to be included?

No.

All applicants should be interviewed in the presence of two duty solicitors from the local duty solicitor committee.

An interview process will take place involving experienced duty solicitors.

All applicants should sit a written test.

The Commission agrees.

First Assist will not have the expertise to recruit advisors. The Commission should undertake this task.

The Commission will assist First Assist in the recruitment process.

This has serious implications for client confidentiality, the maintenance of records and independence.

Such issues are important to the Commission and will be covered by the proposed Code of Conduct and Office Manual which will be discussed with the professional bodies.

The advisors should be in a separate building to avoid any question of inappropriate referrals or pressure to send calls to a particular firm.

The advisors will be close to but separated from staff who deploy calls. CDS Direct will have no influence over the decision as to which supplier a cases should be deployed to.

Local knowledge is essential in order to advise clients.

The advisors for the pilot will usually have been employed undertaking work in London police stations so local knowledge of this area will exist. The Commission will train advisors on aspects of local practice for all pilot site locations.

SUMMARY

The respondents that did not agree with this proposal generally were of the opinion that the pilot should not be undertaken irrespective of location.

The Commission intends to pursue this proposal.

Question 3.ii

Should advisors be holders of the Police Station Qualification?

Yes 18

No 15

Partially agree 9

Non solicitor representatives should only be employed if they have several years experience.

The Commission does not agree that a solicitor holding the PSQ should be treated differently from non solicitors holding the PSQ.

References should be obtained from two qualified solicitors experienced in criminal law.

The Commission will consider how references can best be taken.

PSQ training does not cover the provision of advice by telephone.

The Commission agrees that neither the PSQ nor CLAS for duty solicitors covers the provision of telephone advice. Applicant's ability to advise by telephone will however be assessed as part of the recruitment process.

Applicants must have one years experience of court advocacy; provided advice in at least 20 attendances of which 10 should be either way and/or have 1 years full time employment with a criminal law practice.

The Commission agrees that experience of attendance at the police station will form part of the recruitment process. The Commission does not agree that solicitors holding the PSQ should be treated differently from non solicitors holding the PSQ.

Advisors should be duty solicitors.

The Commission understands this approach but it is unlikely that sufficient duty solicitors will be recruited for a pilot and, if such numbers were recruited, suppliers currently employing the individuals could be significantly affected.

So long as the individual is also a solicitor.

The Commission does not agree. A solicitor holding the PSQ should be treated in the same manner as a non solicitor holding the PSQ.

SUMMARY

The Commission intends that advisors will be holders of the PSQ.

Question 3.iii

Should advisors be required to continue to undertake police station attendances outside their role within CDS Direct?

Yes 31

No 4

Court advocacy should also be included.

The Commission does not agree. A solicitor holding the PSQ should be treated in the same manner as a non solicitor holding the PSQ.

Advisors should also receive specific training on matters such as breach of the peace, breach of civil power of arrest, drinking driving, breach of bail.

The Commission agrees.

This will create conflicts of interest.

It is not clear why this view is taken. Representatives can currently undertake police station advice for several suppliers.

Advisors must not be able to gain any benefit from being a members of CDS Direct compared with other suppliers.

There will be no "benefit" in the deployment of calls which will be undertaken by the DSCC in accordance with existing criteria and not by CDS Direct.

There is no need to maintain "flying hours".

The Commission notes this view which is in the minority.

SUMMARY

The Commission will require advisors to maintain attendances at the police station during their employment.

Question 3.iv

Do you agree that advisors should be governed by a Code of Practice?

Yes 33

No 2

The advisors should be covered by The Law Society Code of Conduct.

Advisors are not solicitors and so cannot be governed by The Law Society.

The supervising solicitor will be covered by solicitor's rules.

Should be subject to compliance with professional Conduct Rules

See above answer.

A Code of conduct must be if enforceable in a similar way to a solicitors breach of rules of professional conduct.

See above answer. If an advisor's conduct merits disciplinary action or dismissal, this action will be considered.

Duty solicitors should be consulted as to the content.

The Commission will consult the professional bodies and publish the details so that any interested supplier can also comment.

The Code should refer to conflicts of interest regarding firms to which the advisor has a link.

The Commission will explore this further in discussions with the professional bodies.

