

**An Economic Analysis Of  
Publicly Funded  
Criminal Defence  
Claims Data and  
The Potential Impact  
Of Lord Carter's  
Proposed Reform  
Of Procurement**

**On behalf of  
The London Criminal Courts Solicitors' Association (LCCSA),  
The Criminal Law Solicitors' Association (CLSA), and  
Legal Aid Practitioners Group (LAPG)**

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## **Executive Summary**

1. Lord Carter's report acknowledged that the biggest challenge that his team faced was the inadequacy of management information available. This is the result of different data systems and the inadequacy of data captured in some of those systems.
2. Rather than postpone the report to collect sufficient data to carry out a robust analysis of fee structures he pressed on with his report.
3. At stake is the long term sustainability of criminal defence providers which research has recently shown to be very fragile with profit margins low.
4. We have analysed various data sets provided to us by the LSC as well as conducting a detailed online survey of practitioners in an attempt to establish what factors may affect the profitability of a particular case or piece of work.
5. We have looked at the various classes of cases and concluded:-

### ***Investigations Claims***

6. We have established that the proposed payment rates have a disproportionate affect upon some case types rather than others, for example homicide investigations will show a decrease in payments under the proposed scheme of 35%.
7. There is a relatively large variation in the effect of the reforms by geographical distribution.
8. The need for an interpreter or a case where the suspect is vulnerable greatly increases the length of time spent by the solicitor.

### ***Proceedings Claims***

9. The affect of the proposals impacts must dramatically upon London as a region and upon Category 1 Non Standard Fee claims by category.
10. Some regions are very adversely affected by the proposals and some will gain by the proposals, indicating that further research is required to examine the causes of these variations.
11. Additional factors such as a Defendant being in custody, vulnerable or requiring an interpreter also impact disproportionately upon the reduction in fees under the revised scheme.

## ***Crown Court Proceedings***

12. The Litigators' Graduated Fee was, we understand, based upon a dataset of 7,419 claims from Preferred Suppliers. A larger dataset of approximately 263,000 claims is also available. We have looked at the effect of the proposed reforms upon the larger dataset and compared this with the impact upon the smaller dataset.
  - a. The overall reduction in fees under the new regime is similar at between 9 and 10% - although 0.72% higher when looking at the larger dataset.
  - b. The larger dataset can distinguish between cases in the London region and cases outside London. It shows a disproportionate adverse effect upon firms in London.
  - c. It is unclear, and more research would be needed, whether this disproportionate adverse effect is shared by other areas with a similar demographic profile to London.
13. Some offences are disproportionately affected than others by the reforms, for example cases of dishonesty involving more than 30,000 pages of evidence, homicide and serious sexual offences.
14. Some preferred suppliers would be up to 40% better off under the proposals and some would be up to 40% worse off under the proposals. Such a wide variation requires further research.
15. Our research also showed that there is a 58% increase in fees claimed under the present scheme, not reflected in the proposed Carter proxies.
16. Where a client is vulnerable or requires an interpreter then currently fees are higher, on average, than cases without those features.

## Introduction

In Lord Carter's July report<sup>1</sup>, he recognises that "*the biggest challenge...faced is the inadequacy of the management information available*"<sup>2</sup>. He seeks to promote "*a new relationship based on openness and co-operation*"<sup>3</sup>, and the urgency to which he also refers perhaps explains his failure to implement a period of thorough data collection and subsequent analysis.

### **Why Is There A Lack Of Information?**

Lord Carter's complaint at the lack of management information is a reflection of the fragmented accounting practices and systems that make up the payment schemes for publicly funded criminal defence services. Our understanding is that these are made up of the following information technology systems: -

1. The Legal Services Commission's CIS system, which contains details of all payments made under the police station and court duty solicitor schemes, along with details of clients, offences and payments made in respect of criminal legal aid orders in the Magistrates' Courts;
2. The Department of Constitutions Affairs' COMSHARE, CDMIS and LAVER systems, which contain details of payments made under higher court criminal legal aid orders.

We are led to believe that the CIS, COMSHARE, CDMIS and LAVER systems contain data relating to the entire criminal defence process, from the provision of advice in the police station, through the provision of assistance and representation in the Magistrates' and Crown Courts, to the provision of assistance and representation in appeals against conviction or sentence<sup>4</sup>. Unfortunately, because the systems have been developed at different times and for different purposes, much of the data they contain cannot be linked. For example it is not possible to join together the details of the Magistrates' and Crown Court components of individual cases, as the lower and higher court systems do not contain a single common, unique case identifier.

### **A Report Drawn From Inadequate Information**

Despite the inadequacy of the data available, Lord Carter pressed on with his review. This culminated with his recommendation of radical, far-reaching "reforms" to the procurement of legal aid, the economic impact of which has recently been assessed by LECG Limited, a group of independent, highly regarded experts and professional staff including renowned academics, former senior government officials, experienced industry leaders, and experienced consultants<sup>5</sup>.

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<sup>1</sup> Legal Aid - A Market-based Approach to Reform

<sup>2</sup> *ibid*, Page iii

<sup>3</sup> *ibid*, Page iv

<sup>4</sup> Criminal Case Profiling Study, Pascoe and Pleasance, 2001

<sup>5</sup> Legal Aid Reforms proposed by the Carter Report – Analysis and Commentary, LECG Ltd, September 2006

LECG's report warns that criminal legal aid firms are at best marginally profitable<sup>6</sup> and, after years of restricted rates and limited profits, the supplier base is fragile. Lord Carter's payment schemes reflect the limited information he had available, and it is hardly surprising that, for example, the three proxies that he identifies for the Crown Court Litigator's Fee are class of offence, page count, and number of days at trial. These are the only variables that he could measure based on the datasets made available to him. Our research shows that other, common sense, variables make a huge difference to the complexity of and time spent on a case, and to simply rely on "swings and roundabouts" (perhaps best described as gains and losses) is to risk irreversible damage to publicly funded criminal defence services.

## ***An Online Joint Impact Survey***

Mindful of the shortcomings of Lord Carter's analysis, the LCCSA, CLSA and LAPG, with the assistance of the Law Society, launched an online survey for firms to "test" the impact of the proposed reforms on their practice. 322 users registered their details, and data was collected in relation to 1,876 investigations claims, 1,526 proceedings claims and 592 Crown Court claims. In the analysis that follows, we use the results of the survey to compare and contrast the effect of the proposed reforms against datasets provided by the Legal Services Commission. This necessarily limited sample, using information gathered over a very short time period, highlights important case factors that Lord Carter's reforms ignore.

## ***What's At Stake?***

The danger of getting the reforms wrong is obvious: more than 800 legal aid firms could be forced out of business (double the number predicted by Lord Carter) with Lord Carter's stated aims of ensuring sustainable, high quality legal aid services lost forever. Added to this should be those firms who will simply chose not to continue in this demanding and unprofitable field of work.

## ***What Should We Do?***

We believe that further work is required in order to confidently predict the results of the proposed reforms.

We recommend a moratorium on the introduction of any of the suggested changes, allowing time for the collection and analysis of important case information that we say is essential for informed decision making.

In our submission, it is not simply a case of "making do" with the limited data to hand; we invite the Legal Services Commission and Department of Constitutional Affairs to work with us to: -

- identify factors that are relevant to the costs and complexity of a case; then
- devise suitable reporting schemes to measure these factors; and finally

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<sup>6</sup> Typical profits, allowing for all costs, range from 2% down to about -6%

- recommend reforms that will guarantee the nirvana of sustainable, high quality legal aid services.

## What Is The Budget For Publicly Funded Criminal Defence Services?

It is difficult to assess fully the potential impact on firms and the criminal justice system as a whole without knowing the precise details of the budget for publicly funded criminal defence services. We have consistently asked for this information, but it is still outstanding.

However, looking at the figures provided by Lord Carter<sup>7</sup>, we can see that by 2010 he envisages that his reforms will secure savings of nearly 10.5% to the criminal legal aid budget, and that some areas of work will be affected more than others – see Table 1.

**Table 1 - Lord Carter's Predicted Spend For Criminal Legal Aid, 2005 - 2010<sup>8</sup>**

Class of work	Anticipated spend per financial year (£m)				
	2005	2006	2007	2008	2009
<b>Advocates' Fees in the Crown Court</b>					
Ex post facto schemes (terminated in stages between 1997-98 and October 2005)	162	105	87	49	11
Graduated fee scheme (introduced in stages since 1997-98 and modified scheme due to take effect from April 2007)	155	175	197	217	238
Very high cost case scheme (introduced in 2000 and due to be modified from October 2007)	45	46	43	42	41
<b>Total Advocates Fees in CC</b>	<b>362</b>	<b>326</b>	<b>327</b>	<b>308</b>	<b>290</b>
<b>Solicitors' Fees in the Crown Court (excluding solicitor advocates)</b>					
Standard fee and ex post facto schemes (due to be terminated April 2007 leaving some legacy)	218	227	109	55	11
New graduated fee scheme (due to take effect April 2007)	-	-	95	143	179
Very high cost case scheme (introduced in 2000 and due	55	56	55	55	55

<sup>7</sup> See Annex 6.2, page 199 of Legal Aid - A market-based Approach to Reform

<sup>8</sup> Although we have used Lord Carter's figures in relation to anticipated spend, our calculations for the total amounts do not reconcile with his (see the figure for solicitors fees in the Crown Court for the financial year 2008). We have assumed that his figure for anticipated spend for 2007-08 is a typographical error, and should read 173 (otherwise his figures do not make sense). It should also be noted that Lord Carter was inconsistent when rounding up or down, and does not explain how the figures are calculated.

Class of work	Anticipated spend per financial year (£m)				
	2005	2006	2007	2008	2009
to be modified from October 2007)					
<b>Total Solicitors Fee in CC</b>	<b>273</b>	<b>283</b>	<b>259</b>	<b>253</b>	<b>245</b>
<b>Lower work</b>					
Police station (new fixed fee scheme due to be introduced April 07)	183	184	173	173	173
Magistrates' courts (revision to standard fee scheme due in April 07 and new graduated fee scheme due to be introduced April 2008)	340	348	335	330	330
<b>Total Lower Work</b>	<b>523</b>	<b>532</b>	<b>508</b>	<b>503</b>	<b>503</b>
<b>Total Criminal Budget</b>	<b>1,158</b>	<b>1,141</b>	<b>1,094</b>	<b>1,064</b>	<b>1,038</b>

Table 1 exposes how the total spend for a particular area of work may disguise the precise affect of Lord Carter's proposals.

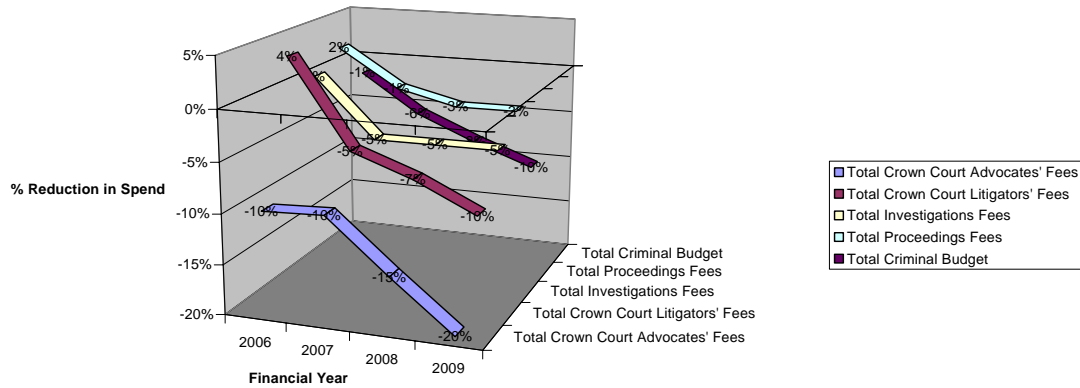
### ***Lord Carter's Forecasts & The Introduction Of Means Testing For Legal Aid***

Figure 1 shows the potential savings that Lord Carter expects to make to the legal aid criminal budget through his reforms in terms of percentage decrease. We believe that it should be possible to disaggregate cash growth for police station and magistrates' court expenditure<sup>9</sup>, and we are aware that these figures have been provided in previous publications<sup>10</sup>. We also note that he has assumed that the volume of cases remains static; our understanding is that, although the volume of magistrates' court has been fairly consistent in recent years, the number of matters being dealt with at police stations has been rising steadily.

