



# **“Transforming Legal Aid: Next Steps”**

**A response by**

**The Chartered Institute of Legal  
Executives**

**1 November 2013**

## Introduction

1. This response is submitted by the Chartered Institute of Legal Executives (CILEx) as an Approved Regulator (AR) under the Legal Services Act 2007. This consultation response follows membership engagement, particularly with our criminal law practitioners, but also our wider membership together with a meeting with the CILEx Legal Aid Working Party, which comprises of various Council Members, including the current Vice President and a Criminal Law Practitioner.
2. CILEx continually engages in the process of policy and law reform. At the heart of its engagement is the public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform policy and law reform relating to justice issues.
3. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it. Where CILEx identifies a matter of public interest which presents a case for reform it raises awareness of this with Government and other stakeholders and advocates for such reform.
4. As we did with the original Transforming Legal Aid Consultation, CILEx recognises that the Government is acting under particular demands to reduce the expenditure of the Ministry of Justice (MoJ), and more particularly the legal aid budget; however we genuinely believe that this cannot possibly be to the detriment of real access to justice.
5. We wholeheartedly agree with such Government statements as legal aid is seen as ‘...an integral part...’ of our legal system, and that we have a ‘world

class reputation for impartiality and fairness'.<sup>1</sup> CILEx also believes that this needs to continue, and therefore there should not be significant barriers to access to justice.

6. CILEx once again challenges the recurrent Government argument that we have one of the highest levels of legal aid spending in the world. This is a misleading statement. Evidence has proven that the expenditure in England and Wales on courts, prosecution and legal aid, as a percentage of GDP per capita, in comparison to other countries, was average.<sup>2</sup> Further, evidence given by the Secretary of State to the Justice Committee also shows that spending on Legal Aid has already reduced by 10% since 2010<sup>3</sup>.

## Response to Consultation

7. This response will first address the Government's response to the consultation paper *Transforming Legal Aid: delivering a more credible and efficient system* prior to dealing with the current consultation.

### Restricting the scope of legal aid for prison law

8. CILEx notes that the Government intends to press ahead with removing legal aid for treatment, resettlement, categorisation and for parole board hearings, which do not relate directly to a prisoner's release. Essentially, the removal of this funding will prevent work being carried out to assist some prisoners in rehabilitating and reducing the risk for reoffending. There is no account taken particularly in relation to children and other vulnerable prisoners.
9. CILEx does not agree with the Government that the current complaints system provides adequate protection for prisoners, and particularly prisoners who are more vulnerable or children. Removing such legal aid means that prisoners will not receive some assistance in their preparation for release,

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<sup>1</sup> Chapter 1. Introduction & the Case For Reform, *Transforming Legal Aid: Next Steps*

<sup>2</sup> National Audit Office, Briefing for the House of Commons Justice Committee, February 2012, Section 3, paragraph 3.3

<sup>3</sup> Justice Committee, 16 October 2013. Uncorrected evidence, response to Question 13 - <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/uc724-i/uc72401.htm>

which may ultimately result in many prisoners remaining in custody for longer than necessary. Extra time in prison, or time in a prison which is too high a category, will cost more money, and is likely to cost significantly more than the £4 million the Government suggest they will save by removing legal aid.

10. Whilst CILEx recognises that the Government has expanded the jurisdiction of the Prison and Probation Ombudsman, the Association of Prison Lawyers recognised that the average investigation by the Ombudsman costs £1,100, which far exceeds the legal aid fixed fee of £220. Again, CILEx suggests that such additional costs will far outweigh the savings proposed by Government.

### **Imposing a financial eligibility threshold in the Crown Court**

11. No household with a disposable income over £37,500 will receive legal aid in the Crown Court unless they are able to demonstrate a 'hardship'. CILEx stands by its response in the original consultation where it sought clarification as to what would amount to allowable expenditure. Despite the further information provided, CILEx is not convinced that the figure is appropriate, and still considers that those who are of modest means, but not of great wealth will be disadvantaged.

