

**PUBLIC DEFENDER SERVICE**  
**REVIEW OF THE FIRST YEAR OF OPERATION**

## **CONTENTS**

- 1 Introduction
- 2 The Decision to Establish the PDS
- 3 Establishing the Service – the First Four Offices
- 4 Selecting the Locations for Offices Five and Six
- 5 Operation of the Service
- 6 Developing the Service
- 7 The Research Programme

## INTRODUCTION

- 1.1 The first Public Defender Service office ever in England and Wales opened in Liverpool on 14 May 2001. Further offices have followed in Swansea, Middlesbrough, Birmingham and Cheltenham.
- 1.2 This report reviews the progress of the Public Defender Service (PDS), and of its individual offices, in its first year of operation with statistics and budget figures up to 31 March 2002. It also reviews the decisions that were made which led to the establishment of the service and the work that was done in the lead up to the opening of the first offices.
- 1.3 We regard the first year of operation of the Service to have been a considerable success. A new organisation has been created, a new approach to the delivery of publicly funded legal services has been implemented and individual offices with client bases have been established from scratch. The credit for these achievements is overwhelmingly due to the commitment and hard work of the teams in the individual PDS offices who have grasped the opportunity afforded by the establishment of the PDS with enthusiasm.

## THE DECISION TO ESTABLISH THE PDS

- 2.1 The Government first announced its intention that a proportion of CDS services should be provided by lawyers directly employed by the Legal Services Commission in the White Paper, *Modernising Justice*, published in December 1998.
- 2.2 The statutory framework, within which we are able to deliver services direct to the public in this way is provided by the Access to Justice Act 1999. This legislation defines some important characteristics of the new service which have had a direct impact on the way in which we have established the service.
- 2.3 First, there is no power in the Act for the Commission to require clients to instruct only a Public Defender if they are to receive CDS services. Clients have a choice of any CDS supplier, whether a contracted private practice firm or a PDS office. This is a different approach to that taken in the early phase of the Public Defender Solicitors Office (PDSO) service in Edinburgh, where certain clients were required to use the PDSO if they were to receive publicly funded assistance. However, we believe it is right that clients should have a choice of quality assured suppliers and that the PDS in England and Wales should compete for clients on the basis of the quality of service provided. Nevertheless, it was recognised that this would have an impact on the speed with which the PDS offices would be able to establish a client base from scratch.
- 2.4 Second, a requirement was put on the Commission to prepare a code of conduct to be observed by those providing PDS services and that this code be approved by the Lord Chancellor and Parliament. The code must include duties –
- to avoid discrimination
  - to protect the interests of the individuals for whom services are to be provided
  - to the court
  - to avoid conflicts of interest
  - of confidentiality.
- 2.5 In June 2000 the Lord Chancellor's Department published a consultation paper, *Criminal Defence Service: Establishing a Salaried Defence Service and Draft Code of Conduct for Salaried Defenders Employed by the Legal Services Commission*. This paper set out the Department's and the Commission's specific plans for the

establishment and operation of the PDS. The key elements of the planned approach were summarised in the paper as follows –

- the initial period of the operation of the service will be a start-up phase, which will coincide with the research programme, of four years. During and at the end of this period the Government will review the service and make decisions on its future development.
- the salaried service will consist of individuals employed by the Commission, but in a structure wholly separate from its existing network of regional offices. The salaried service will be an independent, stand-alone, service within the Commission, responsible solely for delivering criminal defence services to the public.
- the salaried defence service offices will be staffed and established so that they can represent their clients from the police station through to the Crown Court. As the service expands, lawyers with higher rights of audience will be directly employed, as well as those who can only operate in the lower courts. Salaried defenders would also utilise a budget from which they would purchase the services of specialist advocates, whether solicitors or barristers.
- as a minimum requirement, salaried defence offices will have to meet the quality and performance standards set for private practice contracted firms operating under the general CDS contract.
- during the initial period of the start-up phase the Commission will establish salaried defence service offices in six locations. At the outset, the majority of these sites will be in large conurbations. This is because the offices will need access to a relatively large supply of work in order to establish a meaningful caseload quickly. However, at least one of the first six pilot offices will be in a smaller town.
- during the start-up phase the Commission will seek to extend the geographic scope of the service provided outwards from the initial geographic locations in order to test the provision of salaried services in suburban and rural areas. Additionally the Commission will keep under review the options for expanding the service beyond the six initially selected sites during the course of the start-up phase.
- individuals seeking criminal defence services will not be required by the LSC to choose a salaried defender rather than a lawyer in private practice.

- salaried defenders will be allocated slots on relevant police station and court duty solicitor schemes.
- the heads of the salaried service offices will be responsible for managing their own budgets from which they will cover direct costs (staff, accommodation, etc) and purchase services from others (advocates, experts and disbursements).
- individual salaries will be set at a level to attract individuals of the necessary calibre in the context of prevailing local salary conditions, but within a national framework
- overall management of the salaried service will be initially with the Commission's Head of Criminal Defence Services.
- the research will compare the PDS to services being provided through private practice and will test it against the most commonly voiced criticisms – independence, choice of representative, underfunding, case overload, guilty pleas and restriction of access.