<sup>9</sup> Lord Carter was unable to perform this calculation – see page 195, Annex 6.2 of Legal Aid - A market-based Approach to Reform

<sup>10</sup> See, for example, Professor Ed Cape's and Professor Richard Moorhead's research paper "Demand Induced Supply? Identifying Cost Drivers in Criminal Defence Work. A Report to the Legal Services Commission" – July 2005

**Figure 1 - Anticipated Reductions in Spend on Publicly Funded Criminal Defence Services, 2006 - 2009<sup>11</sup>**



Lord Carter’s forecasts savings in the magistrates’ court of 4% between 2006 and 2007 as a result of the “rolling-up” of travel and waiting costs from April next year.

It is absolutely vital that the effect of the introduction of means testing is factored into the equation when reviewing the sustainability of the market based on the savings Lord Carter predicts. Our understanding is that the Legal Services Commission estimates that there will be a reduction in the number of representation orders of approximately 10%, amounting to approximately £35 million (or 8.5% of the total Magistrates’ Court spend) . Most practitioners, and early experience tends to confirm this, believe this to be significantly underestimated. The means test is cumbersome, bureaucratic and full of anomalies and difficulties. Many defendants who should be eligible both on means and merits will fall through the net simply based upon their inability to comply with the complex requirements of the rules. Not all defendants who are refused legal aid based on means will pay privately for the services of a lawyer, and it is essential that before any wholesale change to the procurement of defence services is introduced, the precise affect of this change is measured. This should be possible with the means test having commenced operation on Monday 2<sup>nd</sup> October 2006.

Again, we have made repeated requests for the Legal Services Commission’s projections in relation to the effect of the introduction of means testing, but have yet to receive this data.

<sup>11</sup> We have been unable to reconcile all of our figures in terms of percentage increases/decreases - compare the percentage reduction in total litigators’ costs in the Crown Court for the financial years 2007-2008 (we say -2% and Lord Carter says -3%), and the percentage differences for investigations claims for the financial years 2006-2007 (we say 1%, Lord Carter says 0%), 2007-2008 (we say 0% Lord Carter says -6%), and 2008-2009 (we say -6% and Lord Carter says 0%).

## Investigations Claims

### ***Data Available***

Following the publication of Lord Carter's report, the Legal Services Commission made available to the Law Society a dataset consisting of 631,465 proceedings claims. We have asked for a more detailed dataset, to include details of the individual police stations, as well as the make-up of duty solicitor schemes in terms of police stations, but still await this data.

As part of our analysis, we conducted an online survey of our members, and throughout this report draw conclusions from the data gathered during that exercise.

### ***The Loss Of Post-Charge Investigations Claims (1F – 1M)***

Lord Carter's report is silent on the issue of post-charge investigations work, for example ID parades, "financial" and immigration interviews. There does not seem to be any allowance for this type of claim in the proposed proceedings or litigator's fee structures, and clarification is sought on this issue. (We understand that the Legal Services Commission has verbally confirmed that the monies for these classes of work will continue to be paid). The dataset provided to us does not allow us to measure the potential amount involved.

### ***The Headline Figures***

Using the Legal Services Commission's data, we believe that Lord Carter's proposed reforms will lead to a decrease of costs claimed for investigations work of 6.3%<sup>12</sup>. The effect will be felt most in Nottinghamshire, where costs would be reduced by as much as 15.7% - see Figure 3.

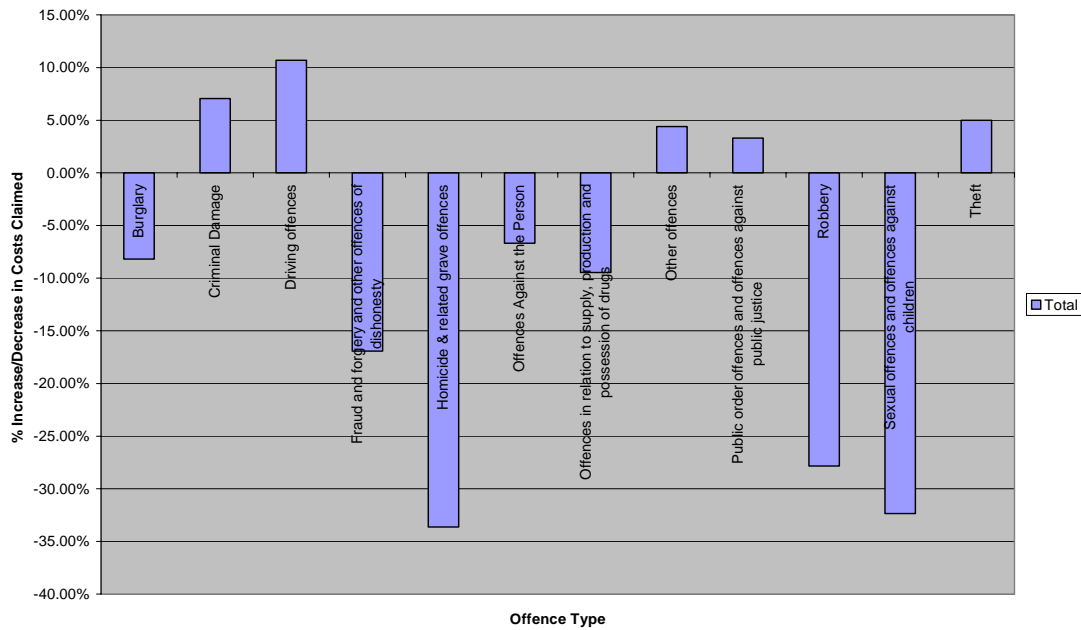
### **What About The Types Of Offences – Does This Make A Difference?**

Figure 2 clearly demonstrates that some offences are affected more than others in terms of a reduction in the costs claimable under the proposed scheme. Homicide and other grave offences (such as terrorism) experience the largest deficit – a little less than 35%. Claims made in relation to defending suspects accused of sexual offences or offences against children will be reduced by just over 32%.

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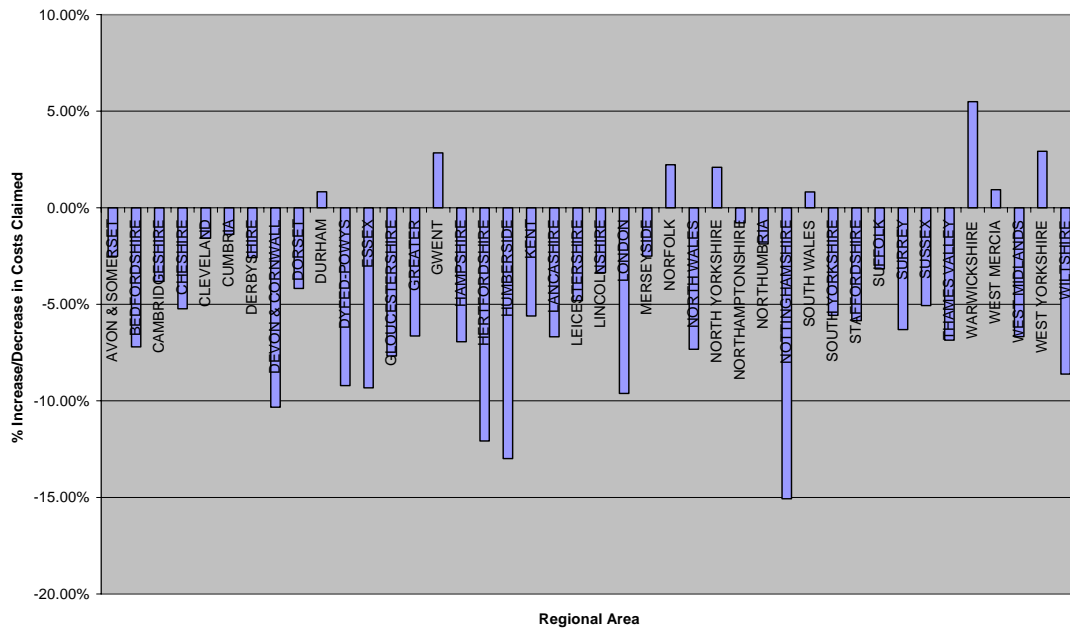
<sup>12</sup> Lord Carter estimates total savings of 5% - see Figure 1 - Anticipated Reductions in Spend on Publicly Funded Criminal Defence Services, 2006 - 2009

**Figure 2 – Potential % Increase/Decrease In Investigations Costs Claimed, By Offence Type**



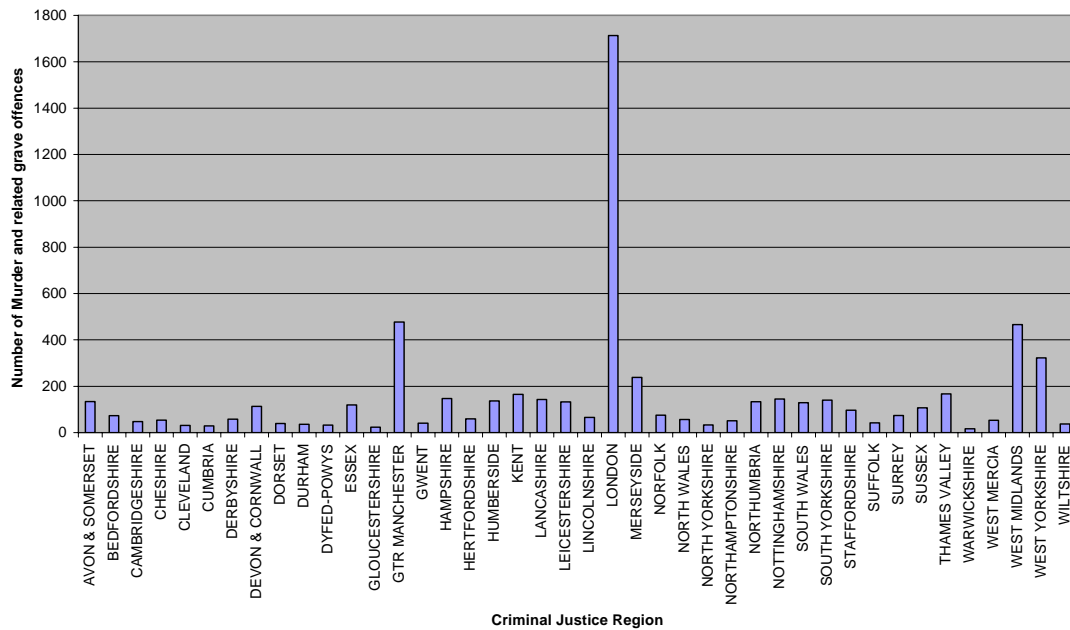
### Is There A Geographical Discrepancy?

**Figure 3 – Potential % Increase/Decrease In Investigations Costs, By Region**



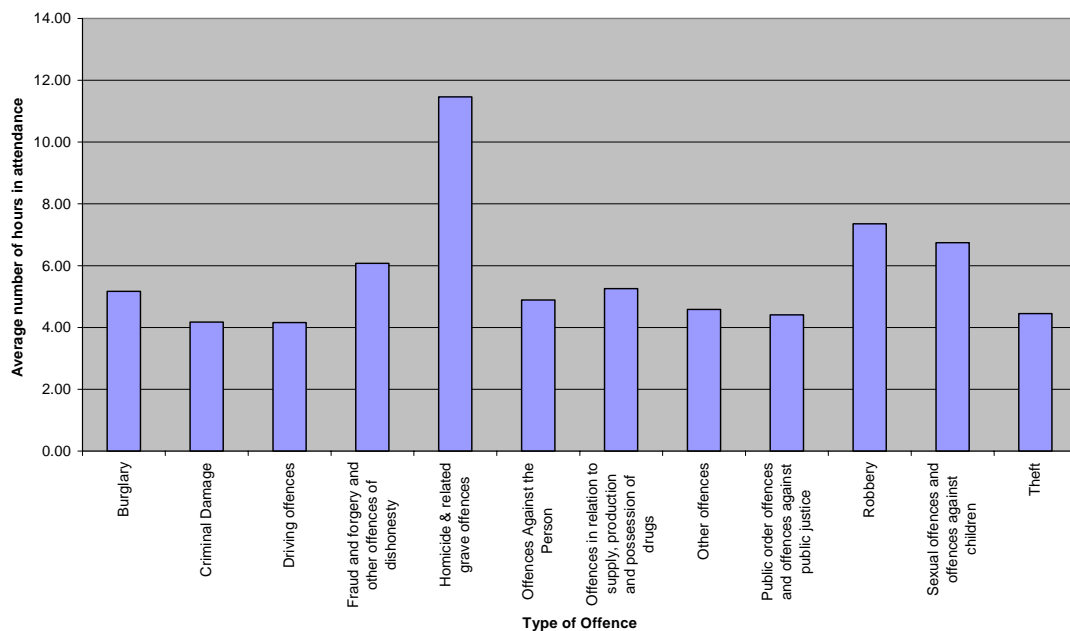
Given the differences of effect depending on the types of offences, it is noteworthy that London has by far the most claims for homicide and other grave offences – see Figure 4.