12. We also encourage the Government to take into account the exclusion from access to justice for those who, the impact of such a prosecution could have a swift and damaging impact on family finances. Not only does this provide issues for the defendant and their families involved, but will also cause delay.

### **Introducing a residence test**

13. CILEx regrets the Government's intentions to press ahead with the introduction of a residence test for civil legal aid purposes. CILEx recognises that the Government has made some concessions, and extended situations where persons will not be required to satisfy the residency test, but CILEx believes that the test is arbitrary, and that the concessions are not as significant as they may appear.

14. In the current consultation, at paragraph 2.14 the Government states that the residence test will not apply to cases “...which broadly relate to an individual’s liberty, where the individual is particularly vulnerable or where the case relates to the protection of children”. On first reading it seems as though this would relate to a significant group of people. However, Annex B, paragraph 125, and the subsequent consideration of Schedule 1 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (‘LASPO’) (which is referred to in Paragraph 125), shows that the scope of this is much more narrow than it would first appear. Whilst current immigration detainees are protected by this extension, it is only to the extent that they are challenging the fact of their detention. Therefore, if an immigration detainee had a legitimate case regarding discrimination in detention, or mistreatment in detention, they would not be able to obtain legal aid to bring such a claim as it is not challenging the lawfulness of their detention.
15. Essentially, cases such as those recently reported regarding Yarl’s Wood Immigration Removal Centre, and the allegations of sexual abuse would not be pursued.<sup>4</sup>
16. The same applies with victims of trafficking, which the Government claims would now not be subject to the residence test. Those who can prove that they are a victim of trafficking will only receive legal aid for certain types of cases.
17. There remain a number of particularly vulnerable groups of people who will be substantially disadvantaged as a result of the introduction of this residence test, or those who will fall foul of the test through no fault of their own, and consequently be excluded from access to legal aid. CILEx would

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<sup>4</sup> <http://www.theguardian.com/uk-news/2013/sep/14/detainees-yarls-wood-sexual-abuse> and <http://www.theguardian.com/uk-news/2013/sep/21/sexual-abuse-yarls-wood-immigration>.  
<http://www.dailymail.co.uk/news/article-2421211/Yarls-Wood-sexual-abuse-claim-Police-investigate-accusations-woman-held->

consider it an appropriate measure to exclude those deemed as lacking capacity from this residence test.

18. There may be people who have lost documentation, or those who are unable to access them, for various reasons.
19. There is only a slim exception for children in terms of abuse cases and specific care proceedings, and those under 12 months old. This could render a child in a position where, because of the action of their parents, they will be left unable to secure legal aid and attempt to obtain support or accommodation whilst their immigration status is being resolved. This would be the same for those who have mental health issues or other disability.
20. CILEx does not accept the Government's continued assertion that anybody excluded from civil legal aid as a result of the residence test is entitled to apply for exceptional funding under section 10 of LASPO, as an acceptable substitute for access to justice in the first instance. A person would be entitled to assistance under section 10 of LASPO if their human rights or EU rights would be breached if they were not to receive such assistance. When LASPO came into force, the Government had estimated that, due to the type of cases being taken out of scope by LASPO, that there would be 5,000-7,000 applications for exceptional funding during its first year in force. Figures provided up to the end of September 2013 are that there were 760 applications made, and of those, 15 were successful.<sup>5</sup>
21. Given that very few cases are proceeding, it would suggest that the scheme is not fit for purpose. The Public Law Project<sup>6</sup> in its evidence to the Joint Committee on Human Rights suggested that this is down to the fact that the process for applying for exceptional funding is onerous, expensive and time consuming<sup>7</sup>. A detailed explanation of *some* of the information that is required was set out in paragraph 24, and includes substantial information

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<sup>5</sup> <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/uc724-i/uc72401.htm>

<sup>6</sup> A national legal charity which states that it ... "aims to improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage"

<sup>7</sup> [http://www.publiclawproject.org.uk/documents/Public\\_Law\\_Project\\_written%20evidence\\_to\\_JCHR.pdf](http://www.publiclawproject.org.uk/documents/Public_Law_Project_written%20evidence_to_JCHR.pdf)

together with supporting evidence from a number of sources. CILEx believes that this demonstrates that such a 'safety net' is not fit for purpose, and should not be relied upon to justify the removal of legal aid if applicants fail to pass the residence test.