SUMMARY

There is a clear majority in favour of a Code of Conduct which the Commission will discuss further with the professional bodies. Details will be made available for suppliers to comment on.

Question 3.v

After the pilot evaluation, do you agree that any contract subsequently offered for the provision of such advice should be the subject of a tender for which CDS suppliers may bid?

No 16

Yes 14

The cheapest price is not always the best.

The Commission agrees. A tender would be assessed on "value for money" and not price alone. Value for money would include quality standards and price. There is no guarantee that the cheapest price would obtain the contract.

Profit will be all that matters to however wins the tender.

See above answer.

Full consultation must take place before a tender is invited.

The Commission agrees.

Why change a system that is working well.

The Commission must explore opportunities to improve value for money whilst, at a minimum, maintaining current service.

LSC must continue to manage.

The Commission notes and agrees with this view.

I am concerned that the supplier operating the tender may abuse the system to increase own client work.

The Commission agrees that any tender must provide an assurance that such abuse is not possible.

Providing the matter will only progress if it is established that the pilot has not compromised the quality of advice received by detained persons.

The Commission notes this view and agrees in principle.

The pilot should be subject to tender at the beginning.

The Commission understands the point made however it is not possible, without a pilot, to be clear as to what processes and service standards should apply.

SUMMARY

The Commission notes that responses are divided on this proposal. The Commission intends to consult fully with the professional bodies before tendering for a contract.

Question 4i

Is a duty solicitor the appropriate grade for the supervisor or should any additional criteria such as a minimum number of years post qualification experience be necessary?

Yes 28

No 2

Supervisor must be a current duty solicitor and have a practising certificate free of conditions.

The Commission agrees.

Supervisor must regularly attend the police station.

The Commission agrees.

Substantial experience in private practice (partner or head of PDS office grade).

The Commission notes and agrees with this view.

Duty solicitor with minimum of 3 years experience of acting in the capacity of a duty solicitor.

The Commission agrees.

Should be 5 years PQE.

Whilst several supervisors may have such experience, such a requirement to qualify as a supervisor appears unnecessary.

Should have 10 years experience

See above answer.

Must be able to meet SQM requirements.
The Commission notes and agrees with this view.

A number of supervisors will be required.
The Commission agrees and one individual will act as the “co-ordinating” supervisor.

SUMMARY

The Commission notes that the majority of respondents agree with this proposal and the Commission will arrange for the supervisor to be a duty solicitor.

Question 4.ii

Are there any specific issues that should be covered by the supervision arrangements?

No 6
Yes 16

There should be a maximum ratio set of advisors per supervisor.
The Commission agrees.

50% of file reviews should be conducted face to face.
The Commission agrees.

Advisors should be subject to the same file review requirements of trainee solicitors (10 files per month) and be subject to the same CPD requirements.
The advisors are not trainee solicitors and this requirement does not apply to accredited police station representatives so the Commission does not agree.

The Commission must document: advice given, complaints handling, conduct of advisors.
The Commission agrees and will document these issues.

Supervisor should not be employed by any other CDS Supplier.
The Commission does not agree with this view as it would result in the supervisor needing to cease being a duty solicitor as membership of a local scheme is not available to an individual solely on the basis of their employment by CDS Direct.

The Commission should document when advice from a supervisor must be sought.
The Commission notes and agrees with this view in principle although suggests that the professional expertise of the advisor will be the most significant factor.

Silent listening of calls should be arranged.

The Commission notes and agrees with this view and will investigate this further. No recording of telephone calls will however take place.

Supervisors should be directly responsible for training within a team framework to encourage best practice and cascading of knowledge.

The Commission notes and agrees with this view.

Given that 24 hour operation will be required, more than one supervisor will be required.

The Commission agrees with this point and will document the arrangements to apply and discuss these with the professional bodies.

Confidentiality issues must be covered.

The Commission agrees and will cover this issue in the documentation to be discussed with the professional bodies.

The quality of advice should be subject to peer review.

The Commission agrees in principle with this view and will explore further during the pilot.

Detailed procedures including the importance of contact with the investigating officer; the importance of regular contact with the client must be documented.

The Commission agrees.

Supervisors must maintain current experience of police station work.

The Commission agrees.

SUMMARY

The Commission will document the supervision requirements including the views from consultation will and discuss these with the professional bodies.