**Figure 4 - Number Of Investigations Claims Submitted In Relation To Homicide And Other Grave Offences, By Region**



It is also significant that these types of claims require on average the most number of hours in attendance at the police station – see Figure 5.

**Figure 5 - Average Number Of Hours In Attendance At The Police Station, By Offence**



### **What Other Factors Affect The Costs Of A Case?**

The joint survey undertaken by the LCCSA, CLSA, LAPG and the Law Society has allowed us to identify what, if any, other factors over and above the type of offence, affect the costs of a case.

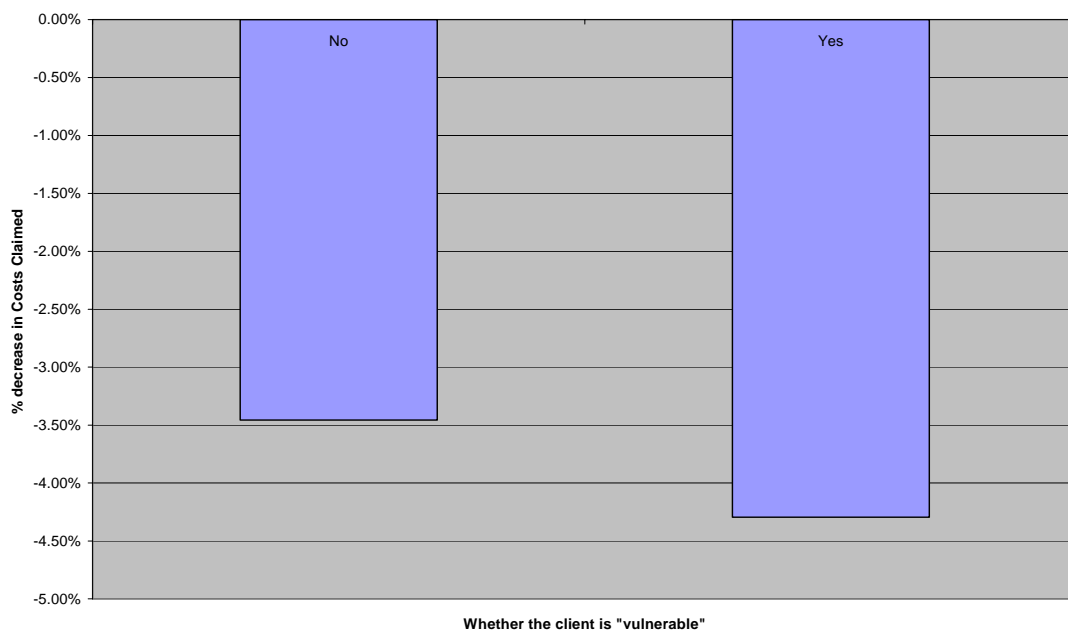
### **What If The Suspect Requires An Interpreter?**

Our research provides evidence that where an interpreter is required in the future, there will potentially be as much as a 30.24% reduction in the fees claimed. One obvious explanation for this differential is that it takes longer for the lawyer in attendance to explain their role to the suspect, advise him/her on the relevant law and take sufficient instructions in order to be able to properly advise him/her.

### **What If The Suspect Is Vulnerable?**

Our survey reveals potentially a greater decrease in the fees claimed where a suspect is vulnerable – see Figure 6.

**Figure 6 - Potential % Decrease For Investigations Claims Where The Suspect Is "Vulnerable"**



There may be a number of reasons for this differential, including lawyers having to explain the roles of the various parties to the appropriate adult, greater time being required to gain a suspect’s trust and confidence and ensuring that (s)he understands the relevant law and the implications of his/her instructions. It is also often the case that lawyers have to wait at the police station for an appropriate adult to attend.

## Proceedings Claims

### Data Available

Following the publication of Lord Carter's report, the Legal Services Commission made available to the Law Society a dataset consisting of 584,283 proceedings claims. We also conducted an online survey, and draw conclusions from the data gathered during that exercise.

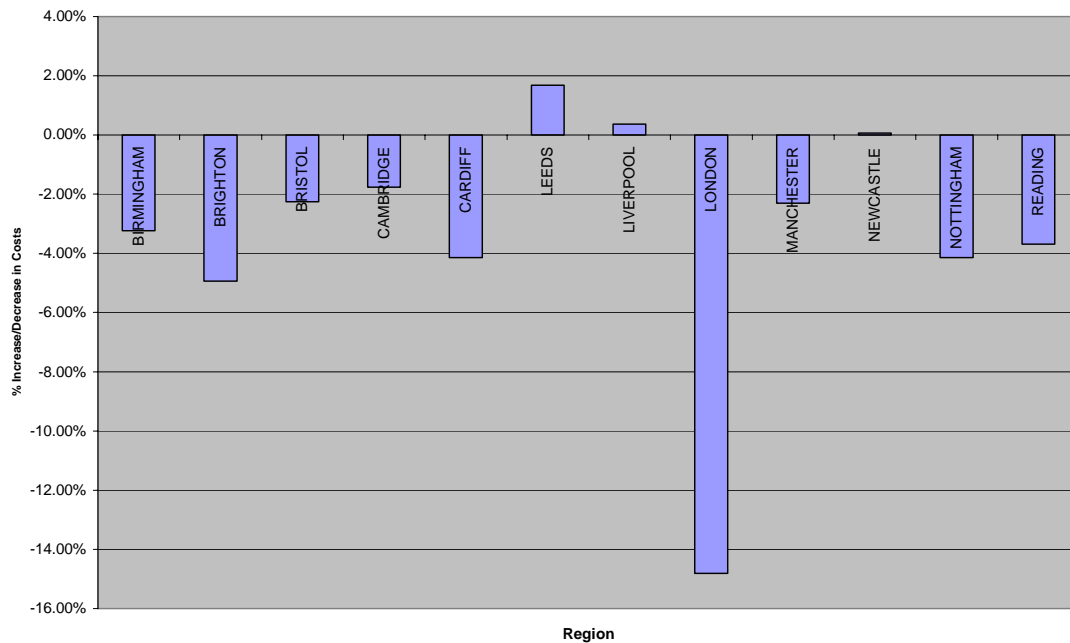
### Planned Abolition Of Category 3 Claims – S6(1) & S6(2) Committals

Lord Carter's report is silent as to what happens to the costs saved by the abolition of committal proceedings. We cannot identify any reinvestment of these monies, either in to the litigator's fee scheme, or the proceedings schemes, and we would ask the Legal Services Commission to clarify the position in relation to this. We understand that the savings may be as much as £30 million.

### The Headline Figures

Using the Legal Services Commission's data, we can predict that Lord Carter's proposed reforms will lead to a decrease in the fees claimed for proceedings work of 4.58%<sup>13</sup>. The effect will be felt most in London, where costs would potentially be reduced by as much as 14.81% - see Figure 7.

Figure 7 - % Potential Decrease In Proceedings Claims By Region



<sup>13</sup> Lord Carter predicts total savings of approximately 3% - see Figure 1 - Anticipated Reductions in Spend on Publicly Funded Criminal Defence Services, 2006 - 2009

## Are Some Types Of Claims Affected More Than Others?

Category 1 non standard fees will be affected most, suffering a loss of over 18.64% (see Table 2)

Table 2 – Potential % Increase/Difference To Proceedings Claim Type And Category

Claim Type	Category	Difference
Higher Standard Fee	1	-10.37%
Higher Standard Fee	2	-6.91%
Lower Standard Fee	1	2.34%
Lower Standard Fee	2	-2.45%
Non Standard Fee	1	-18.64%
Non Standard Fee	2	-15.41%

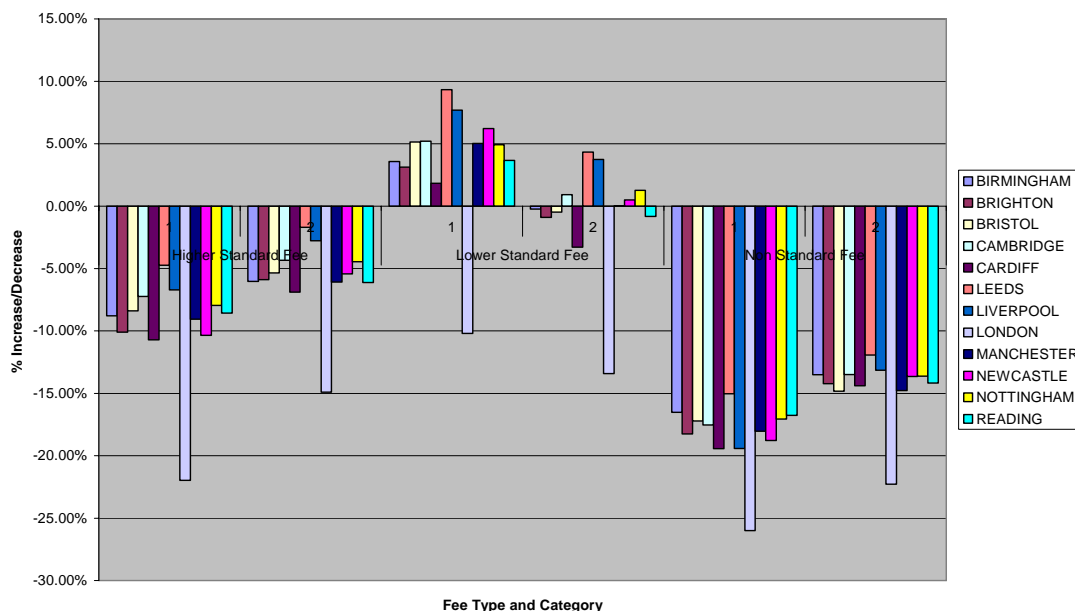
## What About The Types Of Offences – Does This Make A Difference?

The data obtained from the Legal Services Commission is limited and does not include information that will allow us to report against offence type.

## Is There A Geographical Discrepancy?

London is clearly affected the most by the proposed changes, and in the case of category 1 non-standard fees the costs of the claims would be reduced by as much as 26%.

Figure 8 – Potential % Increase/Decrease For Proceedings Claims, By Type & Category



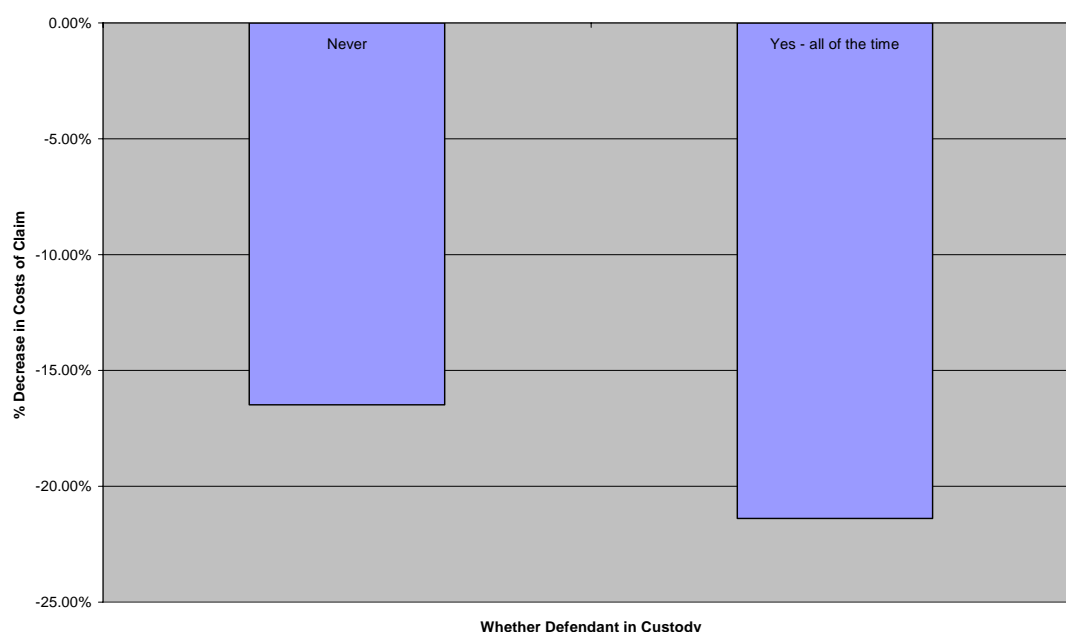
## What Other Factors Affect The Costs Of A Case?<sup>14</sup>

The Joint Survey undertaken by the LCCSA, CLSA, LAPG and the Law Society has allowed us to identify what, if any, factors beyond the type of offence affect the costs of a case.