22. This is further compounded when it is considered in conjunction with the Government's own Impact Assessment<sup>8</sup> which acknowledges, in relation to costs, that the Legal Aid Agency do not currently record the residence status of a client. It states, therefore, that it is not possible to estimate the reduction on volume of claims which will result from the policy. CILEx believes that it also demonstrates that the policy is based on ideology rather than fact and evidence.

23. CILEx considers that there are going to be significant costs associated with the introduction of the residence test. Aside from the costs for the Legal Aid Agency, which the Government considers will be up to £1million, there will be the additional, transferred costs to the public purse, when Local Authorities are required to deal with, for example, vulnerable children and homelessness which is caused as a direct result of the application of the residence test. Local Authorities, and other interested groups have suggested, when preparing a Shadow Impact Assessment that this will cost them £26million.<sup>9</sup>

### **Paying for permission work in judicial review cases**

24. CILEx will be responding to the "Judicial Review: Proposals for further reform" separately.

### **Civil merits test – removing legal aid for borderline cases**

25. Despite the Government response on this matter, CILEx sees no compelling reason why cases assessed as having a 'borderline' chance of success should be removed from the availability of legal aid. The savings the Government have suggested will be made by this policy is under £1million

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<sup>8</sup> Transforming legal aid: scope, eligibility and merits (civil legal aid) IA No: MoJ194

<sup>9</sup> <http://www.nrpfnetwork.org.uk/SiteCollectionDocuments/1Executive%20Summary%20Impact%20on%20Equality%20and%20Economy%20from%20a%20Residence%20Test.pdf>

which, in terms of the savings discussed throughout the consultation, is minimal. If the Government removes funding for these types of cases, it will remove access to justice in matters which raise novel or unclear points of law. This will hinder the development of the law.

26. In relation to paragraphs 8 to 25 above, CILEx reiterates a major concern is that these changes are intended to be introduced through amendments to secondary legislation. Whilst the Government states this is 'subject to Parliamentary approval' there is essentially no room for manoeuvre by Parliament. Changes so significant should be subject to proper debate and scrutiny.

### **Introducing Competition in the Criminal Legal Aid Market**

27. CILEx is pleased that the Government has conceded that client choice is a fundamental basis in the effective delivery of criminal legal aid, and that a model of competition where an administratively set price is the key criterion is not appropriate for such a market.

28. CILEx has maintained for some time that there are a number of inefficiencies within the criminal justice system. We still believe that if there were better integration between all the relevant participants within the system, then costs savings would ultimately follow. Anecdotal member evidence long suggests that there are inefficiencies at Court, the Police Station, with the CPS and the Legal Aid Agency. There has never been a firm commitment from Government that these wider inefficiencies will be tackled. We maintain that Legal Aid providers are being disproportionately penalised for systemic inefficiencies in the criminal justice system as a whole.

29. CILEx recognises the newly implemented Criminal Procedure Rules and Criminal Practice Directions. However, these have not had any opportunity to bed in, and therefore have not demonstrated if they will be successful in introducing efficiencies to the system. .



30. The current Government proposals are also being put forward on the basis once again of saving £220million. This is without any acknowledgement of the fact that vast cuts and savings have already been made, or are in the process of coming into force and cannot yet be calculated. Such cuts and reductions have essentially been absorbed by the legal service providers up to this point.