2.6 In March 2001 the Lord Chancellor's Department published the Government's conclusions following consultation on the code of conduct. As a result of the consultation a number of key amendments were made to the code. The code was subsequently approved by the Lord Chancellor and by Parliament and published in April 2001.

2.7 In April 2001 the Lord Chancellor's Department published the Government's conclusions following consultation on the plans for the establishment of the PDS. Some 30 responses to the consultation paper were received. None of the major proposals for the establishment of the service, as set out in paragraph 2.5 above, were changed as a result of the consultation responses.

## **ESTABLISHING THE SERVICE – THE FIRST FOUR OFFICES**

- 3.1 The aim set for the Commission was to open the first three PDS offices in April 2001. This was a very challenging timetable to establish a wholly new service and to some extent influenced a number of key decisions which had to be taken in the process of setting up the Service. For example, decisions had to be taken about the shortlist of locations for the first offices before we had appointed the external research team who would otherwise have been involved in this process.
- 3.2 The key activities which had to be undertaken in this period were -
- finalise the strategy for establishing the first offices
  - identify the locations for the offices
  - recruit the office heads and their teams
  - identify, obtain and prepare office accommodation
  - set up the management systems necessary to provide a quality service
  - appoint the external research team.

### **The strategy**

- 3.3 It was clear that the key challenge that would face us in the first year of operation would be to attract a client base to businesses starting from a zero base. Given that we would not be directing clients to the PDS, nor giving the PDS a higher proportion of duty solicitor work than other private practice firms in the same locality, the ability to attract and retain clients would be primarily dependent on the quality, level of service and commitment provided by the PDS teams. Therefore the first priority was to recruit high quality teams. This had consequences for the approach that we took.
- 3.4 First, we took the view that the specific locations in which we established offices was, within certain parameters, of secondary importance compared to the quality of the teams we were able to establish. This meant that the final decisions on locations were made in the light of where we were able to recruit high quality teams – rather than locations being decided first.
- 3.5 Second, we considered that high quality teams were more likely to be established where the offices heads were closely involved in the recruitment of their teams. This made the overall recruitment process longer as we had to recruit sequentially for the office heads and then

for their teams once we had identified the office heads – rather than conduct a single recruitment exercise for whole teams.

- 3.6 Third, we decided it was important that we be able to provide a 24 hour a day, seven day a week, service from the outset. This would require a minimum number of solicitors and accredited representatives for each office in order to provide a rota for out of hours cover but which would be higher than justified for the volume of casework which the offices would have in the early days. However, it was felt that the approach was still desirable in order to be able to maximise the amount of out of hours duty and own solicitor work accepted and in order to ensure that a high quality service was provided to clients and so help to establish the service's reputation.

### **Identifying locations**

- 3.7 The initial decision, as set out in the June 2000 consultation paper, was that the early PDS offices would be based in large conurbations. A shortlist of nine locations was developed which provided a good geographical spread nationally, which contained a mixture of sizes of towns and cities and some of which had indications of shortages, or potential shortages, in the private practice supplier base. The nine shortlisted locations were: Birmingham, Carlisle, Dover, Oxford, Gloucester/Cheltenham, Liverpool, Middlesbrough, Sheffield and Swansea.

### **Recruitment**

- 3.8 The initial phase of recruitment focused on the office heads. We sought experienced, first-rate, criminal defence lawyers who also had inspirational leadership abilities and business acumen.
- 3.9 Some 150 applications were received for these posts and, as a result, four appointments were made for offices in Birmingham, Liverpool, Middlesbrough and Swansea. All four successful applicants were senior solicitors with considerable experience – ranging between ten and twenty years – in criminal defence work in private practice.
- 3.10 Following the appointment of the heads we agreed with them the size and mix of their teams. In making these decisions a key determining factor was the decision, set out at paragraph 3.6 above, that the offices should be staffed to provide a comprehensive service to clients 24 hours a day, seven days a week, without the need to rely on agents or other external support.
- 3.11 Given this, the basic model against which the next phase of recruitment took place was for three duty solicitors (including the heads), three accredited police station representatives, a practice manager and two administrators. However, the final structures in each office all differ

slightly as a result of the outcomes of the recruitment processes for each office.

- 3.12 Salaries were set at a competitive level within each local market, but within a national salary scale framework. The average salaries in each grade were -

Office heads	£50k
Solicitors	£34k
Accredited representatives	£22k
Practice managers	£26k
Administrators	£14.25k

- 3.13 The whole recruitment process was undertaken jointly by the PDS management team and our Human Resources Department. The recruitment process followed was that set as a standard within the Commission. It involved two stages and a combination of interviews, presentations, psychometric and numerical and written critical reasoning tests. As an organisation we believe this process is transparent, fully meets equal opportunities best practice and is most likely to identify the most appropriate candidates for the roles. As a public body we consider the process to be essential. However, we recognise that the process is more thorough, and therefore more resource intensive, than that followed by many private practice CDS suppliers.