### What If The Defendant Is In Custody?

Our online survey reveals that claims for matters where the defendant is remanded in custody for the entirety of the proceedings suffer an additional 4.9% decrease under the proposed reforms – see Figure 9.

**Figure 9 – Potential % Decrease For Costs Of Proceedings Claims Where Defendant In Custody**



### What If The Defendant Is “Vulnerable”?

We have tried to avoid “vague” or imprecise proxies, but in the case of “vulnerable” defendants there will always be an element of this. An easy way to measure this type of claim would be to include those where either: -

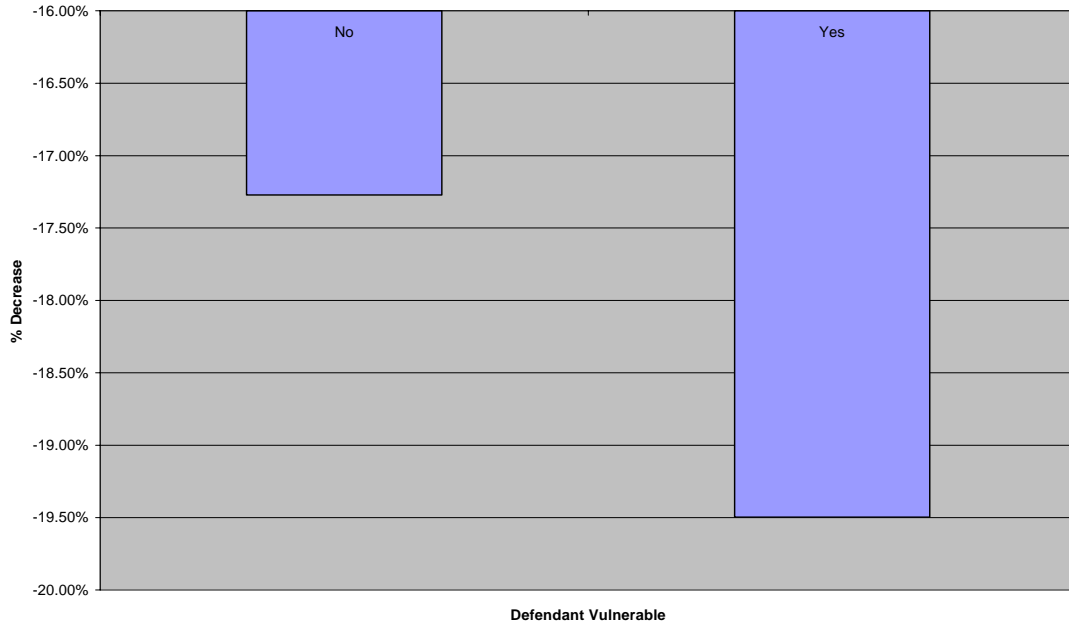
- The defendant required an appropriate adult under PACE because of his/her apparent “mental disorder”<sup>15</sup>; or
- Where the court proceedings included a disposal under the Mental Health Act 1983; or
- Where the court proceedings included an enquiry as to whether the defendant was fit to plead.

<sup>14</sup> For the purposes of this analysis we have ignored costs drivers referred to in the LCCSA’s interim response to Lord Carter’s Interim Report, as well as Professor Ed Cape and Professor Richard Moorhead’s research paper: “Demand Induced Supply?”

<sup>15</sup> Defined as “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of the mind” - section 1(2) of the Mental Health Act 1983

Our Online Survey reveals that there will be a potential 19.5% reduction in the costs claimed where a defendant meets the definition of vulnerable.

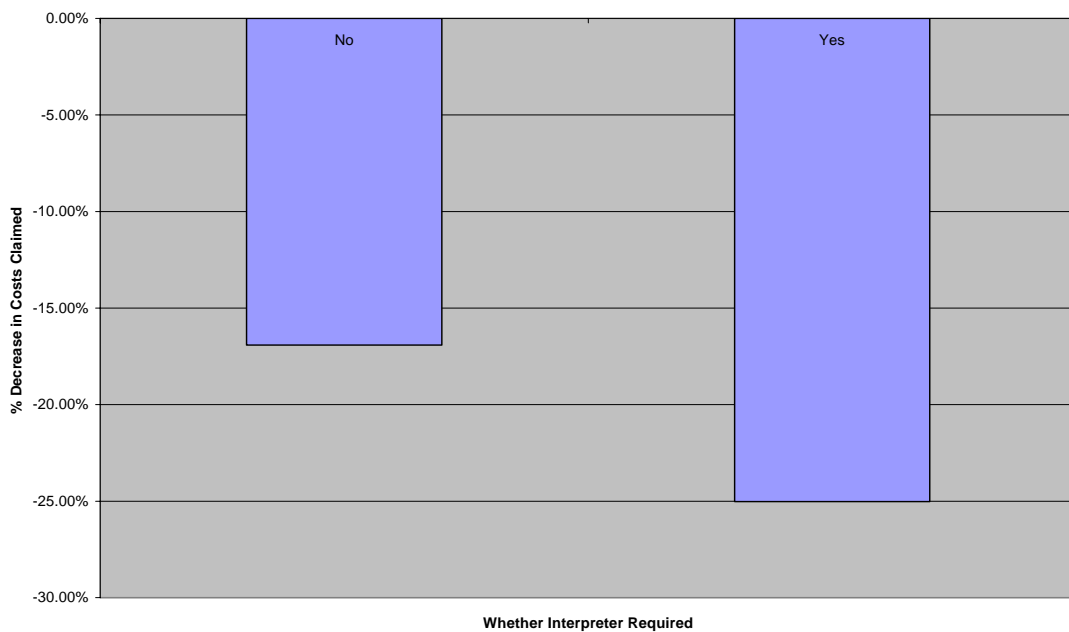
**Figure 10 - % Decrease For Proceedings Claims Where Defendant Is "Vulnerable"**



**What If The Defendant Requires An Interpreter?**

Our joint survey also shows that claims will be affected more if the Defendant requires an interpreter – see Figure 11.

**Figure 11 - % Decrease For Proceedings Costs Claimed Where Interpreter Required**



## Crown Court Claims

### ***Data Available***

Following the publication of Lord Carter's report, the Legal Services Commission provided us with a number of datasets of Crown Court claims. These included: -

- Data on 7,419 claims made by "preferred suppliers" between 2000 and 2005;
- Data on 272,975 claims made since 2003<sup>16</sup>.

We also conducted an online survey, and draw conclusions from the data gathered during this exercise.

### ***The Headline Figures***

The larger of the two datasets includes details on 263,975 claims totalling £432,824,368.99 (not all of the claims were included because of doubts raised by the Legal Services Commission in relation to their accuracy). If these were to be paid under the litigator's fee envisaged by Lord Carter, the total expenditure would be £390,515,864.87, an overall reduction of £42,308,504.12 (9.77%)<sup>17</sup>. This is broadly in line with the 9.05% reduction in fee income that would be experienced by the preferred suppliers when applying the litigator's fee to the 7,419 dataset.

### **Are Some Types of Claims Affected More Than Others?**

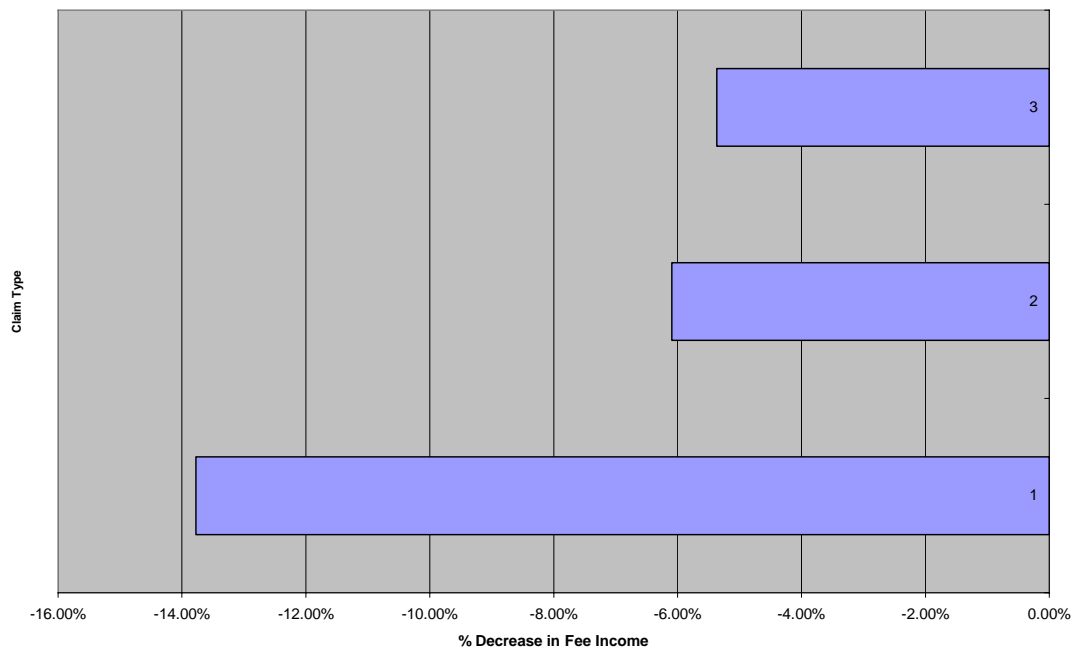
Perhaps unsurprisingly, the claims most affected are those relating to trials, and firms will experience a total reduction of 13.77% in their fee income from this type of work – see Figure 12.

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<sup>16</sup> Our understanding is that this dataset was created by amalgamating counsel's graduated fee claims data, solicitors standard fee claims data and the National Taxation Team's ex-post facto claims data

<sup>17</sup> Lord Carter predicts total savings of 10% - see Figure 1 - Anticipated Reductions in Spend on Publicly Funded Criminal Defence Services, 2006 - 2009

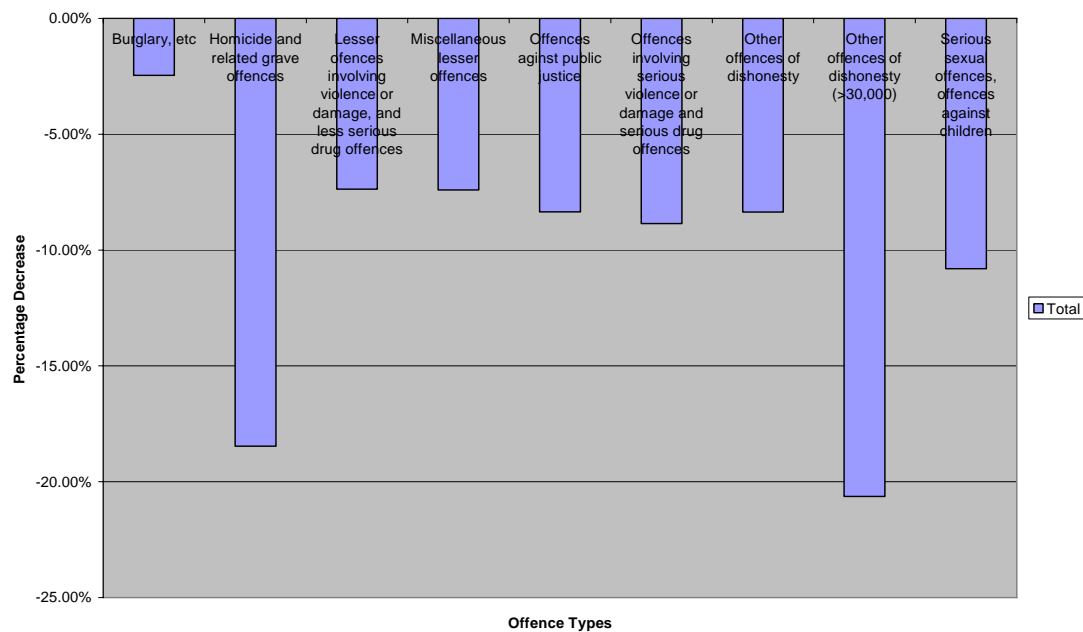
**Figure 12 – Potential % Reduction By Crown Court Claim Type<sup>18</sup>**



**What About The Types Of Offences – Does This Make A Difference?**

Our analysis of the large dataset demonstrates that claims in relation to some offences are more affected than others – see Figure 13.