Question 4.iii

Do you agree that the supervision arrangements should be the subject of consultation with the professional bodies?

Yes 30

No 2

Partial 1

Consultation must take place especially with LCCSA and CLSA.

The Commission agrees that these representative bodies should be included in the consultation.

Full consultation must take place with solicitors who have experience of providing police station advice.

The Commission believes that it is not practical to consult with all suppliers on this issue and that the professional bodies are best placed to provide such advice.

SUMMARY

Discussion with the professional bodies will be arranged by the Commission.

Question 5i

Do you agree that a duty solicitor already at the police station should be able to accept a case without the need for CDS Direct involvement?

Yes 31

No 3

Partially 1

Given that if a case does not warrant attendance, a maximum fee equivalent to the police station telephone fixed fee is payable, the duty solicitor should have the discretion to refuse the request.

Calls will not be deployed by CDS Direct unless the criteria for attendance are justified.

A duty solicitor already at the police station is, by definition, already advising another client and so must not accept a further case.

The Commission notes this view which is in the minority.

This will lead to abuse.

It is unclear why this view is taken.

LSC should introduce a system to check if duty solicitor is already at the police station.

There is currently a system in place whereby the DSCC ask the police, at the time that legal advice is requested, whether the duty solicitor is already at the police station.

A duty solicitor at the police station should not be able to accept case without CDS Direct being involved. This will reduce the number of occasions when a representative, purporting to be the duty solicitor accepts a case.

The Commission notes this view which is in the minority.

SUMMARY

The Commission notes that the majority of respondents agree with this proposal and so the Commission will continue to permit calls to be accepted by duty solicitors already at the police station.

Question 6i

Do you agree that the pilot sites are appropriate?

Yes 9

No 21

Work should be taken equally from all areas in the country.

The Commission does not agree with this view as the benefits of a controlled pilot would be significantly reduced.

Medium size town should also be included as the pilot needs to be wide ranging.

The Commission understand the point made however the majority of responses do not wish a further extension to the pilot sites proposed.

A fully rural location should also be chosen, where the distances between police stations and suppliers is large.

The Boston scheme does meet such a need.

London is too large for a pilot.

The Commission understands this point which was made by several respondents.

The pilot areas should be larger to take account of different requirements around the country.

The Commission understands the point made.

The pilot should not take place.

The Commission does not agree with this view.

SUMMARY

The Commission notes the majority view that the pilot sites are not appropriate and that several respondents were concerned that all of London was too large to be included in a pilot. The Commission has decided that the pilot will cover:

- Liverpool region (all schemes) and Boston scheme for all duty solicitor work excluding indictable only cases and those cases where the time of interview is known at the point that the request for a duty solicitor is made. London region will not be included in the handling of all such duty solicitor work but will be included in scope for those cases limited to telephone only advice.
- The new Community Justice Court in Liverpool should be excluded from the pilot.

- The pilot will cover all duty solicitor work nationally (including London region) where the matter is restricted to telephone advice only i.e. driving with excess alcohol; client detained for non imprisonable offence; warrant. If the exceptions permitted by the General Criminal Contract for attendance such as to attend an interview, apply then the matter will be referred to a crime supplier in the usual way by the Duty Solicitor Call Centre.
- The Commission will investigate the option of including the provision of immigration advice for clients detained at the police station until an interview for a criminal offence is to take place.

Question 6.ii

Do you agree that the pilot should last for not less than six months?

Yes 20

No 9

The pilot should not take place.

The Commission does not agree with this view.

The pilot should last a maximum of one month.

The Commission believes that such a period is too short to learn lessons from a pilot.

The pilot should last from 3 to 6 months.

See above answer.

The pilot should last for at least 12 months to assess seasonal variations.

The Commission agrees that seasonal variations are an important factor to be considered and has data concerning call volumes received by the DSCC over many years and so such variations can be assessed.

Six months is far too short a period.

The Commission notes this view which is in the minority.

There must however be arrangements to bring the pilot to a speedy end if it becomes clear that the arrangements are not working.

The Commission notes and agrees with this view.

SUMMARY

The Commission notes that the majority of respondents agree with the proposals and will arrange for the pilot to last not less than 6 months.

Question 7i

Do you agree that own client work should be excluded from the pilot?