### **Setting up the offices**

- 3.14 We took decisions on the types of office accommodation and their specific locations within each city in conjunction with the office heads. All of the first four offices are located in the city centres and in close proximity to the city's criminal courts and central police stations.
- 3.15 All four offices have ground floor "shop front" type accommodation in secondary retail type streets. Most also have further accommodation at first floor level and above. The decision to opt for this approach was, again, driven by the need to attract and retain clients from a standing start. Our view is that such locations provide an open and non-intimidating image. They are accessible, provide a degree of visual impact, attract some "passing" clients and advertise our presence in the area. All four offices are fully accessible to people with physical disabilities.
- 3.16 All office accommodation meets health and safety requirements and provides good standard working environments for staff. The public areas of each office are smart and business-like, but not luxurious.

## **Management systems**

- 3.17 As the heads joined the Commission prior to their offices opening we worked with them to develop the internal management systems for their offices. This included the development of the complete quality management systems necessary for compliance with the Commission's published quality standard (then LAFQAS but now the Specialist Level Quality Mark), standard forms and letters and the internal management systems, such as financial management systems.
- 3.18 The result is a single set of management systems some of which – mainly concerned with the management of individual cases – are very similar to those which would operate in a private practice firm, and others which are defined by the PDS being a part of the Commission and which therefore need to interface and comply with the Commission's wider management systems – for example, the internal financial management systems.
- 3.19 Initially the decision was taken to set up each office's computer system as a separate system, divorced from the Commission's wider, integrated computer system (which provides a single cross-organisation system encompassing word processing, internal financial management systems, internal e-mail, etc.). This decision was taken because it was felt that this was necessary to provide a separation of data regarding individual cases between the PDS offices and the rest of the organisation. However, it rapidly became apparent that this approach would cause difficulties in the day to day operation of the service. Therefore the infrastructure was changed and the PDS offices are now fully integrated into the Commission's wider information systems. This enables improved communication within the PDS, full access to the financial management systems which the PDS offices use to manage their budgets and more effective computer system support from the Commission's central Information Systems Department. This has been achieved whilst ensuring the security of any confidential PDS case-related data through systems within the infrastructure and the fact that the PDS case management system is not networked but stands alone within each PDS office.
- 3.20 The management systems were set up in discussion with the external research team to ensure that – in addition to their primary purpose – they also provided access for the researchers to data that they will require for their evaluation of the service. This issue is addressed further in section 7 of this report below.

## **Appointing the External Research Team**

- 3.21 This issue is addressed further in section 7 of this report below.

## SELECTING THE LOCATIONS FOR OFFICES FIVE AND SIX

### Considering options for offices five and six

- 4.1 Following the decision regarding the locations of the first four offices we took stock before deciding where and in what form the fifth and sixth offices should be established. This process involved input from the heads of the first four offices and from the external research team.
- 4.2 We considered a number of options which were discarded. These were –
- a London office
  - an office specialising in Youth Court work
  - an office in a very rural location.
- 4.3 Although there was an underlying view that a London office would have been useful from a research viewpoint – because of the probable difference in the cost of practice in the London area – we did not feel that a London office was appropriate at this time. This was for a combination of reasons but the most important were –
- there are more than sufficient criminal defence practices in London at present
  - one of the distinct features of practice in London is the spread of cases across numerous courts. Opening a single office in London was likely to provide only local information and would not reflect the London market as a whole
  - Birmingham, although having a central set of courts, shares with London the fact of having a large number of criminal defence practices and therefore provides a testing ground for a PDS operating in a highly competitive local market.
- 4.4 A Youth Court specialist office was rejected after careful consideration because we do not believe it possible to create such an office from scratch – if at all. In practice, representing young people within the criminal justice system is an integral part of criminal defence practice. In time it may be possible for individuals within the PDS to develop a particular level of experience and expertise in this area – and we will be exploring this.
- 4.5 The provision of CDS services in rural locations is an important issue for the Commission. There are key issues for the Commission in maintaining access to quality services in these areas at a time when there is a general retrenchment of the courts and police stations in

many such areas. The PDS has a role to play for the Commission in this area both in terms of benchmarking and understanding better the provision of these services in rural areas and in providing an option to intervene more directly in areas where existing supply fails and causes access problems by providing services through the PDS.

4.6 We examined a number of rural areas to establish whether we should open a rural PDS office at this stage. In particular we looked carefully at some rural areas in South Wales where it might have been possible to provide services in a rural location using the Swansea office as a base. Ultimately we decided against opening in a very rural area in offices five or six. The major reasons for reaching this decision were –

- we had no rural areas where there had been a complete failure of the service, therefore there was no need for immediate action to provide access
- in the rural locations we did examine, there were some concerns that opening a PDS office might affect the viability of existing suppliers
- we wish to undertake further work to examine the issues affecting rural supply and this needs to be done before we take future decisions in this area – unless we need to take urgent action to remedy an access problem
- we wish to undertake further work to examine the most appropriate business model for the supply of PDS services in a rural area before taking a decision.