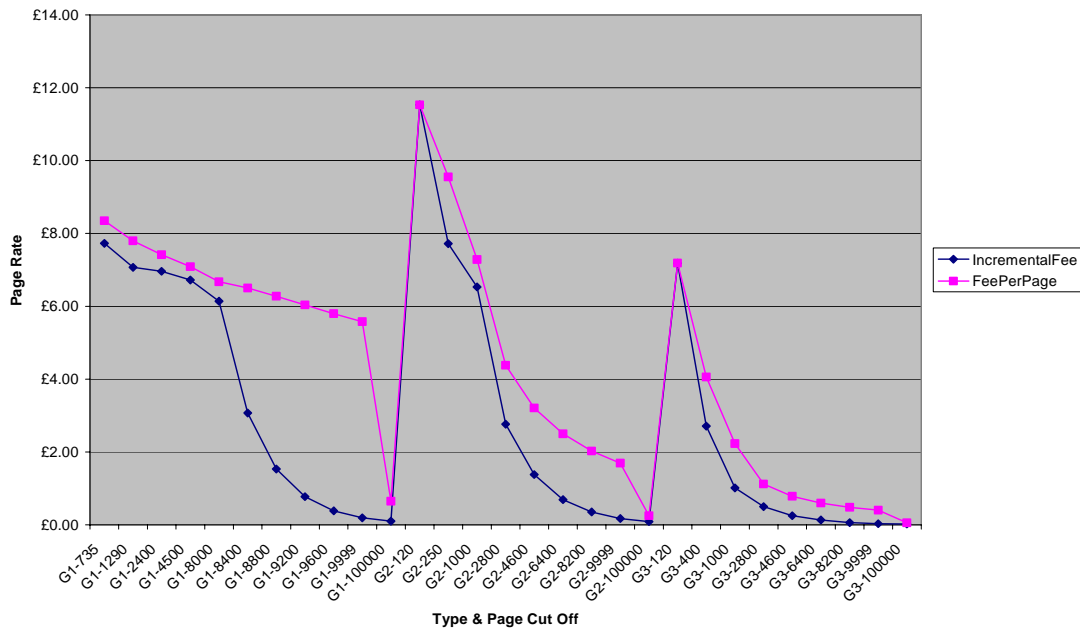
**Figure 13 – Potential % Decrease Of Crown Court Claims Income By Offence Type**



<sup>18</sup> The following case type referencing is used throughout this analysis: 1 = Trial, 2 = Cracked Trial, 3 = Guilty Plea

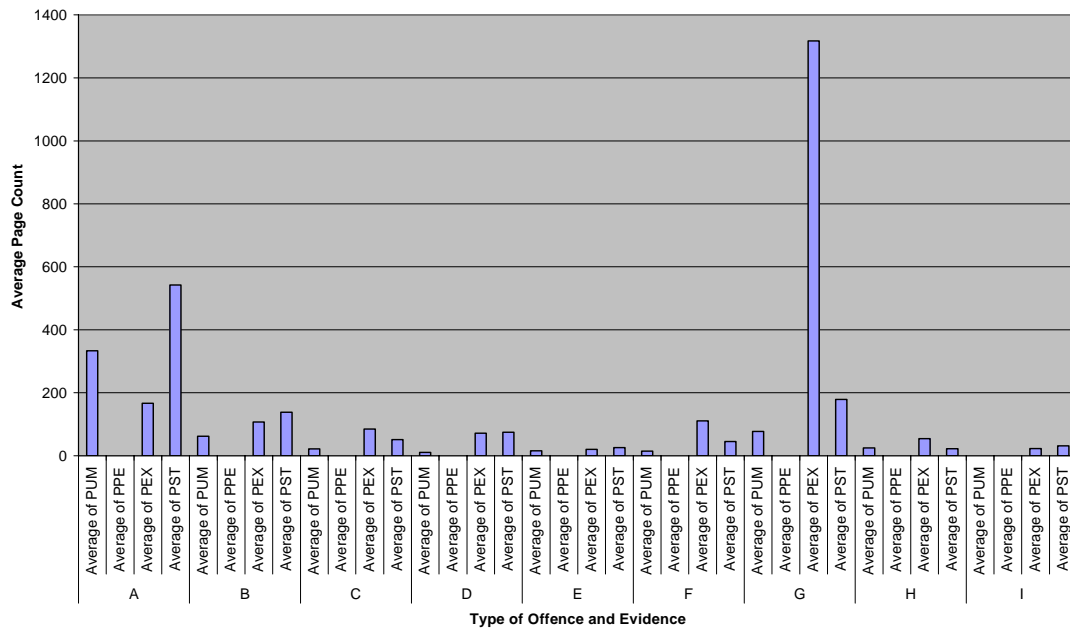
The greatest loss is to claims for defending “other offences of dishonesty” where the alleged value of the fraud/deception/theft is greater than £30,000, a loss of 20.63% in real terms. This is most probably explained by the fact that these cases tend to be “paper-heavy” and there is a steep reduction in the incremental fee paid per page of primary evidence over and above 8,400 pages.

**Figure 14 – Litigators Fee Page Rate For "Other Offences Of Dishonesty Where Value > £30,000"**



There is further support for this contention from an examination of the joint online survey (see Figure 15), which clearly shows that average number of pages for “other offences of dishonesty” far exceeds those for other types of offences.

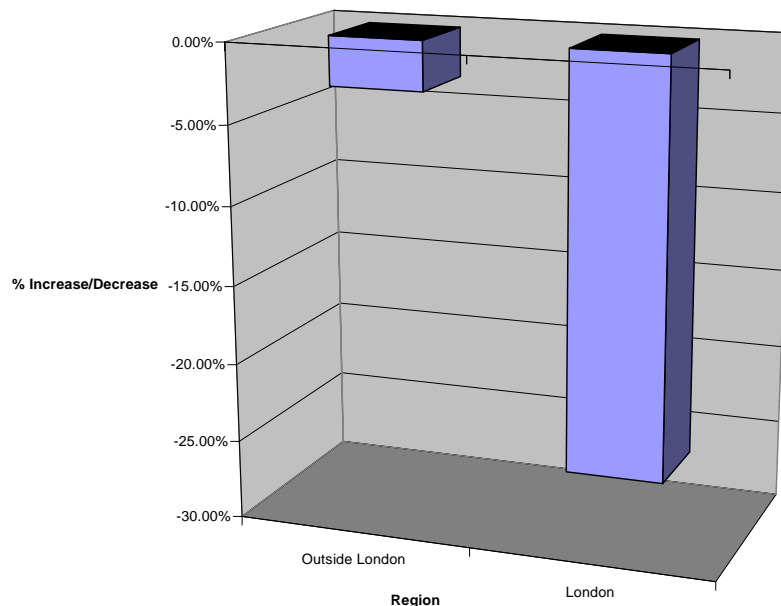
**Figure 15 - Average Pages Of Material For Crown Court Claims By Offence Type<sup>19</sup>**



### Is There A Geographical Discrepancy?

Our analysis reveals that London firms will potentially suffer the largest reduction in their of fee income, losing 26.11% (see Figure 16)

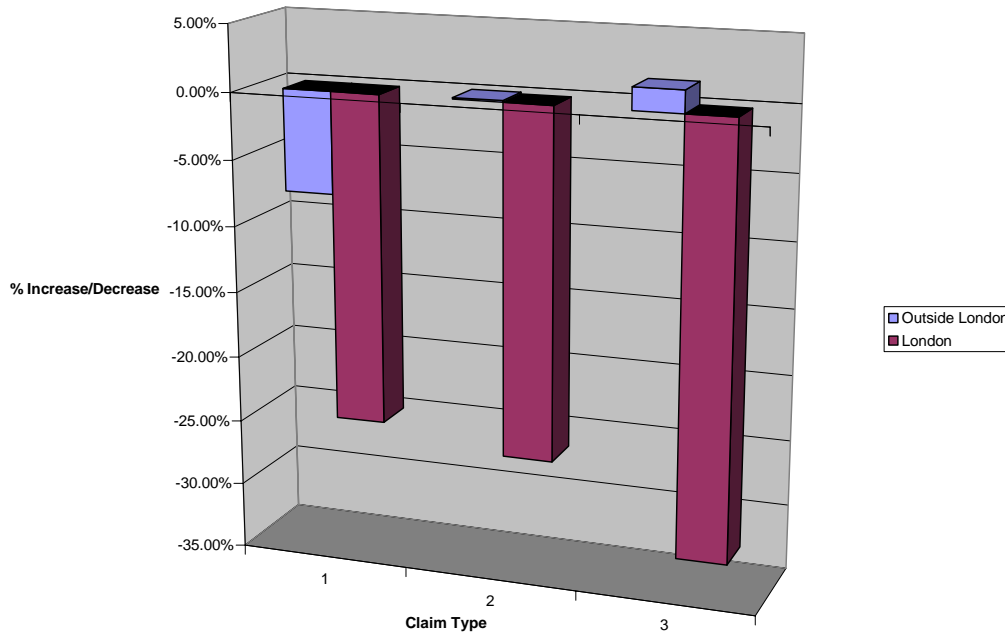
**Figure 16 - Potential % Difference In Crown Court Costs Claimed By Geography**



<sup>19</sup> Types of offence are categorised A-I, with G referring to "Other Offences of Dishonesty where value > £30,000"

The claim and offence type is better particularised in Table 3, and the differences in relation to claim types are most dramatic when you analyse them by region (see Figure 17). For guilty pleas, London’s potential losses amount to 32.63%.

**Figure 17 - % Increase/Decrease By Crown Court Claim Type And Region**



**Table 3 –Potential % Differences In Crown Court Fee Income By Offence, Claim Type And Region**

Description	Claim Type	Outside London	London
Burglary, etc	1	3.95%	-13.30%
	2	2.32%	-22.59%
	3	4.97%	-32.30%
Homicide and related grave offences	1	-14.94%	-28.98%
	2	0.52%	-31.79%
	3	8.84%	-34.59%
Lesser offences involving violence or damage, and less serious drug offences	1	-2.40%	-18.20%
	2	-1.06%	-24.58%
	3	2.21%	-34.02%
Miscellaneous lesser offences	1	-8.60%	-16.91%
	2	-3.54%	-19.93%
	3	-0.04%	-27.22%
Offences against public justice	1	-11.14%	-16.47%
	2	-2.63%	-29.24%
	3	-1.64%	-41.52%
Offences involving serious violence or damage and serious drug offences	1	-5.92%	-24.05%
	2	1.49%	-28.58%
	3	1.73%	-32.76%
Other offences of dishonesty	1	-4.88%	-21.08%
	2	0.42%	-20.06%

Description	Claim Type	Outside London	London
	3	1.52%	-30.46%
Other offences of dishonesty (>£30,000)	1	-17.21%	-35.59%
	2	1.41%	-23.00%
	3	-0.43%	-24.48%
Serious sexual offences, offences against children	1	-6.89%	-28.48%
	2	0.32%	-33.24%
	3	-2.58%	-39.23%

### ***What About The Preferred Supplier Data?<sup>20</sup>***

Figure 18 reveals the variations that the preferred suppliers would experience under the proposed litigator's fee. In some cases, the results are at complete odds with the larger dataset, and whether they can be regarded as representative must be suspect. Certainly, given that there are only four (out of twenty-one) preferred suppliers based in London, great care must be taken when assessing the impact on firms based in the capital.