31. The proposals also fail to take into account other factors including Legal Aid Agency's recognition that the introduction of various fixed fees have reduced the legal aid spend, and that such costs will continue to decrease.<sup>10</sup> Neither does it acknowledge the statistic released by the Ministry of Justice which suggests that for the financial year 2012/13, the overall spend on legal aid amounted to £1.917billion. This figure is a significant reduction to the expenditure over the previous six financial years.<sup>11</sup> Furthermore, it does not consider the much wider context of the reduction in levels of crime. The recent Crime statistics released by the Office for National Statistics, confirmed that crimes against households and resident adults in the last 12 months (up to June 2013) have reduced by 7% from the previous year. This is the lowest they have been in the history of the Crime Survey for England and Wales (which started in 1981). Furthermore, the police recorded 7% fewer crimes than the previous year, which is the lowest comparative level for 10 years, since the National Crime Recording Standard was introduced.<sup>12</sup>

32. Further comments on the new proposed model for the Criminal Legal Aid Market will be addressed below.

## **Reforming Fees in Criminal Legal Aid**

33. We note the Government's intention to reduce the litigator and advocate fees in Very High Costs Cases (VHCC). CILEx previously voiced a full review of this area, including some in relation to procedure, needs to be undertaken. It

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<sup>10</sup> <http://www.justice.gov.uk/downloads/publications/corporate-reports/legal-aid-agency/laa-business-plan-2013-14.pdf>

<sup>11</sup> <http://www.justice.gov.uk/downloads/publications/corporate-reports/lsc/legal-aid-stats-12-13.pdf> Table 1 at Page 27

<sup>12</sup> <http://www.ons.gov.uk/ons/rel/crime-stats/crime-statistics/period-ending-june-2013/index.html>

may be that ultimately a reduction in fees results from a wider package of reforms, but simply making a crude cut to the fees is not acceptable. It also fails to address the fact that by their very definition, these are the most difficult cases within the system.

34. CILEx again expresses its concern that these changes will be implemented without being subject to proper scrutiny and debate within Parliament.

### **Reforming Fees in Civil Legal Aid**

35. CILEx repeats its previous arguments that, particularly on the back of the wholesale changes introduced by the Legal Aid Sentencing and Punishment of Offenders Act 2012, such changes should not be introduced, and again takes issue with the way in which they will be introduced through secondary legislation.

### **Expert Fees in Civil, Family and Criminal Proceedings**

36. CILEx urges the Government to re-think its decision to proceed with the proposal to reduce the fees payable to most experts in civil, family and criminal proceedings. Whilst the Government has modified its proposals in relation to some expert fields, this simply does not go far enough.

37. The Government must ensure that any fees must not fall below the level which is paid by the Crown to its experts, as this would have serious implications regarding equality of arms.

38. CILEx wholly disagrees with the Government proposal to reduce the rates available to interpreters outside of London by 12.5%, particularly when there are already problems around the Court Interpreter Scheme with delays at Court due to the late arrival, or non-attendance of interpreters who are not prepared to undertake the work for the current fees.

## Further Consultation

### Procurement of Criminal Legal Aid Services

#### Modified Model

39. CILEx acknowledges the Government's actions in conceding the issue around client choice. It is fundamental that clients have access to a lawyer of their own choosing. However, ensuring the doctrine of client choice remains present has very little real effect if the market place is so diminished that effectively there is very little client choice.
40. CILEx agrees that the market should move towards a "more cost effective and modern business model..." but raises again the issue of lack of all-inclusive approach to the Criminal Justice System as a whole.
41. CILEx notes the Government's statement that the new model retains its policy objectives of economies of scale, economies of scope, simplification and greater flexibility and a savings objective.
42. CILEx further notes the Government assertion that the new model will allow those offering criminal legal aid services to offer own client work (the contracts for which are unlimited and can be offered anywhere in England and Wales) and to offer services to those who do not have their own lawyer, for which a competitive tendering process for a limited number of contracts will be run.
43. The statement by the Government that this provides an "appropriate balance between providing opportunities for consolidation – thereby ensuring sustainable provision of the duty provider service which is fundamental to the effective of criminal legal aid [sic] – without restricting access to the market unnecessarily" is not one which CILEx would readily agree.

## **Scope of the new contract**

44. CILEx are pleased with the concession on the part of the Government that providers who wish only to deliver prison law and/or appeals and reviews services will now be able to do so under these proposals.