4.7 Notwithstanding the above we believe we will wish to provide PDS services in a rural location in the future.

#### **Office five - Cheltenham**

4.8 Following the consideration – and discarding – of the options set out above, we decided that the fifth office should be opened in an area where there was strong demand for CDS services, but a relative shortage, or limited choice, of private practice CDS suppliers. The two locations shortlisted were Cheltenham/Gloucester and Oxford/Abingdon/South Oxfordshire.

4.9 It was decided that the business model and method of office set-up would be the same as for the first four offices. As a result of the recruitment process for office heads a decision was taken to open the fifth office in Cheltenham.

## Office six - Pontypridd

4.10 A number of factors combined to result in the decision that the sixth PDS office should open in Pontypridd.

4.11 Although the first four offices were established in the centre of large conurbations it had always been intended to establish the service in smaller towns and to move outwards from the city centre locations. In the original consultation paper it was stated –

*“At the outset, the majority of these sites will be in large conurbations. This is because the offices will need access to a relatively large supply of work in order to establish a meaningful caseload quickly. However, at least one of the first six pilot offices will be in a smaller town. During the start-up phase the Commission will seek to extend the geographic scope of the service provided outwards from the initial geographic locations in order to test the provision of salaried services in suburban and rural areas. “*

4.12 As the service developed, and building on this original vision, we identified a clear need to examine the option of using the major city centre offices as management centres not just to provide services directly but to manage the work of smaller branch offices. We believe this will

- enable us to reduce the overall overheads of the service as the costs associated with the branch offices will be lower
- establish offices of a smaller size, appropriate to the size and volumes of business available in smaller town locations
- provide greater flexibility to deliver services across the main office and branch office location using all of the resources available to both offices
- enable us to establish a “larger” presence in each location to provide us with greater degrees of resilience to the possible loss of fee-earners in the future
- enable us to establish a “larger” presence in each region from which it would be possible to move relatively quickly, using existing resources in the short-term, to address any developing access problems in rural locations within the region.

4.13 The Swansea PDS office was well placed to serve as a base for this expansion as it had opened relatively early in the life of the PDS, had developed a strong client base and had relatively ready physical access to a number of smaller towns in the South Wales area. A number of the Swansea team had previously practised in the Pontypridd area and had clients who had chosen to continue to instruct

them following their move to the PDS. By opening a PDS office in Pontypridd we would be better placed to provide services to those existing clients and well placed to build on an existing local presence.

- 4.14 The Pontypridd office – which is due to open in August 2002 – will primarily be staffed by lawyers and accredited representatives moving from the Swansea office. We have already recruited new lawyers for the Swansea office to replace those who will be moving to Pontypridd. The new office will be managed on a day to day basis by an experienced solicitor but will fall within the overall management responsibility of the head of the Swansea PDS office who will manage resources across both offices.
- 4.15 In a further change from the business model for the first offices we will be locating the Pontypridd office in more “traditional” office accommodation; in offices at first floor level without a shop-front at ground level. We are able to do this because we already have an established presence in the town. This will have the effect of reducing the overhead costs of the office and allow us to examine the effect of a different approach.

## OPERATION OF THE SERVICE

### Management structure and central support

- 5.1 Each PDS office head is personally and professionally responsible for the management of their office and for the conduct of individual cases by the office. The PDS office heads report directly to the Commission's Head of CDS, Richard Collins. In addition, the PDS office heads have a line of accountability to the Professional Head of Service, Tony Edwards, who is a Member of the Legal Services Commission and an experienced criminal defence solicitor.
- 5.2 At the centre, the Head of CDS is assisted in his overall management of the service by two members of staff.
- 5.3 In order to assist the collective, strategic direction of the Service, there is a CDS Management Committee which involves the Head of CDS, the heads of PDS offices and which is chaired by the Professional Head of Service.
- 5.4 In addition to the direct input of the PDS team in individual offices and at the centre, there is input to the work of the offices from a number of LSC central support departments. In particular, the Human Resources Department, Facilities Department and Information Systems Department have all made an important contribution to setting up the service. These departments will provide ongoing support to the PDS in their specialist areas, as they do to all areas of the Commission.
- 5.5 Our view is that the above arrangements have worked effectively during the first year of the operation of the service.

### Opening the offices

- 5.6 The timing of the opening of the first four offices was largely dictated by the timing of the availability of the individuals recruited into the service and the availability of the office accommodation. The first four offices opened on the following dates –

Liverpool	14 May 2001
Middlesbrough	17 May 2001
Swansea	21 May 2001
Birmingham	11 July 2001

- 5.7 The opening of the first offices was relatively low key. This was largely due to the fact that they opened during the campaign leading to the 2001 General Election and fell within the strict rules regarding non-publicity for government initiatives during such periods. However, we do not believe that this was a major handicap. For example, our first

office, Liverpool, had clients seeking its services on the first day it opened.