<sup>20</sup> This analysis is drawn from the 7,419 dataset supplied by the Legal Services Commission

**Figure 18 – Potential % Differences For Preferred Suppliers Crown Court Claims, By Offence Types And Region**

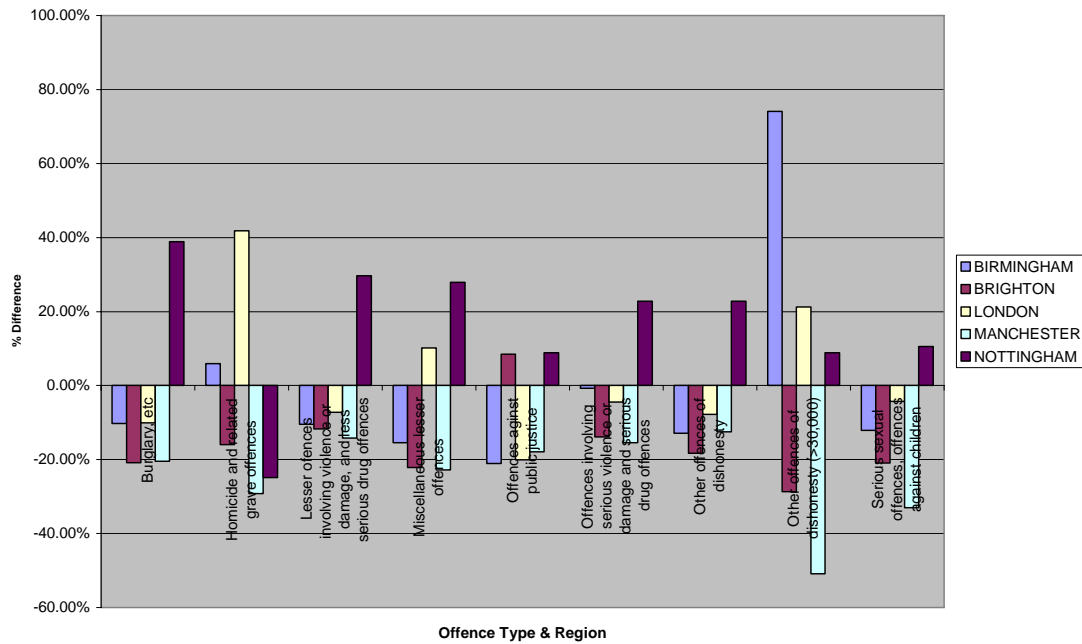
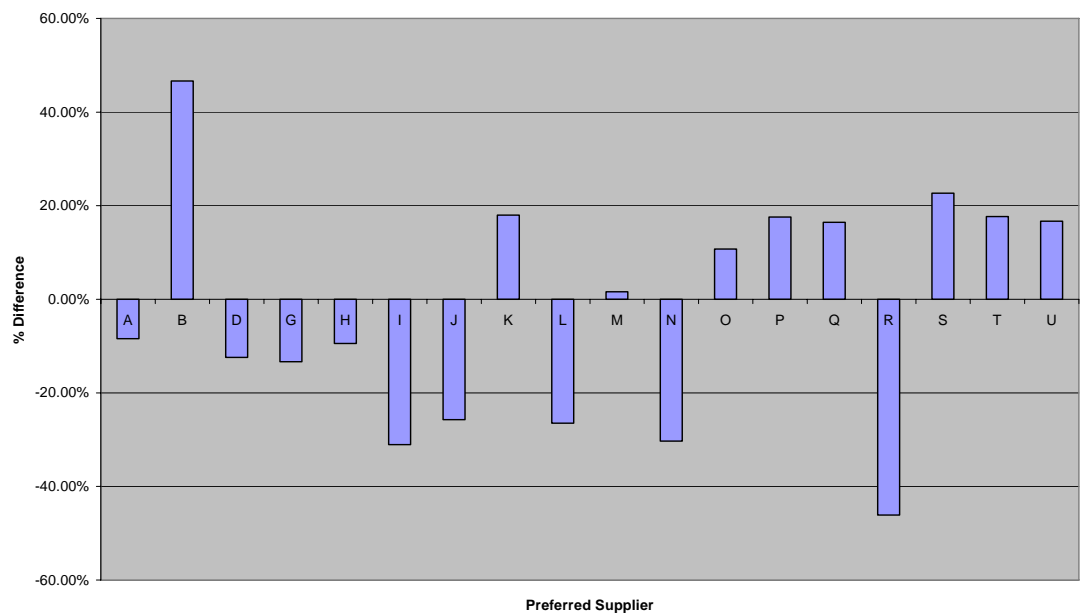


Figure 19 shows the potential affect on the individual firms. What is interesting is the apparent arbitrary effect of these proposals upon the LSC’s flagship firms – no doubt regarded as both quality assured and costs efficient. One firm is set to lose over 46% of its Crown Court fee income and four others over 20%.

**Figure 19 - Potential Effect Of Litigators Fee On Preferred Supplier Firms<sup>21</sup>**



<sup>21</sup> We have excluded preferred suppliers where we have data for less than 100 claims

Table 4 also reveals that there are currently no preferred suppliers in the following Legal Aid areas: Merseyside (Liverpool), Chester, Wales (Cardiff), South West (Bristol), North East (Newcastle), Yorkshire & Humberside (Leeds), and Eastern (Cambridge). This is an additional reason for treating the results of any analysis of that dataset with scepticism.

**Table 4 - Preferred Suppliers And Region<sup>22</sup>**

Region	Preferred Supplier
BIRMINGHAM	BACHES
BIRMINGHAM	OWEN NASH & CO
BIRMINGHAM	ROTHERHAM & CO
BIRMINGHAM	TERRY JONES SOLICITORS
BIRMINGHAM	WILLIAMSON & SODEN
BRIGHTON	EDWARD HAYES
BRIGHTON	FRANCIS LOVETT
BRIGHTON	HAMNETT OSBORNE TISSHAW SOLICITORS
BRIGHTON	WANNOP & FOX
LONDON	ASHLEY SMITH & CO
LONDON	FISHER MEREDITH
LONDON	H C L HANNE & CO
LONDON	T V EDWARDS SOLICITORS
MANCHESTER	BURTON COPELAND LLP
MANCHESTER	FORBES SOLICITORS
MANCHESTER	PLATT HALPERN
MANCHESTER	PLUCK ANDREW & CO (INC HIBBERT POWNALL & NEWTON)
NOTTINGHAM	BHATIA BEST SOLICITORS
NOTTINGHAM	CARTWRIGHT KING SOLICITORS
NOTTINGHAM	EMERY JOHNSON
NOTTINGHAM	THE JOHNSON PARTNERSHIP

### ***What Are The Possible Reasons For The Geographical Variations?***

The figures above present contradictory findings. The preferred supplier dataset (four London firms out of 21) shows those London firms with a 0.9% gain under the Carter reforms. By contrast, the larger dataset shows a loss for London of 26.11%. The distinction between “London” and “out of London” is a crude one. What, for example, of inner city Manchester or Liverpool or any other large urban area? It is likely that in such areas, as in London, there is a greater proportion of more serious offences. Carter impacts upon these to a greater extent than less serious offences.

Analysis of the larger data set shows that conclusions based solely upon the preferred supplier dataset are unreliable when setting the appropriate fee levels under the proposed litigators’ graduated fee scheme.

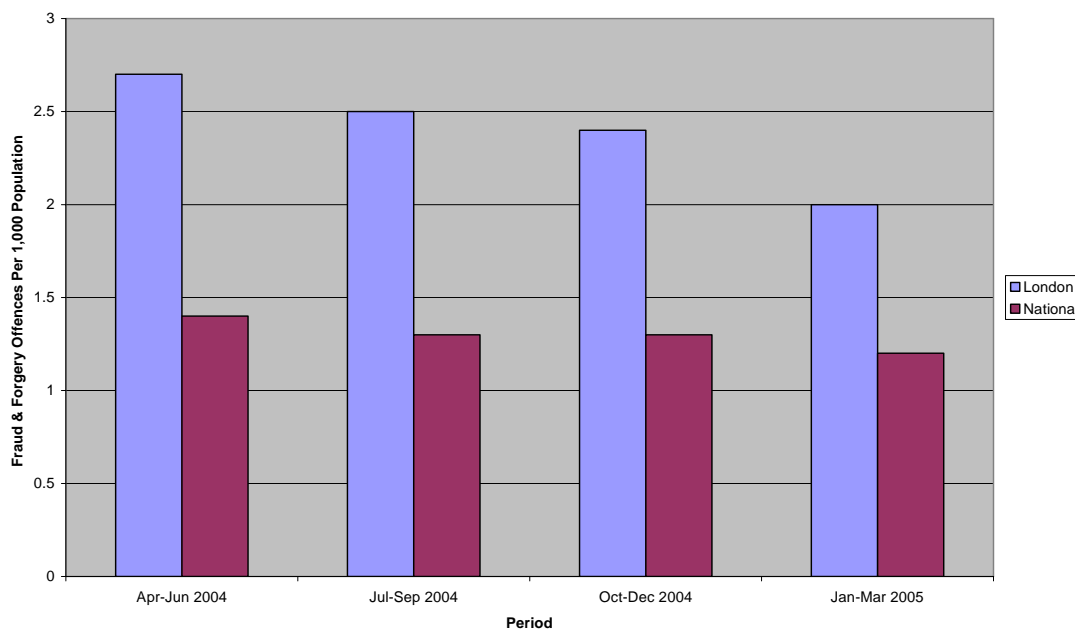
<sup>22</sup> The order of the firms listed in the table bears no relation to the alphabetical identifiers in Figure 18, and it is not possible for the reader to relate one to the other.

**Table 5 - All Crime For London Region Apr 2004 - Mar 2005<sup>23</sup>**

Month	Total number of offences	Offences per 1000 population	Offences per 1000 England/Wales population
Apr-Jun 2004	261193	35.4	27.3
Jul-Sep 2004	257383	34.8	26.3
Oct-Dec 2004	255509	34.6	26.1
Jan-Mar 2005	243553	33.0	25.5

The disproportionate affect on London claims may be partly explained by the higher percentage of fraud in the capital. This is best illustrated by Figure 20.

**Figure 20 - Fraud & Forgery Offences Per 1,000 Populations<sup>24</sup>**



**What Other Factors Affect The Costs Of A Case?<sup>25</sup>**

The joint survey undertaken by the LCCSA, CLSA, LAPG and the Law Society has allowed us to identify what, if any, other factors over and above trial length and page count affect the costs of a case.

In addition to the factors referred to below, we also attempted to measure the average number of hours of audio and video evidence in relation to each claim, but the data collected is too small a sample to provide meaningful analysis. We believe that

<sup>23</sup> “Crime in England and Wales 2004/2005”, Home Office

<sup>24</sup> “Crime in England and Wales 2004/2005”, Home Office

<sup>25</sup> For the purposes of this analysis we have ignored costs drivers referred to in the LCCSA’s interim response to Lord Carter’s Interim Report, as well as Professor Ed Cape and Professor Richard Moorhead’s research paper: “Demand Induced Supply?”

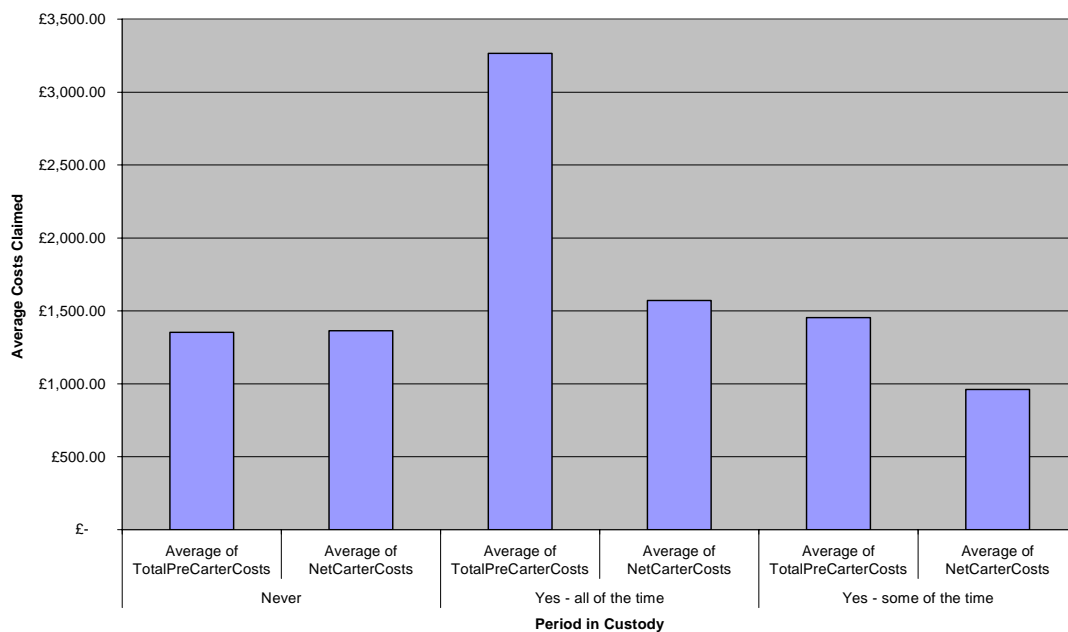
further work should be carried out in relation to these possible proxies before any graduated fee scheme is introduced.