45. It would not seem viable for firms dealing with own client matters alone, who currently rely upon duty rota work to 'top up' their client base. It is safe to assume that a high number of 'own client's' of firms, originally came through the duty rota scheme, or recommended by someone who had come through the system. A firm would find it extremely difficult to survive in a situation where they operated only own client work, even if it was only a relatively low percentage of work they currently undertake.

## **Contract Length**

46. CILEx welcomes the extension of the contract term by up to one further year. However, we still believe that this is not sufficiently long enough to avoid being considered a financial risk to a bank. We reiterate our concerns raised in our initial response, and are extremely concerned that the Government wish to include a no fault termination clause. Again, it is likely this will be viewed with risk by any banks.

## **Geographical areas for the procurement and delivery of criminal legal aid services**

47. CILEx welcomes the increase in procurement areas, but considers that it doesn't go far enough, and the Government have not addressed all of the concerns raised in our previous response regarding the delivery of such legal services over a relatively large geographical area.

48. The Government states that no proposed procurement area would require a provider to travel more than one and half hours by car between two points of delivery, but CILEx would question just how workable and realistic this

actually is. There is a significant difference between a city where motorways are available, and those areas which are substantially more rural, for example those which fall into the procurement area of Dyfed-Powys 2. Another example of the latter is Machynlleth to Carmarthen, which the AA Routefinder states is 78.6 miles, taking the total of 1 hour and 51 minutes. The policy does not take into account real issues such as this, traffic at certain periods of the day, or other issues which may be encountered on travelling. The Government need to consider carefully responses in this regard, and acknowledge that practitioners in such areas will have better knowledge, and make the variations necessary to this proposed travel time. With some of these proposed areas, it is very difficult to see how the 'economies of scale' envisaged by the Government will be achieved.

## **Number of contracts**

49. CILEx agrees that there needs to be an appropriate number of contracts for Duty Provider Work, and the number of contracts available needs to strike a balance between being financially sustainable and not leading to a substantial collapse of the market.
50. CILEx would remain concerned that there may not be enough contracts in some areas to deal sufficiently with conflicts of interest. There may well be reasons, other than potential conflicts of interest, as to why a firm is unable to accept instructions, so any division of contracts needs to take into account such possibilities.
51. At paragraph 3.32, the Government states '...to ensure that Duty Provider Work is sustainable on its own'. CILEx questions whether this is viable. Although natural market forces will allow for some firms to obtain more work, there will be a substantial loss of duty provider work.
52. CILEx does not agree with the statements in 3.35, nor how the Government have arrived at such a suggestion.

53. CILEx assumes that the further research that Ministry of Justice and the Law Society are jointly commissioning will seriously review the issue of geographical locations. It cannot be correct to look at a national average, when local conditions will vary greatly from such an average.

54. CILEx is not in a position to comment further without sight of the evidence obtained by the Law Society and Ministry of Justice but seeks confirmation that the evidence will be considered fully and in detail by the Government, and will be made available for consideration and further comment or input by all other stakeholders.

### **Types of Provider**

55. We note the points made by the Government, and we are pleased that the Government wishes to ensure that any organisation which seeks to bid for a contract must ensure they have appropriate regulation in place.

### **Contract value**

56. CILEx notes the position regarding the contract value. We have no comments at this time, as such contracts cannot be valued without having an idea of the number of contracts that may be available in any procurement area.

### **Client choice**

57. Once again CILEx expresses a great relief that client choice is to be retained.

58. We have some concern regarding the withdrawals or transfers prior to the grant of representation being made only after consideration of the same criteria as those which apply for withdrawals or transfers *after* the grant of representation has been issued. This is restricting client choice in the situation where they have been initially represented by a lawyer under the duty rota scheme, but only because of the unavailability of their own lawyer, and after the initial representation, they wish to instruct their own lawyer.

59. In paragraph 3.48 the Government states “The LAA would explore whether to include any obligations in the new criminal legal aid contract against which providers would be monitored”. CILEx seeks further clarification regarding this statement.