- 5.8 The Cheltenham office opened on 15 April 2002.
- 5.9 The Pontypridd office is scheduled to open at the beginning of August.
- 5.10 The opening of all offices was extremely successful in that we were able to offer a comprehensive and quality service to clients, 24 hours a day, seven days, a week, from the moment we opened the doors.

## Teams

- 5.11 At paragraph 3.11 above we have referred to the basic staffing model we set out to recruit. Ultimately the teams we established differed between offices depending on the outcome of the individual recruitment processes. In addition, not all staff were available by the dates on which we chose to open, although all offices were quite capable of offering the required level of service when they did open. The team profiles of the offices when all staff had joined were as follows.

Office	Team Profile
Liverpool	1 Head of Office (duty solicitor), 2 Duty Solicitors, 3 Accredited Police Station Representatives, 1 Practice Manager, 2 Administrators
Swansea	1 Head of Office (duty solicitor), 3 Duty Solicitors, 3 Accredited Police Station Representatives, 1 Practice Manager, 2 Administrators
Middlesbrough	1 Head of Office (duty solicitor), 2 Duty Solicitors, 3 Accredited Police Station Representatives, 1 Practice Manager, 2 Administrators
Birmingham	1 Head of Office (duty solicitor), 2 Duty Solicitors, 1 Trainee Solicitor, 1 Practice Manager, 2 Administrators
Cheltenham	1 Head of Office (duty solicitor), 1 Solicitor, 2 Accredited Police Station Representatives, 1 Practice Manager, 2 Administrators

- 5.12 Already these teams have begun to evolve. In Swansea, we will be moving two duty solicitors and an accredited police station representative to Pontypridd and have recruited two new duty solicitors and a trainee solicitor to replace them. In Middlesbrough, one of the accredited police station representatives is now training to become a

solicitor. In Birmingham the trainee solicitor has now qualified as a solicitor and we are recruiting for a new duty solicitor to replace one of the original duty solicitors who has left the service.

### **Specialist Quality Mark**

- 5.13 We have developed a common quality management system for the service to which all of the offices operate. The offices applied for the Commission's Specialist level Quality Mark and the first four offices have passed the process and have met the Quality Mark standard. The Cheltenham office passed its Preliminary Audit on 13 June 2002.
- 5.14 The first four offices have also been subject to the Transaction Criteria and Cost Compliance Audit process as are all contracted private practice suppliers. A Transaction Criteria audit is a detailed assessment of a sample of closed files against a set of quality criteria. The files are scored out of 100 with 70 as the pass mark. A Cost Compliance Audit consists of the review of a sample of files against the criteria for assessing costs set out in the General Criminal Contract. Suppliers with the least variation between reported costs and this assessment of costs are given Category 1 status.

The PDS offices achieved the following results –

<b>Office</b>	<b>Transaction Criteria Average Score</b>	<b>Cost Compliance Category</b>
Birmingham	76	Not yet audited
Liverpool	83	1
Middlesbrough	79	1
Swansea	81	1

- 5.15 We will be publishing the PDS Office Manual and the key standard guidance, forms and letters we use within the PDS. This will allow contracted private practice firms to use them as models for their own documentation and systems if they wish.

### **Case Management System**

- 5.16 We have purchased a computerised case management system (CMS) for the PDS from one of the major suppliers in the field, Solicitec. The contract was awarded following a competitive tender process undertaken in accordance with government and EU procurement rules. We began the specification and procurement process following the

appointment of the first office heads and of the external researchers. We felt it important that this key management tool was one which met the business needs of those who would be using it and that it was capable of providing the information that the research team would be seeking. Given this necessary approach, and the length of time taken for the procurement as a result of the EU procurement requirements, the CMS was not available for the opening of the offices. The need to comply with EU regulations in tendering also incurred an additional cost arising from the PDS being in the public sector, when compared with contracted services.

- 5.17 The CMS is now installed and working in all offices. We are undertaking further work with the system in order to enhance the facilities it provides for the PDS teams and to meet the needs of the researchers.

### **Workload**

- 5.18 A key issue for the offices during the first year of the service's operation was to attract and retain clients. As has been explained above, the offices received no special treatment in order to direct clients towards them or to give them an advantage on the duty solicitor schemes. At the same time the offices had some disadvantages in comparison to the way in which most new private practice firms start. These were -

- we were overwhelmingly starting without an existing client base and, in Birmingham and Middlesbrough in particular, in areas where our lawyers had not previously practised. Many new criminal firms arise from splits in existing practices, either whole crime departments leaving general firms or a number of fee-earners leaving to establish their own practice. In these circumstances the lawyers will usually take an existing client base with them or, at the least, be known within the area.
- as explained above, we made a deliberate decision to "staff-up" to provide a 24 hour a day, seven day a week service, with the consequence that we were overstaffed for the volume of work in the early days. Most new private practice firms would only open with enough staff to service the existing client base and employ further people as numbers grew.

- 5.19 The issue of over-capacity in the early days will be examined by the research team.