Yes 38

No 1

If own client work is ever to be included, Parliament needs to consider this issue.

The Commission notes this view.

If own client work is ever to be included, a separate pilot must be conducted.

The Commission notes this view.

Own client work should be included in the pilot.

The Commission does not intend to include own client work in the pilot given the clear indication by suppliers in the responses to consultation.

CDS Direct should establish whether the client has an own solicitor and, if so, establish contact with that solicitor.

The client has already chosen to use the duty solicitor and the Commission believes that no further questioning of this decision should take place.

SUMMARY

There is a clear view that own client work should be excluded from the pilot and the Commission agrees with this view.

Question 8i

Do you agree with the benefits and impact assessment as shown?

No 33

Yes 2

Partially 2

Firm will miss the opportunity to build relationship with duty clients and convert such clients to own clients for future cases.

The Commission notes this point which is, in the Commission's view, not sufficient to prevent the pilot taking place.

I don't believe that there will be resultant costs savings.

The pilot will determine whether the Commission's view is correct.

The Commission should set targets for financial savings.

The Commission is unable to set such targets before the lessons of the pilot are learned. If however the pilot demonstrates that financial benefits are unlikely to be realised, a tender will not take place and the pilot will cease.

I consider it wrong to consider that suppliers are not reliant on telephone advice fees. Their loss will further erode the profitability of legal aid suppliers.

An analysis of April claims for Boston suppliers shows that police station telephone advice and assistance (1B Claims) is less than 1% of total CDS claims.

A similar analysis for London shows that for 89% of suppliers, the proportion of police station telephone advice and assistance claims is less than 2% of their total claims and that for 98% of suppliers the proportion of police station telephone advice and assistance claims is less than 5% of their total claims.

Analysis for Merseyside suppliers shows that for 89% of suppliers, the proportion of police station telephone advice and assistance claims is less than 1% of their total claims and that for 97% of suppliers the proportion of police station telephone advice and assistance claims is less than 3% of their total claims.

The Commission does not underestimate that some suppliers may be dependant on income from telephone advice but suggests that this is not a prime income stream for the majority of suppliers. The pressure upon the CDS budget makes it essential that different methods of delivery are considered.

The pilot has the potential to significantly improve the quality of advice given whilst at the same time saving public money and ensuring deployment to solicitors when needed.

The Commission notes this view.

There is no current evidence of any delay in providing telephone advice. *The speed of telephone advice nationally is impressive but capable of improvement. Nationally, suppliers accept 93%/94% of duty solicitor requests within 30 minutes and then provide telephone advice usually speedily. This still leaves over 6% of cases (over 20,000 client a year) where non initial contact is made within 30 minutes. Last year there were nearly 5000 clients where suppliers took more than 2 hours to accept duty solicitor requests.*

This will be a “patsy” for the police.

The Commission understands the need to ensure that CDS Direct advisors provide robust and effective advice to clients and is confident of demonstrating best practice in this area.

Self carbonating forms, showing each stage following a clients arrest should be made mandatory and signed by all concerned parties at all stages.

The Commission does not support this proposal which would pose several practical difficulties for practitioners.

A result of the pilot will be that clients receive bail on less occasions.

The Commission has no reason to believe that this will be so but will investigate whether it is possible to monitor this during the pilot.

The real problem is that custody suites are insufficiently staffed and there are often delays in establishing contact.

The Commission will monitor during the pilot whether particular police stations are difficult to contact by telephone. If this is the case, we will discuss with the police how improvements can be made. The collection and analysis of such information cannot easily be currently undertaken by suppliers.

The pilot will result in several people being involved in one case with duplication.

The systems in place should avoid duplication to a significant extent whilst still providing a reliable service. Current practice also permits several advisors to be involved in the provision of police station telephone advice

The pilot needs to assess whether there are any additional cost implications to the police as a consequence of the change.

The Commission agrees and has established dialogue with the police forces in the pilot sites that will continue.

How will notes of any telephone advice provided by CDS Direct be passed to suppliers.

The Commission is investigating a combination of options including (a) telephone (b) facsimile (c) e mail. It is expected that telephone will be the usual route.

Clients needs may not coincide with other agencies involved in the Criminal Justice System.