## **Case allocation**

60. CILEx notes the proposals here and at this time has no comments to make.

## **Remuneration**

### **Phased Fee Reduction**

61. CILEx notes the proposal within the modified model which is a total reduction in fees of 17.5% by spring 2015, and that this date is also the proposed Service Commencement date of the new criminal legal aid contract.

62. At Paragraph 219 of Annex B “Response to the Consultation”, the Government states:

*“...we acknowledged in the April 2013 consultation paper that the current provider base would not be able to sustain such a fee reduction without some form of market restructuring and consolidation. Some providers have indicated they would be able to sustain such a fee reduction if they had enough work in order to exploit economies of scale. The Otterburn report provided by the Law Society in its response supports this view. If it is possible to deliver the same quality legal aid services as now the 17.5% below the current price, the Government believes that it is self-evident that the current system is not delivering the best value for money for the taxpayer”*

63. CILEx wholeheartedly disagrees with this. To say that the Otterburn report<sup>13</sup> supports the view that providers would be able to sustain such a fee reduction

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<sup>13</sup> “Price Competitive Tendering for Criminal Defence Services 2013. A Report for the Law Society of England and Wales. June 2013”

is misleading. At page 45 of the report, it is noted that there is an indication that 25% of firms would still be profitable. However, as pointed out also within the report, there would have been no guarantee that such firms would have been awarded contracts in any event.

64. The Otterburn report makes it clear at Page 45 that “It is also important to recognise that these figures are before the impact of the existing cuts that are still working their way through the system”. On the same page the report states: “As indicated in table 9 overall there is insufficient surplus for firms to withstand a 17.5% cut. Some may be able to reduce salaries as well but many will not. The profits, for most firms, simply are not there”.
65. As an alternative to the PCT then being considered, when the report was being prepared, questions were asked of all of the participants, including “What do you anticipate would be the impact on your firm of the 17.5% cut in crime fees?” and “What changes would you have to make to maintain the firms viability under a 17.5% cut in fees?” The first question, with the responses at Appendix 8 of the report, the majority of them do not suggest sustainability. There are many comments regarding how it would not be viable to continue, and there is much mention of closure of firms and redundancies. This would obviously have a huge impact on the market, with the closure of many firms. This very real possibility is not mitigated because there are a minority of firms who may continue to make a profit. It is recognised throughout the report and in the Appendices that many firms would not remain viable if such cuts were introduced. CILEx contends that in this circumstance, rare and minority exceptions to the general majority concern that providers would not remain viable does not provide sufficient argument to introduce such cuts.
66. In April 2013 the Government did not think it was sustainable to implement such a cut, there has been no real evidence to suggest that this would still not be the case. CILEx is deeply opposed to the introduction of such cuts, and considers that introducing them over two successive reductions will not



change the situation. Particularly when there is no guarantee of increase in volume of work to strike any sort of balance.

67. Such cuts will produce a very real and unacceptable risk to the sustainability of the market as a whole. This will ultimately lead to a lack of access to justice. It must be considered against the background that in almost 20 years providers have been responsible for absorbing inflation without any increase in fees at all, so in real terms have been dealing with fee cuts, whilst still providing good quality service to clients.

68. If these cuts are introduced, the consequences will be terrible, and will be irreversible. They will not result in a sustainable legal aid market, and it is highly doubtful they will achieve the relatively modest savings that are proposed. Furthermore, any savings that are achieved are likely to be invalidated by future costs of putting the market right again.

69. Such cuts are likely to lead to a swift contraction in the market, which will lead to advice deserts, which will irreparably impact upon access to justice, and will damage the integrity of the criminal justice system as a whole.

## **Fixed Fees**

### **Police station attendance fixed fee**

70. Following correctional figures being clarified by the Ministry of Justice, CILEx notes the proposed fixed fee for attending a police station is £160.45 plus VAT (a total of £192.54).