- 5.20 Although the offices' client bases have grown at different rates all have achieved the objectives set for them in terms of developing a client base during this period. We expect case numbers to grow strongly in 2002/03 as the offices continue towards a position of operating at full capacity. Case numbers within the 2001/02 financial year are set out below.

Office	Ave wkly 2001 /02	Live matters at 31 March	Total matters for yr 1	Annual % new matters from existing clients*
Birmingham (open 11/7)	7	140	274	19
Liverpool (open 14/5)	10	161	482	40
Middlesboro (open 17/5)	7	95	327	28
Swansea (open 21/5)	14	275	626	49

\* % of new matters from existing clients of PDS fee-earner or referred by existing clients.

- 5.21 The particularly strong performance of Liverpool and Swansea is, in part, due to the fact that a large proportion of the solicitors and accredited representatives in the teams had previously practised, and were well known, in the area. In the Swansea office a number of key individuals had worked previously in South Wales but outside of Swansea. We regard it as a testament to the quality of their service that a significant number of their previous clients have continued to instruct them in their new location.
- 5.22 The Birmingham and Middlesbrough offices have done well given that the teams in these offices had primarily practised in other areas before joining the PDS and therefore have a bigger hurdle to overcome in developing a client base and becoming known within the area.
- 5.23 The Cheltenham office has started strongly with a current weekly average of 13 new matters. We regard this as particularly important as this is the first area in which we have opened where we regard there to be a relative shortage of private practice criminal defence firms.
- 5.24 As we expected at this stage in the service's development the majority of matters in the early days have involved police station advice and magistrates' court representation. We expect to be dealing with a greater proportion of more serious cases and more Crown Court work as the service matures and some of the more serious matters first dealt with in the police station progress through the system. However, particularly in Swansea and Liverpool we are already representing defendants in serious Crown Court matters and in trials lasting for a considerable period of time. We expect this pattern to be replicated in the other offices.

## Costs

- 5.25 The costs of running the PDS offices for the first year, plus the set-up costs are shown in the table below. Central costs include two full time head office staff, integration of the PDS offices into the LSC IT network, the purchase of a Case Management System and support from other central departments. There are some central costs associated with the establishment of the service which have been funded from the

Commission's administration budget (the costs set out below are all Fund expenditure). These will be split out and allocated to the PDS for the purposes of the research evaluation.

<b>PDS costs April 2001 - March 2002</b>			
<b>Office.</b>	<b>Running costs</b>	<b>Set up Costs</b>	<b>Totals</b>
Central	80,601	264,793	345,394
Birmingham	308,516	193,312	501,828
Cheltenham	20,756	59,853	80,609
Liverpool	387,014	141,663	528,677
Middlesbrough	332,415	166,479	498,894
Swansea	374,951	254,014	628,965
<b>Totals</b>	<b>1,504,253</b>	<b>1,080,114</b>	<b>2,584,367</b>

### **Role of the Professional Head**

- 5.26 The Commission has appointed Tony Edwards, a Commission Member and experienced private practice defence lawyer, as Professional Head of Service. He has specific responsibilities for the professional standards and independence of the service in the way it, and the staff within the offices, represent clients. In particular he is responsible for ensuring that staff comply with the Code of Conduct for Public Defenders, for issuing Guidance under that Code and for monitoring, and if appropriate addressing, any complaints made about the professional services provided by the PDS.
- 5.27 During the year he issued formal Guidance under the Code on paragraphs 2 and 6 regarding advice on guilty pleas and applications for adjournments, which we are publishing because we think it will be of benefit to the profession generally. This is reproduced in **Annex One**.
- 5.28 Four complaints were referred to the Professional Head during the year, although only one from a client and of these, three were categorised as unjustified and one as justified. This related to the conduct of a PDS solicitor towards another solicitor whilst working in a busy court.

## **The Wider Impact of the PDS Within the Commission**

5.29 As well as providing high quality defence services to clients, we have established the PDS for wider purposes. One of these is to increase the direct knowledge of those within the Commission, including senior managers, of issues affecting the provision of criminal defence services. We have already begun to see benefits in this area.

### **The recruitment process**

5.30 Recruitment for duty solicitors in a number of areas was relatively difficult. We have no evidence that this was either because the rates of remuneration we were offering were uncompetitive or because of a reluctance to join the PDS. Given other evidence we have available from private practice we consider that this reflects a growing shortage of criminal defence solicitors. This is an important matter for us in considering the future supply of CDS services from private practice suppliers and adds to the growing concerns we have about our ability to maintain national access to these services.

### **Information systems**

5.31 When developed to its ultimate capabilities we believe the CMS will provide a significant tool to assist us in providing a well managed, efficient and high quality service. However, the development and implementation of the system has required a significant input of fee-earner and non fee-earner time. We will be undertaking further work to analyse the overall cost of developing, implementing and managing such a system. This will provide us with a much greater understanding of the impact implementing their own computer systems on private practice suppliers.