### What If The Client Is In Custody?

Our research demonstrates the effect of the defendant being remanded in custody in so far as the total cost of a case is concerned (see Figure 21). Under the current claiming regime, the average costs for a case where the defendant is in custody is £3,265.03; for those on bail, this figure is reduced to £1,352.10, a difference of just over 58%.

The reasons for this may be obvious, including increased travel and waiting time, as well as “ancillary” court hearings such as bail applications and custody time limits. Also, it is true to say that if a defendant is charged with a more serious offence then (s)he is more likely to be remanded in to custody.

**Figure 21 - Average Crown Court Costs Claimed, By Custody Status**



### What If The Client Is “Vulnerable”?

We have tried to avoid “vague” or imprecise proxies, but in the case of “vulnerable” defendants there will always be an element of this. An easy way to measure this type of claim would be to include those where either: -

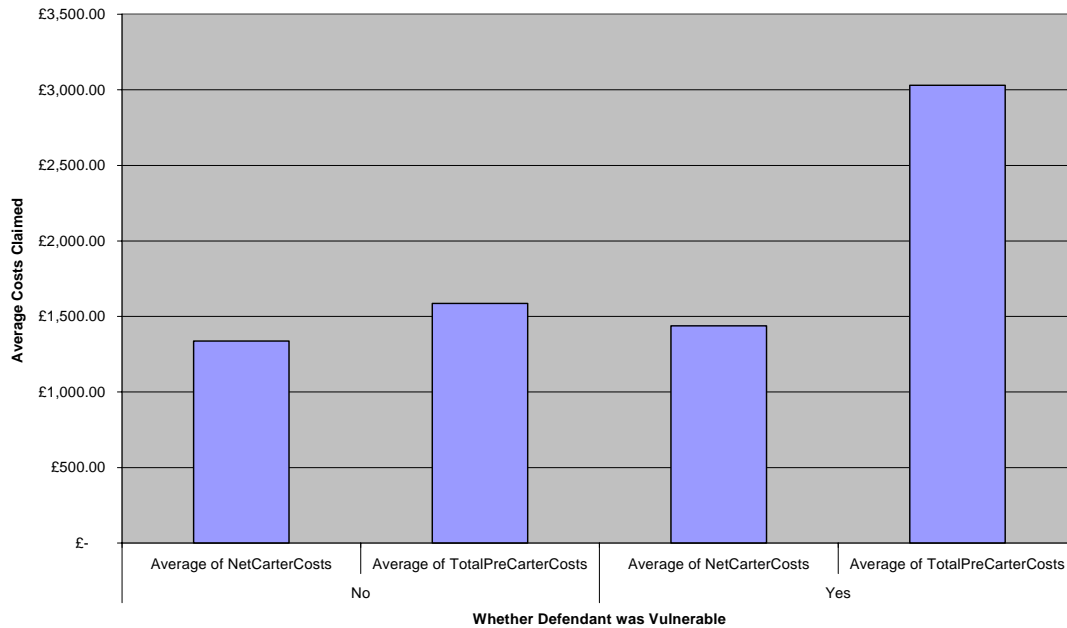
- the defendant required an appropriate adult under PACE because of his/her “mental disorder”<sup>26</sup>; or
- where the court proceedings included a disposal under the Mental Health Act 1983; or

<sup>26</sup> Defined as “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of the mind” - section 1(2) of the Mental Health Act 1983

- where the court proceedings included an enquiry as to whether the defendant was fit to plead.

The online survey reveals that for these types of cases, there is a significant impact on the average costs claimed – see Figure 22.

**Figure 22 - Average Crown Court Costs Claimed, By Defendant's "Vulnerability"**

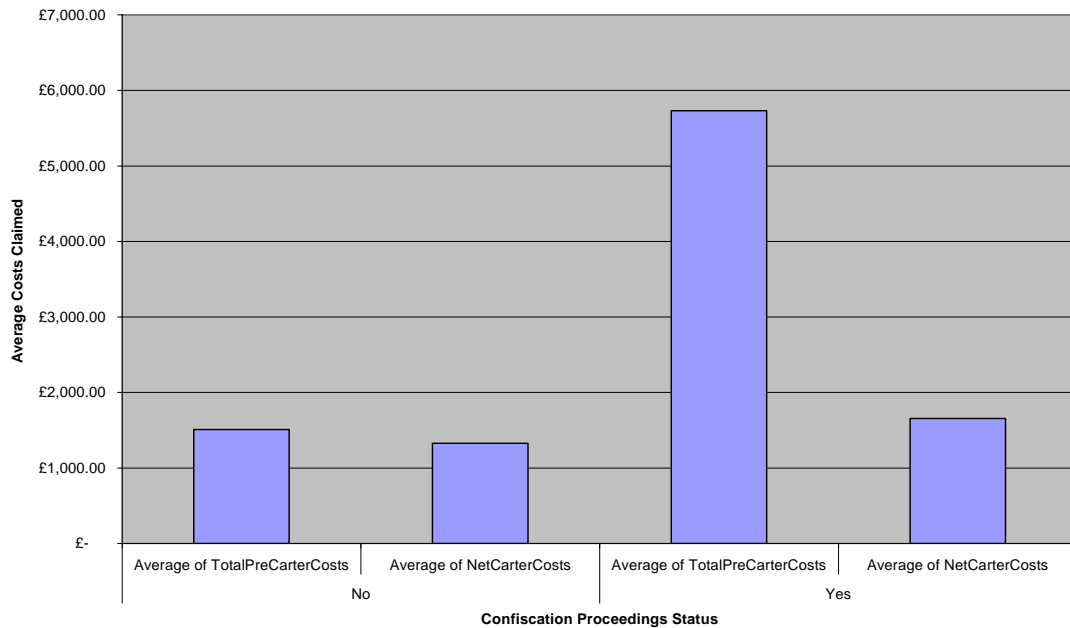


We have serious concerns that the proposals would significantly disadvantage firms representing mentally disordered offenders – a particularly vulnerable group. These cases are demonstrably more expensive and inherently more difficult. This should be reflected in the fee structure.

**What If There Have Been Confiscation Proceedings?**

The fact that there have been confiscation proceedings also makes a significant difference. Defending these types of cases leads to an average £4,221.063 increase in the claimed costs – reflecting the complexity of the evidence and issues involved in calculating a defendant’s benefit and identifying his/her realisable assets. This is further complicated when the Crown contend criminal lifestyle, extended benefit or hidden assets, and the work of the defence often involves a forensic analysis of bank accounts, identifying the source of credits and debits and seeking supporting evidence.

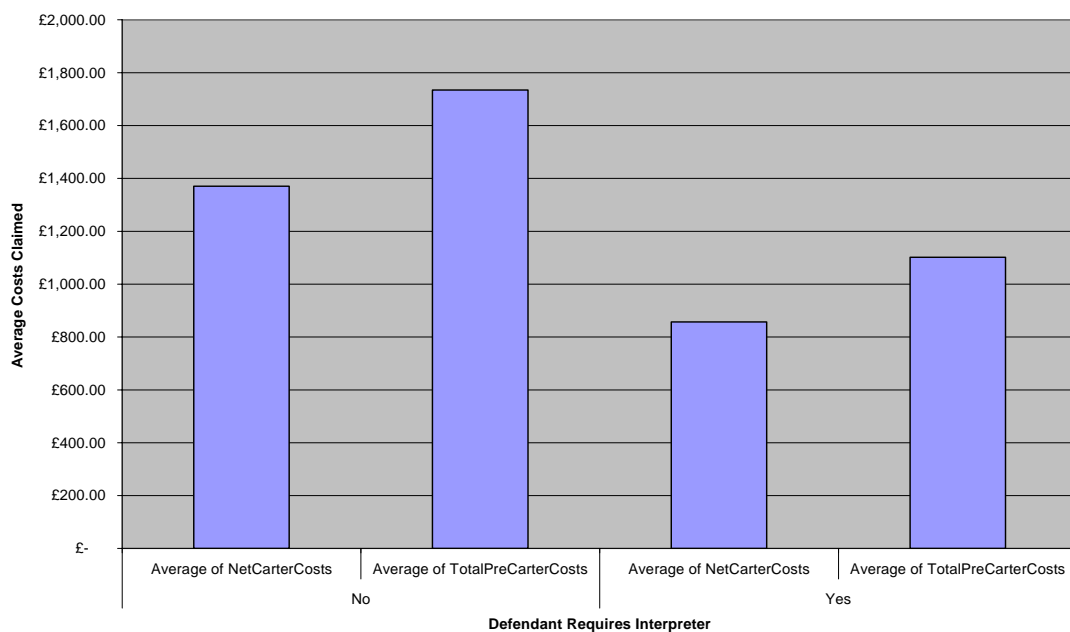
**Figure 23 - Average Crown Court Costs Claimed, Distinguishing Confiscation Proceedings**



### What If An Interpreter Is Required?

The results of the online survey are surprising in terms of the effect the requirement of an interpreter has on the average costs claimed - see Figure 24. One would have thought that this would have made an equally significant difference both in terms of number of hours required to take instructions and on the length of trial as the other factors referred to above, and the relatively low differential may be explained by the small size of the data sample.

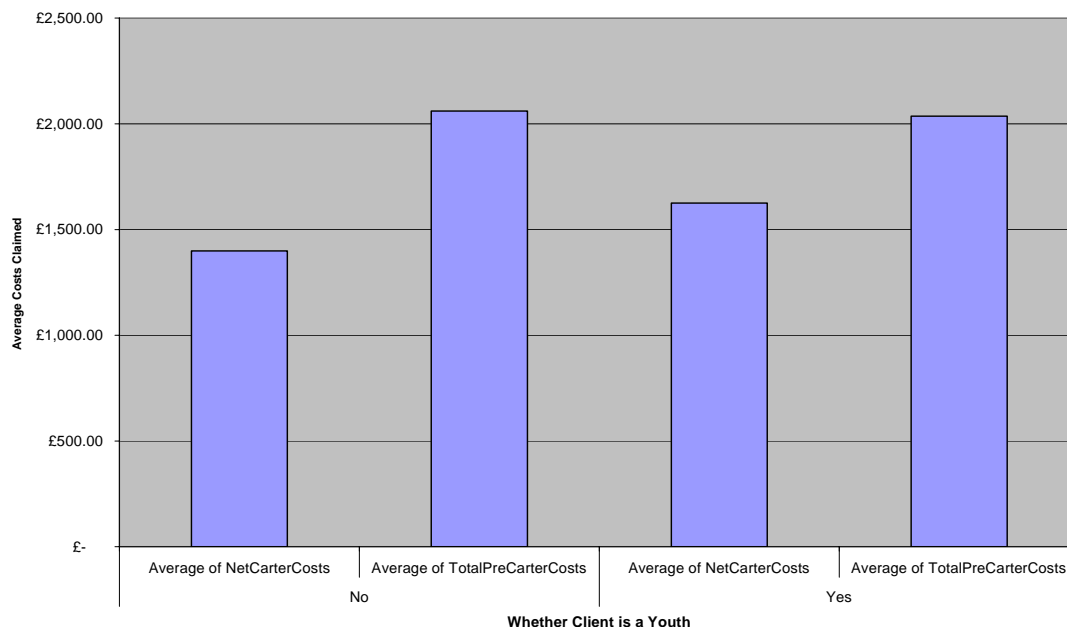
**Figure 24 - Average Crown Court Costs Claimed, By Requirement for Interpreter**



## What if the Defendant is a Youth?

Our Online Survey shows that there is no significant difference in the average costs claimed when defending adult or youth defendants – see Figure 25.