71. CILEx is alarmed with the approach to apply a national average in this way. Whilst CILEx agrees that the current fee structure is complex, to simplify it in such a way will have serious consequences.

72. This does not consider the impact of such fees in different geographical areas. There are a number of areas where the proposed national fixed fee will represent a significant decrease from the current fee available for such work. This will, in real terms, mean that some areas are dealing with a much more significant cut than 17.5% which will have a significant impact once again on sustainability of service over different parts of the country. CILEx is

certain that local conditions should be seriously considered and taken into account if fees are fixed in different geographical locations.

73. CILEx notes the Government's intention to remove the escape threshold for police station work. It is imperative to remember how vital the role of police station attendance is within the process of the criminal justice system.

74. If you consider that whilst a suspect can be kept in detention for up to 24 hours, in more serious matters that can be extended to 96 hours, during which time the suspect may be interviewed on any number of occasions, and his or her representative would be required to be present. This time period could increase significantly on more serious terrorism charges.

75. There are a number of matters which would take longer than usual, for example, if the suspect involved is vulnerable, or has mental health issues. This could lead to a position where, in order to stay viable, a firm will send more junior staff to deal with these cases, which will have an adverse impact on the administration of justice.

76. The Government should retain an exceptional fee for exceptional cases, and should seriously consider whether that is calculated by the length of time a lawyer has worked on the matter, or the length of time the suspect has been detained.

### **Representation in the magistrates' court fixed fee**

77. Following the correctional figures clarified by the Ministry of Justice, CILEx notes the proposed fixed fee for attending the magistrates' court will be £258.71 plus VAT (a total of £310.45), removing the distinction between a Lower Standard Fee and a Higher Standard Fee. CILEx further notes that the government intends to maintain a mechanism, similar to the current scheme, which will enable providers to claim a higher fee provided they can demonstrate their hours worked exceeded a specified threshold.

78. CILEx believes that a single fixed fee for guilty pleas, a cracked trial and a trial is wholly inappropriate. It will have a catastrophic effect on the administration of justice.

79. It is clear that there will be much more work and time involved on a case which goes to a full trial, than a case where an early guilty plea is entered. Cracked trials will often also involve a high amount of work, which will differ in each case as trials crack for different reasons, and at various stages.

80. Those who represent clients have a professional obligation to represent them, but the current proposals will mean that the lawyer could be seriously undercompensated for the preparation required, and the hours spent.

81. These proposals may also cause difficulties between client and lawyer, as a client may choose not to accept the advice of their lawyer to, for example, plead guilty, if they consider that the advice may be driven by financial constraints.

82. CILEx argues therefore, that there should be an increase on the fee for cracked trials and trials. The Government's wish to save a modest sum cannot be placed before justice.

## **Procurement Process**

83. The Government is now proposing two contracts, namely 'Own Client' work and 'Duty Provider' work.

84. It is difficult to comment on the proposed procurement process, particularly when it is not certain to be going ahead, and particularly without being aware of the number of Duty Provider contracts which will be available.

85. The difficulty that CILEx has, is that in order to sustain the cuts which will be implemented, it is extremely likely that firms will be forced to make cuts, which as some responses in the Otterburn report concluded, will include redundancies. Essentially the market will consist of unstable firms which have been forced to make cuts, who then are

required to complete a PQQ and ITT demonstrating how they are going to cope with an increase in volume of work, which is not even guaranteed, and potentially an increase in the geographical area they are going to cover. There will be firms in a position whereby they have made redundancies in order to stay viable following the cuts, but having to demonstrate evidence of expansion.

## **Implementation**

86. Even though the Government has extended the timeline, the timetable for implementation of change is still a challenging and tight one. It is particularly ambitious when the Government is not aware of the findings of the jointly commissioned report regarding the status of the market and the providers within it.

87. CILEx considers it would have been much more appropriate to wait until the further investigations, consultations, and reports had been carried out before beginning to implement the cuts.

## **Reforming Criminal Advocacy Fees**

88. CILEx will not be offering comments on proposals to reform criminal advocacy fees at this stage.