### **Training**

5.32 Members of PDS teams are already having a significant impact on the training of LSC staff involved in the monitoring, management and auditing of criminal defence work. We will continue to use PDS staff to participate in the training of LSC staff undertaking this work to increase their level of understanding of the criminal justice system, the role of criminal defence lawyers and the practical issues facing them in representing clients in this area.

### **Input into policy development**

5.33 There are a large number of significant changes to the criminal justice system either under development or being implemented. Many of these impact on the Commission and on the CDS services which we fund. We have used PDS lawyers to provide direct input to central policy staff within the Commission to ensure that, when considering these

changes, we have a clearer understanding of the practical impact of them on the defence.

## DEVELOPING THE SERVICE

### Purpose

6.1 During the course of the first year of operation we have reviewed the reasons for the establishment of the service and refined them, in the light of our experience of operating the service. We consider that the Public Defender Service exists for the following reasons -

- to provide independent, high quality and value for money criminal defence services to the public
- nationally, and locally, to provide examples of excellence in the provision of criminal defence services
- to provide us with benchmarking information to be used to improve the performance of the contracting regime with private practice suppliers
- to raise the level of understanding within government and the LCD and all levels and areas of the LSC of the issues facing criminal defence lawyers in providing high quality services to the public
- to provide us with an additional option for ensuring the provision of quality criminal defence services in geographic areas where existing provision is low or of a poor standard
- to recruit, train and develop people to provide high quality criminal defence services – in accordance with the PDS's own business needs – which will add to the body of such people available to provide criminal defence services generally
- to share with private practice suppliers best practice, in terms of forms, systems, etc., developed within the PDS to assist in the overall improvement of CDS provision.

6.2 It is in the context of this clear statement of purpose that we have set our plans for 2002/03. Our key objectives for this year are focused in three areas –

- growth
- quality
- people.

## Growth

- 6.3 The attraction and retention of clients, in order to provide them with high quality criminal defence services is the key to the future success of the PDS. We expect all of our offices to continue to attract increasing numbers of clients and we have set targets against which each office's progress will be measured. The targets for 2002 / 2003 below have been developed by using the volume of new business at the end of year one as a baseline.

Office		New files being opened a month at end of 2002/2003	Files opened in 2002/03
Birmingham		60	550
Cheltenham		60	600
Liverpool		75	800
Middlesbrough		60	600
Swansea	Swansea	65	750
	Pontypridd	40	250

- 6.4 We are developing more sophisticated approaches to caseload measurement which will take account of the relative size and seriousness of cases. We will make progressive use of this as the year progresses.

## Quality

- 6.5 The quality of service we provide to clients is important for a number of reasons. Importantly, our clients are entitled to receive a quality service and it is the single most effective tool we have at our disposal to attract and retain clients.
- 6.6 During the year we will continue to take forward the work we have started so well in the first year of operation by focusing on quality in three areas –
- we will maintain full compliance with the Commission' SQM and CDS Contract quality requirements and an approach to these requirements designed to provide us with the maximum benefit from them – in terms of enhancing the quality of service to clients
  - we will develop and implement a statement of our own definition of a quality criminal defence service

- we will develop a fuller understanding of our client's expectations of our services and their views on the extent to which we meet these expectations.

## **People**

- 6.7 The people who work for the PDS are our most important asset. A range of factors contribute to the delivery of quality criminal defence services, but the most important is for the PDS to be staffed by skilled, experienced and committed people working together in well managed teams.
- 6.8 All existing members of staff will have training and development plans so that we can identify clear objectives for them within the service and what is necessary for them to realise their potential.
- 6.9 We consider that the recruitment of criminal defence solicitors and accredited representatives is likely to be increasingly difficult. Therefore we consider it important that we train and develop our own accredited representatives and solicitors of the future. We have already recruited a trainee solicitor in the Swansea office and one of our accredited representatives in Middlesbrough is also now training to be a solicitor. During the coming year we will be recruiting, or developing existing staff, into trainee solicitors in Liverpool, Birmingham and Cheltenham.
- 6.10 We will also be recruiting further staff for the Cheltenham office to meet the increasing demand for our services at this location.

## RESEARCH

- 7.1 We have commissioned an extensive programme of research into the PDS which runs for four years. The research is being jointly directed by Professor Lee Bridges, of Warwick University and Professor Avrom Sherr, of the Institute of Advanced Legal Studies.
- 7.2 The team has undertaken substantial preparatory work for the research programme. This has divided into three main areas.
- 7.3 The researchers have spent significant periods of time with the central PDS team and the PDS offices to ensure that systems set up for management purposes and to provide management information also, as far as is possible, provide the information that the researchers will need for evaluation purposes.
- 7.4 Significant work has also been undertaken to collect and collate information that is already available. This has centred on the decisions that have been taken in setting up the service, costs and other information about the set-up and operation of the service in the first year, information about the pattern of supply by private practice firms in the areas in which the PDS is operating.
- 7.5 The third area has been the preparation of the methodology for the research itself. This resulted in the production of a consultation paper on the research methodology which was published and consulted on in the early part of 2002. The consultation process involved local meetings between the research team and private practice solicitors in each PDS area. This process was important. Much of the research will seek to compare the PDS with other, private practice providers in the same area and this process will only work effectively with the co-operation of those private practice firms. The outcome of this process, in terms of a final methodology for the research will be published in July.
- 7.6 The consultation process has confirmed our and the researchers' initial view that the research should proceed on a phased basis with the researchers examining, in sequence, criminal investigations work, magistrates' court representation and then Crown Court representation.
- 7.7 The Government, LSC and researchers are all committed to an open and consultative approach to the evaluation of the PDS. This has been demonstrated by the consultation already held on the research methodology.