Figure 25 - Average Crown Court Costs Claimed, by Adult or Youth Status



## How does the Litigator’s Fee compare to the proposed Advocate’s Fee?<sup>27</sup>

Approximately a quarter of all criminal legal aid is spent on advocacy services in the Crown Court<sup>28</sup>. There are over 11,000 independent advocates in private practice, with approximately 3,000 providing criminal defence services<sup>29</sup>.

It is possible to use the 272,975 dataset supplied by the Legal Services Commission to compare the proposed Litigator’s fee to the proposed Advocate’s fee<sup>30</sup>.

Figure 26 highlights the disparity between Queen’s Counsels and Leading Advocates’ fees compared to Litigators’ fees: Queen’s Counsel will be paid over 113% more for undertaking exactly the same cases, Leading Counsel 60% more (in other words, the advocate will be paid more for presenting the case in court than the solicitor for

<sup>27</sup> Lord Carter predicts total savings on Advocates’ Fees of 20% - see Figure 1 - Anticipated Reductions in Spend on Publicly Funded Criminal Defence Services, 2006 - 2009

<sup>28</sup> Procurement of Criminal Defence Services, page 14

<sup>29</sup> ibid

<sup>30</sup> In fact, the Advocate’s Fee would likely be greater than that calculated because we have not included any of the “ancillary payments” (see page 159, Annex 4.5 of Legal Aid - A market-based Approach to Reform), and we have not used the enhanced rates for D+ and G+ offences (the dataset does not allow us to make the distinction).

preparing it)<sup>31</sup>. Solicitors firms, Led Junior counsel and Junior counsel acting alone will receive approximately the same fee for undertaking these cases.

**Figure 26 - Total Advocates' Fees, Expressed As A Percentage Of Total Litigators' Fees<sup>32</sup>**

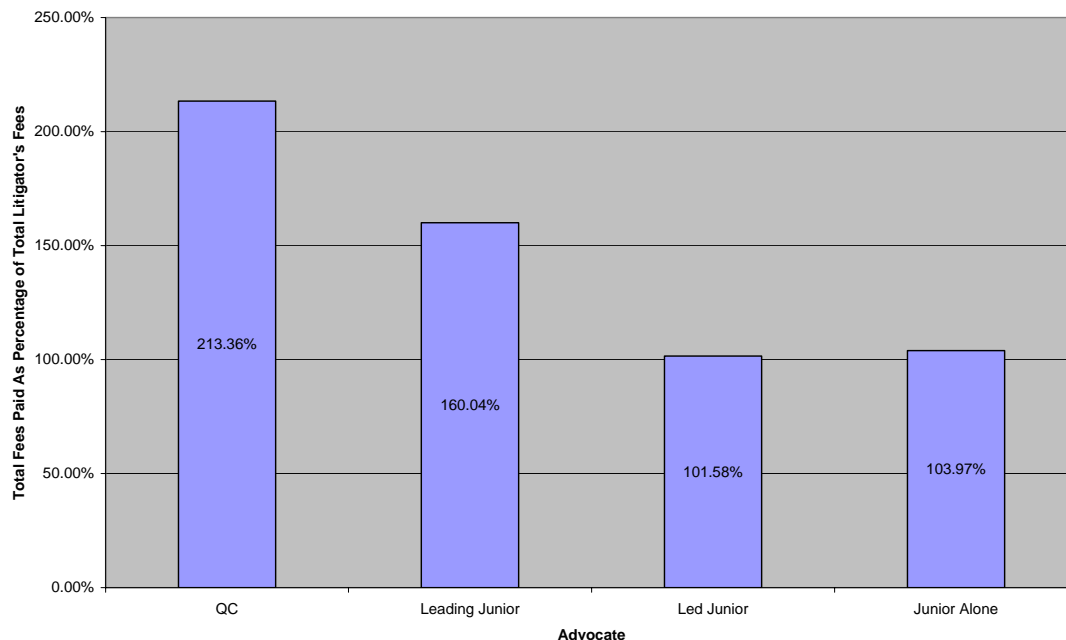


Table 6 shows the differences between the fees, distinguishing the class of offence and types of cases. We have highlighted entries where an advocate will be paid a lower fee than the litigator by using red text.

**Table 6 - Total Advocates' Fees Expressed As A Percentage Of Litigator's Fee, By Class Of Offence And Type Of Case<sup>33</sup>**

Offence Class	Case Type	Advocate	Fee as % of Litigator's Fee
Burglary, etc	Trial	QC	160.79%
		Leading Junior	120.58%
		Led Junior	80.41%
		Junior Alone	83.42%
	Cracked Trial	QC	269.67%
		Leading Junior	202.25%
		Led Junior	134.83%
		Junior Alone	91.88%
	Guilty Plea	QC	311.46%
		Leading Junior	233.60%
		Led Junior	155.73%
		Junior Alone	104.38%

<sup>31</sup> We note that year on year the costs of advocacy in the Crown Court have exceeded the solicitors costs for preparing the case (for example, Annex 6.2.2 and 6.2.3 of Legal Aid - A market-based Approach to Reform reveals that for the 2005 financial year, solicitors firms were paid £273m, and advocates were paid £362m (a difference of 25%). Lord Carter predicts that although a disparity will remain, his reforms will reduce this to 16%.

<sup>32</sup> For cracked trials, we have assumed that the case cracked in the final third (see page 157, Annex 4.5 of Legal Aid - A market-based Approach to Reform)

<sup>33</sup> ibid

Offence Class	Case Type	Advocate	Fee as % of Litigator's Fee
Homicide and related grave offences	Trial	QC	135.13%
		Leading Junior	101.37%
		Led Junior	67.50%
		Junior Alone	79.61%
	Cracked Trial	QC	114.60%
		Leading Junior	85.95%
		Led Junior	57.30%
		Junior Alone	71.94%
	Guilty Plea	QC	113.86%
		Leading Junior	85.39%
		Led Junior	56.93%
		Junior Alone	62.35%
Lesser offences involving violence or damage, and less serious drug offences	Trial	QC	220.95%
		Leading Junior	165.83%
		Led Junior	110.52%
		Junior Alone	110.08%
	Cracked Trial	QC	249.88%
		Leading Junior	187.41%
		Led Junior	101.19%
		Junior Alone	101.32%
	Guilty Plea	QC	257.85%
		Leading Junior	193.39%
		Led Junior	95.70%
		Junior Alone	95.70%
Miscellaneous lesser offences	Trial	QC	263.11%
		Leading Junior	197.47%
		Led Junior	124.16%
		Junior Alone	122.93%
	Cracked Trial	QC	273.18%
		Leading Junior	204.88%
		Led Junior	113.49%
		Junior Alone	113.52%
	Guilty Plea	QC	310.68%
		Leading Junior	233.01%
		Led Junior	122.98%
		Junior Alone	122.98%
Offences against public justice	Trial	QC	188.16%
		Leading Junior	141.20%
		Led Junior	89.85%
		Junior Alone	90.16%
	Cracked Trial	QC	241.33%
		Leading Junior	181.00%
		Led Junior	111.92%
		Junior Alone	111.96%
	Guilty Plea	QC	330.29%
		Leading Junior	247.72%
		Led Junior	151.45%
		Junior Alone	151.45%
Offences involving serious violence or damage and serious drug offences	Trial	QC	222.60%
		Leading Junior	166.94%
		Led Junior	111.22%
		Junior Alone	118.63%
	Cracked Trial	QC	202.54%
		Leading Junior	151.91%

Offence Class	Case Type	Advocate	Fee as % of Litigator's Fee
	Guilty Plea	Led Junior	101.27%
		Junior Alone	116.63%
		QC	235.38%
		Leading Junior	176.54%
		Led Junior	117.69%
		Junior Alone	123.45%
Other offences of dishonesty	Trial	QC	176.97%
		Leading Junior	132.73%
		Led Junior	88.49%
		Junior Alone	96.69%
	Cracked Trial	QC	268.63%
		Leading Junior	201.47%
		Led Junior	134.31%
		Junior Alone	98.98%
	Guilty Plea	QC	288.92%
		Leading Junior	216.69%
		Led Junior	144.46%
		Junior Alone	98.59%
Other offences of dishonesty (Value >£30,000)	Trial	QC	162.04%
		Leading Junior	121.65%
		Led Junior	88.05%
		Junior Alone	91.57%
	Cracked Trial	QC	166.64%
		Leading Junior	124.98%
		Led Junior	83.32%
		Junior Alone	114.66%
	Guilty Plea	QC	192.45%
		Leading Junior	144.34%
		Led Junior	96.22%
		Junior Alone	106.16%
Serious sexual offences, offences against children	Trial	QC	165.06%
		Leading Junior	123.87%
		Led Junior	76.46%
		Junior Alone	77.39%
	Cracked Trial	QC	167.95%
		Leading Junior	125.96%
		Led Junior	83.97%
		Junior Alone	100.96%
	Guilty Plea	QC	207.46%
		Leading Junior	155.60%
		Led Junior	103.38%
		Junior Alone	106.03%

It would appear that Lord Carter accepted that increases were warranted in the case of the fees paid to advocates, and raised their rates by an average of 16% across the board<sup>34</sup>. This appears to have been achieved without any additional spend to the budget for Crown Court advocacy because of the “winding down” of ex post facto taxation, and the anticipated savings achieved through Lord Carter’s proposed reforms to the payment schemes for very high cost cases.

<sup>34</sup> The biggest increases apply to the 1-10 day cases

## Conclusions

We present these figures for interpretation by those involved in the process. We have concerns that the fee proposals within Lord Carter's report are based upon insufficient information to construct safely a revised procurement method. Lord Carter himself recognised problems with the data he had available. Rather than making do with that data we believe there should be a delay to the implementation of the proposals whilst data is collected from which meaningful analysis and a revised scheme can be devised. The DCA/LSC can easily dictate what information suppliers must provide to enable them to carry out that process.

The stated aim of the Review is to provide a sustainable legal aid system and this can only be done on the basis of sufficient information and careful involvement of all stakeholder groups.

## Further Information & Contact Details

### ***The LCCSA ([www.lccsa.org.uk](http://www.lccsa.org.uk))***

The LCCSA represents the interests of specialist criminal lawyers in the London area. Founded in 1948, it now has over 1000 members including lawyers in private practice, Crown prosecutors, freelance advocates and many honorary members who are circuit and district judges.

The objectives of the LCCSA are to encourage and maintain the highest standards of advocacy and practice in the criminal courts in and around London, to participate in discussions on developments in the criminal process, to represent and further the interests of the members on any matters which may affect solicitors who practice in the criminal courts and to improve, develop and maintain the education and knowledge of those actively concerned with the criminal courts, including those who are in the course of their training.

### ***The CLSA ([www.clsa.co.uk](http://www.clsa.co.uk))***

The CLSA represents criminal practitioners throughout England and Wales and membership of the association is open to any solicitor - prosecution or defence - and to court clerks, qualified or trainee - involved with, or interested in, the practice of criminal law.

The objectives of the association are to encourage and maintain the highest standards of advocacy and practice in the criminal courts in England and Wales, to participate in discussions on developments in the criminal process, to represent and further the interests of the members on any matters which may affect solicitors who practice in criminal courts, and to improve, develop and maintain the education and knowledge of those actively concerned in the practice of criminal law in those courts and those who are in the course of their training.

### ***The LAPG ([www.lapg.co.uk](http://www.lapg.co.uk))***

The LAPG is an independent membership body representing organisations undertaking specialist level legal aid work under Legal Services Commission contracts. Its 600 members are mainly firms of solicitors in private practice, covering all the main and niche areas of law and the whole country, as well as a number of law centres and other not for profit agencies.

The LAPG has a policy of positive engagement with the LSC and the Government. It responds to consultations, and has regular discussions to try to find appropriate ways forward that meet the needs of clients and the interests of the taxpayer while recognising the needs of those providing the services. It provides information and training to the profession, and is the co-organiser of the Legal Aid Lawyer of the Year Awards, whose panel of judges is chaired by Cherie Booth QC.

**Contact Details**

If you would like further information in relation to any of the issues raised in this document, please contact: -

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