This is agreed and CDS Direct advisors will operate under a Code of Conduct, which will be discussed with the professional bodies, to ensure the independence of legal advice. This is not to ignore the possibility that the Commission can take actions which preserve client's access to independent legal advice and still contribute towards CJS efficiency.

The proposal does not ensure that clients receive advice from local solicitors. *Local suppliers will still provide advice if attendance is required.*

Why can the call centre not be based in the North?

The pilot will operate from the building of the existing Duty Solicitor Call Centre provider so that changes in processes can be made with the minimum of delay. Once the pilot is complete and the requirements are stable, tenders will be sought and the location will be of the tender's choice.

Whilst there is the potential for increased speed of first contact with a legal adviser, there is also potential for delay in seeing a lawyer in person. There is also potential for this to be used by the police to persuade a suspect to proceed with an interview without legal advice.

The Commission notes this view. Analysis will take place, by police station, of those clients who having initially requested legal advice then proceed to

interview without an advisor being present. No such analysis is available from the current scheme.

A problem with the current system is that suppliers provide telephone only advice when attendance is required and justified.

The Commission notes this view. The pilot will enable attendance to take place by predetermined criteria.

Clients have the right under to PACE to require a solicitor to attend the police station.

PACE Code C section 6.8 provides the right for a detainee to have a solicitor present when they are interviewed. CDS Direct will deploy cases to an advisor in such circumstances.

Detainees have the right to speak with a solicitor.

PACE CODE C section 6.12 allows police station representatives to provide police station advice.

The Notice of Entitlement given to detainees specifically refers to advice being provided by a solicitor.

The Commission agrees but notes that PACE Codes include representatives within the definition of a solicitor.

Will indemnity cover exist?

Yes.

There are Data Protection Act issues as shared computer systems will be used.

No further details were provide by this respondent and the Commission does not understand why this concern exists. The CDS Direct advisors will have access to no further additional information from the DSCC that suppliers currently have.

The client has no redress against inappropriate advice or action by CDS Direct.

This is not correct. The client has the same redress as at present if a supplier arranges for advice to be provided by a representative.

Overall the proposal is a right step in the direction towards justice for all.

The Commission notes this view from The Metropolitan Police.

The consultation period should have been in excess of 6 weeks.

The Commission notes this view however the General Criminal Contract permits a consultation period of 6 weeks with professional bodies.

The policy objectives of the proposals should have been set out in greater detail.

The Commission notes this view and will attempt to improve this area in future consultation papers.

The proposed pilot must be subject to independent research.
The Commission notes this view and will consider, during the pilot, whether research is needed on specific issues.

The proposals are that a lesser skilled advisor provides initial contact. This is contrary to the FAINS proposals that an expert provides initial diagnosis.
CDS Direct will not provide initial diagnosis but rather confirm that the criteria for attendance are justified.

I am in favour of the concept of CDS Direct with the important proviso that it should be so constructed that it cannot be used by an unprincipled government indifferent to the rules of law to reduce the extent and quality of police station advice.
The Commission notes this view.

Who will advise the client if CDS Direct have been involved and the matter is deployed to a supplier and further advice is sought by the client?
In such cases, the supplier has the option of continuing to advise the client or passing the request back to the Duty Solicitor Call Centre.

The pilot should be deferred for 12 to 18 months pending a full evaluation of the cost savings from police station advice fixed fee and competitive tendering for London.
The Commission does not agree. The proposals are separate and should not cause any reason for conflict.

The estimated savings from the pilot should be discussed.
The Commission agrees and is happy to do so and has provided initial views during presentations to suppliers in the pilot areas. Such estimates are very general and will however only be verified during the pilot. The Commission will review this issue during the pilot with the professional bodies.

CDS Direct advisors will need to undertake additional telephone calls such as sureties, employers, bail hostels to prevent clients being retained in custody.
The Commission agrees that work to promote the client's interests should be conducted by CDS Direct.

The advisors will be employed directly by a government agency and the relationship between the police and the advisor will be difficult to explain to a detainee.
The Commission does not accept this view.

The CLSA wishes to be involved in the monitoring and evaluation of this project.
The Commission is happy to involve all the professional bodies in further discussions.

SUMMARY

The Commission notes the views of respondents and will measure these issues during the pilot. Such measurements will be made available to the professional bodies.