## ANNEX ONE

### PUBLIC DEFENDER SERVICE

#### GUIDANCE 1/2002

##### Introduction

1. By paragraph 1.2. of the code of conduct for employees of the Legal Services Commission who provide services as part of the Criminal Defence Service (the Code) I am responsible for providing advice and guidance upon the code.
2. I have been asked by the Legal Services Commission to give advice and guidance in relation to paragraph 2.2. of the Code. I take the opportunity also to do so in relation to applications for adjournments.
3. I have consulted with the Law Society and the Bar Council before issuing this guidance.

##### Paragraph 2.2.

4. This paragraph provides that  

“a professional employee shall not put a client under pressure to plead guilty, and in particular, shall not advise a client that it is in his or her interest to plead guilty unless satisfied that the prosecution is able to discharge the burden of proof”
5. The relevant provisions of the Law Society’s Guide to the Professional Conduct of solicitors 1999 states (paragraph 21.20) that  

“a solicitor who appears in court for the defence in a criminal case is under a duty to say on behalf of the client what the client should properly say for himself or herself if the client possessed the requisite skill and knowledge. The solicitor has a concurrent duty to ensure that the prosecution discharges the onus placed upon it to prove the guilt of the accused.”
6. The relevant provisions of the Bar’s Code of Conduct provide:  

12.1. “when defending a client on a criminal charge, a barrister must endeavour to protect his client from conviction except by a competent tribunal and upon legally admissible evidence sufficient to support a conviction for the offence charged”

12.3. “A barrister acting for a defendant should advise his lay client generally about his plea. In doing so he may, if necessary, express his advice in strong terms. He must however, make it clear that the client has complete freedom of choice and that the responsibility for the plea is the client’s”.

7. The professional employee should seek to obtain a sufficient disclosure of the prosecution evidence so that he or she may be satisfied that the Crown is able to establish its case. The client should not be required to indicate a plea otherwise than on the basis of an informed decision (see R v. Calderdale Magistrates Court ex p Donahue & Cutler 2001 Crim LR 141).
8. If the client wishes to proceed without such disclosure specific instructions to that effect should be obtained and recorded
9. Whilst the court will often reduce the sentence it would have imposed upon a client as a discount for a timely indication of a guilty plea, it will not always do so.
10. A professional employee should be alert to any vulnerability on the part of a client and to their level of understanding. He or she should give advice in terms appropriate to the circumstances of that client.
11. Even if the client wishes to admit guilt, a professional employee should, where appropriate, consider other possibilities such as a reduction in the level of charge or other disposals such as a public interest discontinuance or a caution reprimand or warning.
12. Subject to these considerations a professional employee must be free to give appropriate advice to his or her client. Giving such advice will not be treated as putting a client under pressure to plead guilty for the purpose of paragraph 2.2 of the code, provided it does not seek to remove the final decision on plea from the client. Appropriate records must be kept.

### **Applications for Adjournments**

13. Paragraph 2.1 of the code states  

“the primary duty of a professional employee is to protect the interests of the client so far as is consistent with any duties owed to the court and any other rules of professional conduct.....”
14. Paragraph 6 of the code identifies the duty to the court. It states:  

“6.1 an employee shall never deceive or recklessly or knowingly mislead the court.

6.2. subject to the provisions of this Code and any other rules of professional conduct employees shall ensure that in the public interest they discharge their duties in a way which is consistent with the proper and efficient administration of justice.”

15. The relevant rules of professional conduct are summarised in Cordery on Solicitors Section F
  - 1.1. "A solicitor who has accepted instructions on behalf of the client is bound to carry out those instructions with diligence and must exercise reasonable care and skill...."
  - 2.3. "the solicitor's authority stemmed from the retainer given to him by his client, and his authority to act is limited by any special conditions imposed and supplemented by any special authority conferred by the retainer....."
16. A professional employee should not seek an adjournment for his or her own convenience but only in accordance with instructions received from a client.
17. If a client seeks an adjournment, a professional employee should advise as to the advantages and disadvantages of that course of action. Having given that advice the professional employee should follow the client's instructions. In doing so he or she must comply with the provisions of paragraph 6.1 of the Code. (that provision not being made subject to the rules of professional conduct set out above).

Anthony Edwards  
Professional Head of Service  
Jan 2002

PDS/ Public Defender Service